

RONALD SORIANO, PETITIONER, VS. COURT OF APPEALS; HON. RODOLFO V. TOLEDANO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 69, THIRD JUDICIAL REGION, IBA, ZAMBALES; THE P...

G.R. No. 123936. March 04, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in C.A. G.R. SP No. 35550,[1] which upheld the trial court's orders holding petitioner in contempt and revoking his probation.

The facts of the case are as follows:

Petitioner Ronald Soriano was convicted of the crime of Reckless Imprudence resulting to homicide, serious physical injuries and damage to property on December 7, 1993.[2] His application for probation was granted on March 8, 1994, and among the terms and conditions imposed by the trial court were the following:[3]

"x x x x x x x x

7. He shall meet his family responsibilities.

8. He shall devote himself to a specific employment and shall not change employment without prior notice to the supervising officer; and/or shall pursue a prescribed secular study or vocational training.

x x x x x x x x

11. He is to indemnify the heirs of the victim Isidrino Daluyong in the amount of P98,560.00 as ordered by the Court.

x x x x x x x x"

On April 26, 1994, Assistant Prosecutor Benjamin A. Fadera filed a motion to cancel petitioner's probation due to his failure to satisfy his civil liability to the heirs of the victim, and a supplemental motion alleging petitioner's commission of another crime for which at that time he was awaiting arraignment. The Zambales Parole and Probation Office filed a comment recommending that petitioner be allowed to continue with his probation and that he be required instead to submit a program of payment of his civil liability.

On June 20, 1994, the trial court denied the prosecutor's motion and directed petitioner to submit a program of payment of the civil liability imposed upon him.

Thereafter, probation officer Nelda Da Maycong received information that petitioner's father, who owned the vehicle involved in the accident which killed Daluyong, received P16,500.00 as insurance payment. This amount was not turned over to the heirs of Daluyong and Da Maycong considered this a violation of the terms and conditions of the probation. She submitted a manifestation to the trial court praying that petitioner be made to

explain his non-compliance with the court's order of June 20, 1994, or that he be cited for contempt for such non-compliance. Da Maycong also asked that petitioner be made to submit a program of payment as soon as possible. The trial court granted her prayers in an order dated August 15, 1994. Petitioner was once again ordered to submit his program of payment. Petitioner instead filed a motion for reconsideration explaining that he did not receive any notice of the order dated June 20, 1994. His counsel received a copy of said order on June 23, 1994 but failed to notify petitioner. Thus, the latter failed to comply with said order.

On October 4, 1994, the trial court issued an order declaring petitioner in contempt of court for his failure to comply with its orders of June 20, 1994 and August 15, 1994. The court likewise revoked the grant of probation to petitioner and ordered that he be arrested to serve the sentence originally imposed upon him. According to the trial court, among the violations committed by petitioner as regards his probation are his failure to (1) meet his responsibilities to his family, (2) engage in a specific employment, and (3) cooperate with his program of supervision.

Petitioner then filed a special civil action for certiorari with the Court of Appeals. He claimed that respondent judge committed grave abuse of discretion amounting to lack of, or in excess of, jurisdiction in holding petitioner in contempt and revoking his probation. The Court of Appeals dismissed the petition, holding that petitioner's "stubborn unwillingness" to comply with the orders of the trial court "shows his refusal to reform himself and to correct a wrong."^[4]

According to the Court of Appeals:

"Where probation was approved and probationer has proven to be unrepentant and disrespectful and even showed clear defiance to two lawful court orders, as in the case of herein petitioner, the court is not barred from revoking the same."^[5]

Petitioner's motion for reconsideration was likewise denied by the Court of Appeals for lack of merit.

Hence, this petition for review, in which petitioner makes the following assignment of errors:^[6]

- Respondent Court of Appeals erred in failing to rule that respondent judge committed grave abuse of discretion in finding that there was deliberate refusal on the part of petitioner to comply with his orders dated June 20, 1994 and August 15, 1994 and subsequently declaring petitioner in contempt.
- Respondent Court of Appeals erred in failing to rule that respondent judge committed grave abuse of discretion in revoking the probation order he earlier issued in favor of petitioner on the ground that petitioner failed to satisfy the award of civil indemnity for the heirs of the accident victim.
- Respondent Court of Appeals erred in failing to rule that respondent judge committed grave abuse of discretion in revoking the probation order he earlier issued in favor of petitioner on the ground that the latter violated the conditions of his probation three times.

Petitioner asserts that he had no intention to ignore the orders of the trial court. The court's order of June 20, 1994 was received by his counsel who, however, did not notify petitioner. Petitioner says that his "former counsel's irresponsible delay (in informing him of the order) should not prejudice him."^[7]

He explains that his non-compliance with the order to submit a program of payment of his civil liability is, ultimately, due to his poor financial condition. He only relies on his parents for support. He claims that it is impossible for him to formulate a payment program because, in the first place, he is in no position to comply with the same.

