

OSCAR MENDOZA ESPUELAS, PETITIONER AND APPELLEE, VS. THE PROVINCIAL WARDEN OF BOHOL, RESPONDENT AND APPELLANT.*G.R. No. 13223. May 30, 1960*

Ponente: PADILLA, J.

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The respondent appeals from a judgment of the Court of First Instance of Bohol granting the petition for a writ of habeas corpus filed by Oscar Mendoza Espuelas and ordering his release from the custody of the respondent (special proceedings No. 343).

The petitioner was charged in the Court of First Instance of Bohol with the crime of inciting to sedition denned and penalized in article 142 of the Revised Penal Code. After trial, on 22 September 1947 the Court found him guilty as charged and sentenced to suffer an indeterminate penalty from 2 years, 4 months and 1 day of prision correccional as minimum to 5 years, 4 months and 20 days of prision correccional as maximum, to pay a fine of P1,000, to suffer subsidiary imprisonment not exceeding one-third of the principal penalty in case of insolvency, and to pay the costs. (criminal case No. 576).[1] He commenced to serve his sentence, but before serving it to its full extent, on 17 March 1954, upon recommendation of the Board of Pardons and Parole, the President of the Philippines granted him conditional pardon by remitting the unexpired period of his sentence and payment of the fine of P1,000, "on condition that he shall not again violate any of the penal laws of the Philippines." On 25 March 1954 he accepted the conditional pardon and was released from confinement (Exhibit A). Sometime thereafter, in the Justice of the Peace Court of Tagbilaran, Bohol, he was charged with the crime of usurpation of authority or official functions defined and penalized in article 177 of the Revised Penal Code and Republic Act No. 10. After trial, on 29 August 1956 the Court found him guilty as charged and sentenced to suffer 4 months and 1 day of arresto mayor as minimum to 2 years, 1 month and 1 day of prision correccional as maximum, the accessories of the law, and to pay the costs. He appealed to the Court of First Instance of Bohol. On 5 July 1957 the Provincial Fiscal filed a motion stating that one of the important witnesses for the prosecution was in Manila and could not appear on the day of the trial (5 July) and praying that the case be dismissed provisionally and the bond filed for the provisional release of the petitioner cancelled. On the same day, 5 July 1957, the Court granted the motion and dismissed the case (Exhibit B). On 8 November 1957, upon the recommendation of the Board of Pardons and Parole, the President ordered his recommitment to prison to serve the unexpired period of his sentence (Exhibit 1). On 9 November 1957 the petitioner was arrested by members of the Philippine Constabulary in Tagbilaran, Bohol, and confined in the provincial jail. On 20 November 1957 he filed a petition for habeas corpus in the Court of First Instance of Bohol. After hearing, on 22 November 1957, as stated at the beginning of this opinion, the Court granted his petition. On 23 November 1957 the respondent has appealed. On the same day, 23 November, the petitioner filed a bond for his provisional release pending appeal.

The question to determine is whether the President may order the reincarceration of the appellee, upon violation by the latter of the terms of the conditional pardon granted to and accepted by him, to serve the unexpired term or period of his sentence. The Solicitor General maintains that the President may do so; whereas the appellee

contends that he may not.

In the case of *Tesoro vs. The Director of Prisons*, 68 Phil., 154, quite similar to the case under consideration, this Court held:

* * * * *

Appellant further contends that judicial pronouncement to the effect that he has committed a crime is necessary before he can be properly adjudged as having violated his conditional parole. Under condition No. 2 of his parole, petitioner agreed that he "will not commit any other crime and will conduct himself in an orderly manner." (Italics ours.) It was, therefore, the mere commission not his conviction by court, of any other crime, that was necessary in order that the petitioner may be deemed to have violated his parole. And under section 64 (t) of the Administrative Code the Chief Executive is authorized to order "the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole or suspension of sentence." (Italics ours.)

* * * * *

Under section 64 (i) of the Revised Administrative Code, the President is empowered "to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence." The arrest and confinement of the appellee were ordered by the President upon the recommendation of the Board of Pardons and Parole (Exhibit 1). In *Sales vs. Director of Prisons*, 87 Phil., 492; 48 Off. Gaz., 576, and in *Infante vs. Provincial Warden*, 92 Phil., 310; 48 Off. Gaz., 5228, this Court held:

The Revised Penal Code, which was approved on December 8, 1930, contains a repealing clause (article 367), which expressly repeals among other Acts sections 102, 2670, 2671, and 2672 of the Administrative Code. It does not repeal section 64 (i) above quoted. On the contrary, Act No. 4103, the Indeterminate Sentence Law, which is subsequent to the Revised Penal Code, in its section 9 expressly preserves the authority conferred upon the President by section 64 (i) of the Revised Administrative Code.

