

MARCELO DE LEON, PETITIONER AND APPELLANT, VS. THE DIRECTOR OF PRISONS, RESPONDENT AND APPELLEE.

G.R. No. 10038. March 31, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is a petition for the writ of habeas corpus originally presented in the Court of First Instance of the city of Manila and there denied, and an appeal by the plaintiff to this court.

From an examination of the record, the following facts appear: 1. That some time prior to the 11th day of January, 1904, the said Marcelo de Leon and others were charged with the crime of illegal detention, were arrested, tried, found guilty of said crime, and sentenced to life imprisonment by the trial court; 2. From the sentence of the lower court Marcelo de Leon, together with the others, appealed to this court where, after a consideration of the cause, the sentence of the lower court was modified and he (Marcelo de Leon) was sentenced to be imprisoned for a period of eighteen years of reclusion temporal, with the legal accessory penalties, and to pay the costs; 3. On the 19th day of November, 1909, the Honorable W. Cameron Forbes, Acting Governor-General, extended to the defendant a conditional pardon, or, perhaps it is more accurate to say, reduced the period of imprisonment imposed by the court, in the following order:

"MANILA, November 19, 1909.

"By authority of the President of the United States, and upon the recommendation of the superintendent of the Iwahig Penal Colony and the Director of Prisons, the unexecuted portion of the sentence in the case of Marcelo de Leon, convicted of 'detencion ilegal' by the Court of First Instance of Bulacan and sentenced on March 24, 1903, to imprisonment for life, which sentence was, on January 11, 1904, reduced by the Supreme Court to imprisonment for eighteen years, with the accessory penalties, and to pay the costs of the proceedings, is hereby remitted, upon the condition that for five years from the date of this commutation he remain at the Iwahig Penal Colony as a free colonist, and that he shall not again be guilty of any breach of good conduct.

"W. CAMERON FORBES,

"Acting Governor-General"

4. That the plaintiff, Marcelo de Leon, was transferred to the Iwahig Penal Colony, but for some reason or other was later transferred again to Bilibid; 5. That on the 17th day of November, 1913, the Honorable Francis Burton Harrison, Governor-General, issued a conditional pardon to the plaintiff, the condition being that he should not be guilty of any crime or infraction of the law, the punishment for which should be a year or more of imprisonment, during the rest of the unexpired time of his sentence of imprisonment already imposed; 6. On the 15th day of June, 1914, by a letter from the Honorable Ignacio Villamor, Executive Secretary, to the Director of Prisons, it appears that the Governor-General, by reason of representations made to him by the prison authorities, directed the cancellation of the conditional pardon signed by him under date of November 17, 1913; 7. The said conditional pardon of His Excellency the Governor-General of the 17th of November, 1913, had never been

delivered nor communicated to the plaintiff, neither had the same been accepted by him.

Upon the issues presented by the foregoing facts, the Honorable Simplicio del Rosario, judge, reached the following conclusion:

"A pardon, as an act of grace and pure generosity on the Executive's part, can be revoked by him, for reasons and grounds he may have, at any time before it has been communicated to the interested party and become effective; especially, when it is a matter of a conditional pardon, as in this case, and before the pardon has been communicated to the interested party and the condition thereof accepted by him.

"There is no reason for setting Marcelo de Leon at liberty."

From that judgment the plaintiff appealed to this court.

In this court the plaintiff raises some question about the sufficiency of the proof showing that the pardon of His Excellency the Governor-General, Francis Burton Harrison, was, in fact, revoked. That fact is sustained only by the letter of the Executive Secretary to the Director of Prisons. No objection was made in the court below upon that ground. Upon said letter the lower court found that said conditional pardon had, in fact, been revoked. In view of the fact that the plaintiff made no objection on that question in the court below, we are not inclined now to consider the objection presented for the first time. The real question presented by the record is the effect of the revocation of the conditional pardon of His Excellency the Governor-General of the 17th of November, 1913.

A case quite analogous to the present one was presented to the Federal Courts of the United States in 1869, in the case of *In re De Puy* (7 Federal Cases, 506). In that case De Puy and others had been sentenced to one year's imprisonment and to pay a fine for a violation of the internal revenue laws of the United States, and were actually in the penitentiary undergoing said sentence. On the 3d day of March, 1869, President Johnson of the United States issued a conditional pardon to the defendant, which was sent to the United States marshal.

On the 6th day of March, 1869, President Grant, who had become President of the United States on the 4th day of March, through the Secretary of State, sent a communication to the said United States marshal, stating that if the said De Puy had not been released, that he, the United States marshal, should consider said pardon (March 3) canceled and should return the same. Said pardon was later returned to the Secretary of State of the United States.

On the 8th of March, 1869, an order was issued by President Grant in which "said pardon be, and the same is hereby, revoked and withdrawn."

Later De Puy presented a petition for the writ of habeas corpus in the district court of the southern district of New York. Upon a consideration of the questions presented by the petition for the writ of habeas corpus, Blatchford, district judge, said, among other things:

"It is contended on the part of petitioner that, when this pardon received the signature of the President and the seal of the Department of State, it was a completed act and passed beyond the control of the President. I think that is entirely a mistake. The law undoubtedly is that, when a pardon is complete, there is no power to revoke it, any more than there is power to revoke any other completed act. And yet the question still remains—When is a pardon complete?

"In *U. S. vs. Wilson* (7 Peters [32 U. S.], 150), the Chief Justice says:

" 'A pardon is an act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official, act of the executive magistrate, delivered to the individual for whose benefit it is intended. * * * A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance.'"

"No question arises in this case concerning any right or power on the part of the President to revoke or recall a completed pardon. In the language of Chief Justice Lowrie:

" 'The completed act is the charter of pardon and delivered. This is the one and only step that gives title to a pardon. Until delivery, all that may have been done is a mere matter of intended favor, and may be canceled to accord with a change of intention.'

"Upon the ground that there was no delivery of the pardon in this case to the petitioner, or to any one for him, or to the warden of the prison, who, by Act of Congress, had exclusive control and custody of the petitioner, I hold that the petitioner is not entitled to be discharged, and that he must be remanded to the custody of the warden of the penitentiary."

In the present case the pardon was neither delivered nor accepted before it was canceled by the order of the Governor-General. The same being canceled before delivery or acceptance, it was without force or effect and the petition for the writ of habeas corpus based upon the same must be denied.

For the foregoing reasons, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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