Petitioner avers that to require him to satisfy his civil liability in order to continue to avail of the benefits of

probation is to violate the constitutional proscription against unequal protection of the law. He says only moneyed probationers will be able to benefit from probation if satisfaction of civil liability is made a condition.

Petitioner contends that his enjoyment of probation should not be made to depend on the satisfaction of his civil liability. He invokes the separate opinion of Justice Isagani A. Cruz in *Salgado v. Court of Appeals*,^[8] particularly Justice Cruz' reservation about the validity of imposing satisfaction of civil liability as a condition for probation. Based on this opinion, petitioner claims that such an imposition is in the nature of an amendment of the decision of the trial court in the criminal case against him, which cannot be allowed since the decision is already final and executory. He further invokes the majority decision in *Salgado* and asserts that "any program of payment of civil liability must take into consideration the needs and capacity of petitioner."^[9]

Petitioner claims that his failure to meet his responsibilities to his family and to engage in gainful employment is not deliberate but is due to his poverty. He adds that his being unskilled, with a criminal record to his name, does not exactly enhance his chances for employment.

Finally, petitioner cites our decision in *Baclayon v. Mutia*:^[10]

"x x x Conditions should be interpreted with flexibility in their application and each case should be judged on its own merits -- on the basis of the problems, needs and capacity of the probationer. The very liberality of the probation should not be made a tool by trial courts to stipulate instead unrealistic terms."^[11]

In his comment, the Solicitor General asks for the dismissal of the petition. The only issue to be resolved according to him is whether or not petitioner has violated the terms and conditions of his probation as to warrant its revocation. The Solicitor General argues that petitioner has committed violations, thus justifying the trial court's revocation of the grant of probation. He further points out that our ruling in *Salgado* is inapplicable to the case of petitioner since what was involved in *Salgado* was a program of payment already imposed upon petitioner therein. In this case, however, it is petitioner who is being asked to submit his own program of payment and he had not submitted any such program.

The only issue for us to resolve in this case is whether or not the revocation of petitioner's probation is lawful and proper.

Petitioner asserts that his non-compliance with the orders of the trial court requiring him to submit a program of payment was not deliberate. To our mind, his refusal to comply with said orders cannot be anything but deliberate. He had notice of both orders, although the notice of the order of June 20, 1994 came belatedly. He has, up to this point, refused to comply with the trial court's directive, by questioning instead the constitutionality of the requirement imposed and harping on his alleged poverty as the reason for his failure to comply.

Contrary to his assertion, this requirement is not violative of the equal protection clause of the Constitution. Note that payment of the civil liability is not made a condition precedent to probation. If it were, then perhaps there might be some basis to petitioner's assertion that only moneyed convicts may avail of the benefits of probation. In this case, however, petitioner's application for probation had already been granted. Satisfaction of his civil liability was not made a requirement before he could avail of probation, but was a condition for his continued enjoyment of the same.

The trial court could not have done away with imposing payment of civil liability as a condition for probation, as petitioner suggests. This is not an arbitrary imposition but one required by law. It is a consequence of petitioner's having been convicted of a crime,^[12] and petitioner is bound to satisfy this obligation regardless of whether or not he is placed under probation.

We fail to see why petitioner cannot comply with a simple order to furnish the trial court with a program of

payment of his civil liability. He may, indeed, be poor, but this is precisely the reason why the trial court gave him the chance to make his own program of payment. Knowing his own financial condition, he is in the best position to formulate a program of payment that fits his needs and capacity.

Petitioner blames his former counsel's "irresponsible delay" in informing him of the trial court's order to come up with a program of payment for his failure to make such a program. Petitioner wants to take exception to the rule that notice to counsel is notice to client.

We find no reason to make an exception in this case. Petitioner's counsel has not been shown to be grossly irresponsible as to cause prejudice to petitioner's rights.^[13] Moreover, we note that petitioner later on discovered that such a court order was received by his counsel. He could have endeavored to comply with the order then. In the June 20, 1994 order, he was given 10 days from receipt of the order within which to comply. The same period was given him in the order of August 15, 1994. Petitioner does not claim that he failed to receive notice of the latter order. In fact, he submitted a motion for reconsideration of said order, but still without the required program of payment.

No justifiable reason has been given by petitioner for ignoring those two orders. The trial court could not be faulted for citing him in contempt for his failure to comply with its orders. Nor did it abuse gravely its discretion in issuing said orders. Hence, we are in full agreement with respondent appellate court's decision as well.

Moreover, petitioner's continued refusal to submit a program of payment, along with his prayer for the deletion of the requirement of payment of civil liability from his probation order, creates the impression that he wants to completely avoid paying his civil liability. This he cannot do. He cannot escape payment of his civil liability, with or without a program of payment.