The legislative intent is clear, therefore, to preserve the power of the President to authorize the arrest and reincarceration of any person who violates the condition or conditions of his pardon notwithstanding the enactment of article 159 of the Revised Penal Code. In this connection, we observe that section 64 (i) of the Administrative Code and article 159 of the Revised Penal Code are but a reiteration of Acts Nos. 1524 and 1561, under which a violator of a conditional pardon was liable to suffer and to serve the unexpired portion of the original sentence.

* * * * *

The condition of the pardon granted by the President to the petitioner is "that he shall not again violate any of the penal laws of the Philippines. Should this condition be violated, he will be proceeded against in the manner prescribed by law."

Due process is not necessarily judicial.[1] The appellee had had his day in court and been afforded the opportunity to defend himself during his trial for the crime of inciting to sedition, with which he was charged, that brought about or resulted in his conviction, sentence and confinement in the penitentiary. When he was conditionally pardoned it was a generous exercise by the Chief Executive of his constitutional prerogative. The acceptance thereof by the convict or prisoner carries with it the authority or power of the Executive to determine whether a condition or conditions of the pardon has or have been violated. To no other department of the Government such power has been entrusted. In *Tesoro vs. Director of Prisons*, *supra*, this Court held:

* * * where, as in the instant case, the determination of the violation of the conditional parole rests exclusively

in the sound judgment of the Chief Executive, the courts will not interfere, by way of review, with any of his findings. * * *

In *Sales vs. Director of Prisons*, *supra*, this Court further held:

* * * * *

It is contended by the petitioner that the power vested in the President by section 64 (i) of the Revised Administrative Code to authorize the arrest and reincarceration of a violator of a conditional pardon is repugnant to the due process of law granted by the Constitution (sec. 1, Article III). A similar contention was advanced by the petitioner in the case of *Fuller vs. State of Alabama* (45 L.R.A., 502), and was rejected by the Supreme Court of that state, speaking thru Chief Justice McClellan, in the following language:

But it is insisted that this statute, in so far as it undertakes to authorize the governor to determine that the condition of the parole has not been complied with and the summary arrest of the convict thereupon by the direction of the governor, and his summary return or remandment to servitude or imprisonment under the sentence, is violative of organic guaranties of jury trial, that no warrant shall be issued to seize any person without probable cause, supported by oath or affirmation, etc. This position takes no account of the fact that the person being dealt with is a convict, that he has already been seized in a constitutional way, been confronted by his accusers and the witnesses against him, been tried by the jury of his peers secured to him by the Constitution, and by them been convicted of crime, and been sentenced to punishment therefor. In respect of that crime and his attitude before the law after conviction of it, he is not a citizen, nor entitled to invoke the organic safeguards which hedge about the citizen's liberty, but he is a felon, at large by the mere grace of the executive, and not entitled to be at large after he has breached the conditions upon which that grace was extended to him. In the absence of this statute, a convict who had broken the conditions of a pardon would, if there were no question of his identity or the fact of breach of the conditions, be subject to summary arrest, and remandment, as matter of course, to imprisonment, under the original sentence by the court of his conviction, or any court of coordinate or superior jurisdiction,—a purely formal proceeding. * * * But the statute supervenes to avoid the necessity for any action by the courts in the premises. The executive clemency under it is extended upon the conditions named in it, and he accepts it upon those conditions. One of these is that the governor may withdraw his grace in a certain contingency, and another is that the governor shall himself determine when that contingency has arisen. It is as if the convict, with full competency to bind himself in the premises had expressly contracted and agreed that, whenever the governor should conclude that he had violated the condition of his parole, an executive order for his arrest and remandment to prison should at once issue, and be conclusive upon him. * * *

The judgment appealed from is reversed, with costs against the appellee.

Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

Paras, C. J.: I dissent for the same reasons stated in my dissenting opinion in cases of *Sales vs. Dir. of Prisons* and *Infante vs. Dir. of Prisons* cited in the majority opinion.

Concepcion, J., reserves his vote.

[1] He appealed to the Court of Appeals. On 23 April 1949 the appellate court affirmed the judgment. (C.A.G.R. No. 1938-R.) He filed in this Court a petition for certiorari under Rule 46 to review the judgment of the Court of Appeals. On 17 December 1951, this Court affirmed the judgment of the Court of Appeals. (90 Phil., 524.)

[1] *The Insular Government vs. Ling Su Fan*, 15 Phil., 58; *Forbes vs. Tiaco*, 16 Phil., 534; *Tan Te vs. Bell*, 27 Phil., 354; *De Leon vs. Director of Prisons*, 31 Phil., 60; *U.S. vs. Gomez Jesus*, 31 Phil., 218; *U.S. vs. Ignacio*, 33 Phil., 202; *Cornejo vs. Gabriel*, 41 Phil., 188; and *People vs. Ponce de Leon*, 56 Phil., 386.

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