

BERNARDO VELASQUEZ, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.*G.R. No. 1208. January 30, 1947*

Ponente: BENGZON, J.

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Habeas corpus proceeding. Petitioner Bernardo Velasquez alleges he has been in prison since June, 1944, pursuant to an order of the Zambales court of first instance, pending the revision of his case by this Court, to which he had appealed in May, same year. He asserts that his incarceration for more than two years and six months violates his constitutional right to speedy trial, and that, as a consequence, the Government, in failing to act with dispatch on the matter, lost its authority to detain him further.

Answering the petition, the Solicitor General, for respondent, explains: (1) the prisoner is confined under a commitment order of the aforesaid court, dated May 8, 1944, in accordance with its decision sentencing him, for murder, to life imprisonment and to pay P2,000 as indemnity, with costs; (2) appeal from said decision was interposed, but on July 13, 1944, defendant filed with this Court a motion withdrawing such appeal; and (3) supposing that such appeal is still pending despite the withdrawal, petitioner has no reason to protest because he has taken no steps to reconstitute the records of his case. The Solicitor General submitted a copy of the judgment of conviction.

Petitioner filed a reply, but did not traverse the respondent's main allegations, specially that concerning the withdrawal of his appeal, which consequently must be deemed admitted. (See Rule 102, section 13.) And we have no record of the proceedings against petitioner in the Zambales court; it must have been destroyed together with many others during the battle for the liberation of Manila.

Now then, inasmuch as petitioner is restrained of his liberty by virtue of a judgment or order of a court of record, whose jurisdiction is unquestioned, the writ may not be issued, because section 4 of Rule 102 expressly prohibits the issuance thereof, in the circumstances.

Nor is petitioner in a position to complain of unjustified delay in the disposal of his appeal, because he desisted from such appeal, and even granting that the withdrawal had not been acted upon, the delay is due to the publicly known destruction of court papers, as above stated, and partly to his failure to apply for the reconstruction of his expediente, supposing, as he affirms, that his voluntary desistance did not finally end it.

However, it should be noted that the preceding remarks do not necessarily imply unqualified endorsement of the petitioner's underlying hypothesis, to wit, that defendant's right to speedy trial guaranteed by the Constitution extends to and governs proceedings in the appellate courts. This is an angle which is unnecessary to explore for the present, because conceding validity to his supposition and major premise, we find here no such inexcusable violation of defendant's privileges as to require vindication in the form of a directive for his immediate release, as was authorized in *Conde vs. Rivera and Unson* (45 Phil., 650), and analogous decisions.

Wherefore, without prejudice to the reconstitution of the original record which the parties may institute, the petition for the writ of habeas corpus is denied. No costs.

Moran C.J., Paras, Feria, Pablo, Briones, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Upon the very facts alleged in respondent's return, without considering petitioner's allegations, we are of opinion that petitioner is illegally deprived of his liberty and, therefore, is entitled to be immediately released.

Respondent alleges that petitioner is confined by virtue of a commitment issued on May 8, 1944, by the clerk of the Court of First Instance of Zambales in which it is stated that petitioner had been convicted of murder and sentenced to reclusion perpetua; that petitioner appealed from the said decision but on July 13, 1944, he filed a motion withdrawing his appeal; that it does not appear that a record of petitioner's appeal obtains in the files of the Supreme Court or that petitioner has taken steps for the reconstitution of the records of his case against the possibility that said records were among those destroyed during the war.

Upon these allegations, petitioner appears to be deprived of his liberty by virtue of a judicial process obtained during and under the Japanese regime in 1944, and, as we have expressed in our opinion in the *Co Kim Cham* case (75 Phil., 113), said judicial process is among those we declared null and void by virtue of a proclamation issued by General Douglas MacArthur upon his landing in Leyte. Whether petitioner's appeal is still pending or has been withdrawn is immaterial in view of this conclusion.

Even without considering the nullifying effects of MacArthur's proclamation, there is ground to conclude that petitioner is a victim of unjustified and unjustifiable delay in the administration of justice. If he has withdrawn his appeal on July 13, 1944, there is no justification why such withdrawal should remain unacted upon for two and a half years. If it was not withdrawn, the delay in the disposal of the appeal is also unjustified and unreasonable.

Respondent assumes that if the records of the appeal were destroyed during the war, it is the petitioner who should be blamed for not moving for reconstitution. The position is wrong. The initiative in criminal cases comes and should come from the prosecution. The burden of pressing criminal cases rests on the prosecution's shoulders. The accused is in the defense. As in all conflicts, no one expects that the initiative should come from the defense. The maxim that the best defense is offense is just a paradoxical logodaedaly. An alleged defender who starts a conflict by offensive action, ceases to be a defender, to become an aggressor.

The duty of prosecuting offenders is one of those imposed on all governments, to keep social order. The position of the accused is only one of resistance. Whether static or dynamic, it is always characterized by passivity in matters of initiative to push the case to an end. The prosecution is duty bound not only to prosecute offenders but also to have criminal cases disposed of as early as possible. It is against the nature of things to expect the accused to push the case to an early termination. A law that runs against common sense is bad law. If the case has not been reconstituted, it is the prosecution's fault. The accused should not be made to suffer for a neglect of the prosecution. The failure to move for reconstitution shows a dereliction of official duty of the proper officers of the government.

Under the Constitution, in all criminal prosecutions, the accused shall enjoy the right "to have a speedy and public trial," (section 1, Article III) and "speedy trial" means early disposal of a case, including prompt rendition of a final and executory decision or judgment. The word "trial" as used by the Constitution includes hearing, reception

of evidence, and other processes, such as decision in the first instance, appeal, and final and executory decision in last instance. To exclude the final decision is to make of the constitutional guarantee a mocking nonsense. The guarantee will absolutely serve no purpose if tribunals could keep criminal cases pending for years and decades by failing to render final decision, whether because of laziness or lack of sense of duty or for fraudulent or criminal neglect.

Petitioner complains with reason that he has been undergoing preventive imprisonment since June 14, 1944, and that his right to an immediate and final disposal of his case has been violated by long and painful delay.

We vote, therefore, that petitioner be immediately released from respondent's custody.

HILADO, J.:

I concur in the foregoing dissent of Mr. Justice Perfecto.

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