Petitioner's reliance on *Salgado* is misplaced. In that case, the trial court itself formulated the manner by which *Salgado* was to satisfy his civil liability. He was able to comply for a few months. When he started skipping his payments, his victim sought the issuance of a writ of execution to enforce full payment of the civil liability. The trial court granted this motion and it was sustained by the Court of Appeals which ruled that the program of payment amounted to an amendment of the decision of the trial court ordering payment of civil liability but without a program of payment. Since the trial court's decision had already become final, it can no longer be amended by imposing a program of payment, in installments, of the civil liability.

We held in *Salgado* that the program of payment is not an amendment of the decision of the trial court because it does not increase or decrease the liability and the obligation to pay is to be fulfilled during the period of probation.

Unlike in *Salgado*, herein petitioner was being asked to make a program of payment. But he failed to do so. Hence, in this case, there is yet no program of payment to speak of, because of petitioner's stubborn refusal and delay as well as failure to abide by the trial court's orders.

Petitioner's reliance on *Baclayon* is likewise misplaced. In that case, what was being assailed as an unrealistic condition was the trial court's requirement that petitioner therein, a teacher convicted of Serious Oral Defamation, refrain from exercising her profession. This condition was deemed unreasonable because teaching was the only profession she knew and it appeared that she excelled in teaching. No unrealistic condition similar to the one in *Baclayon* has been imposed upon petitioner herein.

As regards the other violations committed by petitioner, the question of whether or not petitioner has, indeed, violated the terms and conditions of his probation is evidently a factual one which had already been passed upon by both the trial court and the Court of Appeals. Settled is the rule in this jurisdiction that findings of fact of the

trial court are entitled to great weight, more so when they are affirmed by the Court of Appeals,[14] as in this case.

Besides, petitioner himself admits in his petition that he is unemployed and only depends on his parents for support. He can barely support his family.[15] Petitioner ought to be reminded of what is incumbent on a probationer, including those requirements that the trial court may set.

As Section 10 of the Probation Law states:

"SEC. 10. Conditions of Probation. -- xxx

The court may also require the probationer to:

- (a) Cooperate with a program of supervision;
- (b) Meet his family responsibilities;
- (c) Devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;

x x x x x x x x

- (e) Pursue a prescribed secular study or vocational training;

x x x x x x x x"[16]

Clearly, these conditions are not whims of the trial court but are requirements laid down by statute. They are among the conditions that the trial court is empowered to impose and the petitioner, as probationer, is required to follow. Only by satisfying these conditions may the purposes of probation be fulfilled. These include promoting the correction and rehabilitation of an offender by providing him with individualized treatment, and providing an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence.^{16a} Failure to comply will result in the revocation of the order granting probation, pursuant to the Probation Law:

"SEC. 11. Effectivity of Probation Order. -- A probation order shall take effect upon its issuance, at which time the court shall inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions prescribed in the said order or his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation."^{16b} (Emphasis supplied.)

Probation is not an absolute right. It is a mere privilege whose grant rests upon the discretion of the trial court.[17] Its grant is subject to certain terms and conditions that may be imposed by the trial court. Having the power to grant probation, it follows that the trial court also has the power to order its revocation in a proper case and under appropriate circumstances.

Moreover, having admittedly violated the terms and conditions of his probation, petitioner cannot now assail the revocation of his probation. Regrettably, he has squandered the opportunity granted him by the trial court to remain outside prison bars, and must now suffer the consequences of those aforecited violations.

WHEREFORE, the petition is hereby DENIED and the assailed decision of the Court of Appeals in C.A. G.R. SP No. 35550 is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Mendoza, and Buena, JJ., concur.

[1] Penned by Justice Jose C. De la Rama, with Justices Jaime M. Lantin and Eduardo C. Montenegro, concurring.

[2] Rollo, p. 11.

[3] Id., p. 12.

[4] Id., p. 39.

[5] Id., p. 38.

[6] Id., p. 17.

[7] Id., p. 18.

[8] 189 SCRA 304 (1990).

[9] Rollo, p. 23.

[10] 129 SCRA 148 (1984).

[11] Baclayon v. Mutia, supra., at 153.

[12] REVISED PENAL CODE, Art. 100.

[13] Cf. Bayog v. Natino, 258 SCRA 378 (1996).

[14] Meneses v. Court of Appeals, 246 SCRA 162 (1995).

[15] Rollo, p.19.

[16] Section 10, P. D. No. 968, as amended.

16a Section 2, P. D. No. 968, as amended.

16b Section 11, P. D. No. 968, as amended.

[17] Tolentino v. Alconcel, 121 SCRA 92 (1983); Bala v. Martinez, 181 SCRA 459 (1990).

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