

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FLORENTINO MAMATIK, DEFENDANT AND APPELLANT.***G.R. No. 11922. April 16, 1959*

Ponente: MONTEMAYOR, J.

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Florentino Mamatik was accused of acts of lasciviousness committed in the Municipality of Pugo, La Union, and in an uninhabited place, against the person of one Maria Langas, thirteen years of age. When the case was called for arraignment before the Court of First Instance of La Union, the defendant appeared without counsel and the court appointed Atty. Ramon R. Villalon, Jr. as his counsel de oficio, and on the latter's petition that arraignment be postponed in order to enable him to confer with his client, arraignment was set for December 10, 1956. On that day, the defendant appeared without his counsel de oficio. The Court asked him where his counsel was and Mamatik answered that a lawyer was no longer necessary because he would enter a plea of guilty. Thereupon, he was arraigned and he pleaded guilty. In open court, he was sentenced to an indeterminate prison sentence ranging from five (5) months of arresto mayor to two (2) years, four (4) months and one (1) day of prision coreccional, and to pay the costs. Thereafter and on the same day, the clerk of court issued Judicial Form No. 34, committing the person of Florentino Mamatik to the Director of Prisons, saying that "the time of imprisonment will commence to run on the 10th day of December, 1956".

On December 19, 1956, Atty. Manuel B. Lasmarias, as counsel for defendant filed a motion for reconsideration, alleging that when arraigned, his client had no counsel; that there were several facts which were not presented nor brought to the attention of the court which if considered may mitigate the penalty; and that defendant was ready to present those facts. After counsel had filed a memorandum to support his motion for reconsideration, the court on December 26, 1956 denied the motion for reconsideration on the ground that the decision rendered on December 10, 1956 had already become final because the accused has started to serve his sentence the same day. The accused is appealing from the order denying his motion for reconsideration, and not for reopening the case. In his brief, he makes the following assignment of errors:

"I. The lower court erred in allowing the appellant to enter a plea of guilty, instead of postponing the arraignment due to the absence of counsel de oficio.

"II. The lower court erred in ruling its decision has already become final due to partial service of the sentence by the appellant.

"III. The lower court erred in not reopening the case on the grounds alleged in the motion for reconsideration and memorandum in support thereof."

After carefully considering the facts in the case, particularly the circumstances attending appellant's arraignment, plea of guilty, the sentence and the order of commitment, we are fully satisfied that the appeal is without merit. As the Solicitor General well observes in his brief, the trial court proceeded cautiously in arraigning the appellant and fully satisfied itself that his rights were duly protected, and that he understood the information and the consequences of his plea of guilty. We reproduce the transcript of the stenographic notes of what happened in

court on the day of arraignment, December 10, 1956, not when the case was first called for the arraignment of the accused on December 4, 1956, when appearing without counsel, he was given an attorney de oficio who between that date and December 10, 1956, must have conferred with him and must have advised him as to what should be done to best serve his interest:

"COURT: (To accused) Where is your lawyer?

ACCUSED: I do not have lawyer, your Honor.

Court: This is only for the reading of the information to you, do you need the services of lawyer for the purpose of arraignment?

ACCUSED: No more, your Honor, as I am entering a plea of guilty.

COURT: Do you need a lawyer for purposes of entering a plea of guilty?

ACCUSED: No more, your Honor.

COURT: Do you want the information to be read to you now?

Accused: Yes sir.

COURT: (To the Clerk.) Arraign the accused. (The information is read to the accused in the Ilocano dialect which the accused understands.)

Special Deputy Clerk Mamaril: Did you understand the information read to you?

Accused: Yes, sir

Special Deputy Clerk of Court Mamaril: What is your plea, guilty or not guilty?

Accused: I plead guilty, sir.

Court: Sentence. (The Court promulgates the sentence in open court.)"

The main contention of counsel for appellant is that on the date he filed his motion for reconsideration, the decision had not yet become final, because defendant had not yet commenced to serve his sentence.

According to Section 7, Rule 116 of the Rules of Court, a judgment in a criminal case becomes final after expiration of the period for appeal or when the sentence has been partially or totally served, or the defendant has expressly waived in writing his right to appeal. The record shows that appellant voluntarily commenced to serve his prison sentence on the same day that said sentence was meted out to him in open court. The charge against him was simple "acts of lasciviousness". That he was guilty thereof, there can be no question, because after having the benefit of counsel de oficio, he voluntarily entered a plea of guilty. Even his motion for reconsideration does not question his guilt. He merely alleged therein that there were facts not presented or brought to the attention of the court and which if considered, may mitigate the penalty. Presumably, he referred to mitigating circumstances. In this connection, it may be stated that his plea of guilty was considered as a mitigating circumstance to compensate the aggravating circumstance of uninhabited place. We can think of no other mitigating circumstance in his favor. If there were, he or his counsel de oficio could easily have called the attention of the court to the same.

After the sentence, appellant was not merely returned to prison as a detention prisoner, but he was sent there with the "mittimus" to serve his sentence. That was on December 10, 1956. Thereafter, a writ of execution was issued against him on December 17, 1956, for the payment of the fees in the justice of the Peace Court which first took charge of the case, the Court of First Instance, and of the Sheriff, which writ was returned unsatisfied on the same

day. In issuing the order of commitment as well as the writ of execution, the trial court must have been fully convinced from the attitude and acts of defendant, that its sentence had become final.

"A 'mittimus' after conviction is, in criminal cases, similar to an execution after judgment in a civil case. It is final process. It is carrying into effect the judgment of the court. (Scott vs. Spiegel, 35 A. 262, 67 Conn. 349)" (22 CJS p. 511)

It was only on December 19 that his new counsel, Atty. Lasmarias, filed a motion for reconsideration, not to try to prove that his client was innocent of the charge, but that he would try to prove mitigating circumstances.

In view of the foregoing, the order denying the motion for reconsideration is hereby affirmed with costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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