

AGUS DWIKARNA, PETITIONER, VS. HON. ANDREA D. DOMINGO, COMMISSIONER, BUREAU OF IMMIGRATION, GEN. LEANDRO MENDOZA,[] CHIEF, PHILIPPINE NATIONAL POLICE, GEN. JAIME G. CARINGAL, CH...

G.R. No. 153454. July 07, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for certiorari, prohibition and mandamus, filed under Rule 46, in relation to Rule 56, Sections 1 and 2 of the Revised Rules of Court, with a prayer for a temporary mandatory injunction for the immediate release of petitioner from detention.

The facts of the case follow.

On March 13, 2002, at around 7:25 p.m., petitioner Agus Dwikarna and two other Indonesian nationals, namely, Abdul Jamal Balfas and Hamsid Lin Rung, were at the Ninoy Aquino International Airport, checking in their luggage for x-ray screening in preparation for their departure for Bangkok, Thailand. The police authorities apprehended them when they were found to be in possession of two pieces oval-shaped C-4 plastic explosives and five pieces detonating cords.

The following day, on March 14, 2002, an information was filed against petitioner and his two companions in the Regional Trial Court of Pasay City, Branch 117, for violation of PD 1866 (illegal possession of firearms and ammunition), as amended. The accusatory part of the information read:

That on 13 March 2002, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating, together and mutually helping one another, with intent to possess, did then and there, willfully, unlawfully and feloniously have in their possession, custody and control, incendiary devices capable of producing destructive effects on contiguous objects and/or causing injury or death to persons without the necessary license and authority to possess the same, viz. : two (2) pcs. oval shaped C-4 plastic explosives and five (5) pcs. detonating cords.

CONTRARY TO LAW.[1]

The case was docketed as Criminal Case No. 02-0576.

On March 19, 2002, a charge sheet was filed by the special prosecutor of the Bureau of Immigration against petitioner and his two co-accused, docketed as D.C. No. ADD No. 02-004, for violation of section 37 (a) (7) of the Philippine Immigration Act of 1940, as amended. The charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37 (a) (7) of the PIA of 1940, as amended, committed as follows:

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in cooperation with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI'.

That on or about 7:15 PM March 13, 2002 the trio, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASCO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items.

That consequently the corresponding charge for violation of PD 1866 was filed before Pasay City prosecutor. Office and Inquest Prosecutor Bernabe Augustus C. Solis ordered their detention with the PNP Intelligence Group.[2]

On March 25, 2002, the charge sheet was amended and petitioner and his co-accused were further charged with violation of section 37 (a) (8) of the same Act. The amended charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37 (a) (7) of the PIA of 1940, as amended, committed as follows:

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in coordination with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI'.

That on or about 7:15 PM March 13, 2002 the trio AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items;

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That they are likewise charged for violation of Sec. 37 (a) (8) of the Philippine Immigration Act of 1940, as amended, committed as follows:

Being members of the Islamic extremist movements particularly the Jema'ah Islamiah and Mejahidoon Indonesia, they are involved in riots in Indonesia and organized (sic), advocates, or teaches the assault of public official and destruction of public and private property and overthrow of organized government, thus they are undesirable aliens.[3]

Meanwhile, petitioner and his co-accused were allowed to post bail for their provisional liberty, per the release order dated March 22, 2002, issued by the trial court in Criminal Case No. 02-0576. However, the order stated that the release was subject to the condition that "there exist(ed) no other legal cause to the effect that they remain confined under your custody." Since petitioner and his co-accused were charged with violation of the Philippine Immigration Act of 1940, as amended, and were ordered detained by the Bureau of Immigration, their temporary release could not be effected.

Aggrieved, petitioner and his co-accused filed a petition[4] for habeas corpus at the Court of Appeals in CA-G.R. SP No. 70045 on April 11, 2002, alleging in the main that petitioner and his co-accused were "illegally arrested and illegally restrained of their personal liberty in violation of their human rights."

While the case was pending resolution by the Court of Appeals, the information against Tamsil Lin Rung and

Abdul Balfas in Criminal Case No. 02-0576 was withdrawn.[5] Consequently, Lin Rung and Balfas were released from custody and the deportation case with respect to them were likewise dismissed.[6] That left Dwikarna as the sole petitioner in the case.

On April 29, 2002, the Court of Appeals dismissed the petition for habeas corpus:

Without passing on the legality of the arrest of petitioner DWIKARNA, but even assuming arguendo that his arrest was illegal, supervening events bar his subsequent release. x x x For DWIKARNA had already been charged by the BI for violation of the Philippine Immigration Act of 1940, as amended. Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of habeas corpus. His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of habeas corpus should not be allowed after the party sought to be released had been charged before any court. The term 'court' includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration. (Rodriquez v. Bonifacio, 344 SCRA 524, 541 [2000], Underscoring supplied).[7]

On April 30, 2002, petitioner moved for the dismissal of the amended charge sheet in D.C. No. ADD No. 02-004. On May 8, 2002, he filed a motion for the early resolution of the case. Both motions are still pending resolution by the Board of Commissioners.

In May 2002, petitioner filed the present petition for certiorari, prohibition and mandamus, which prays for the issuance of a mandatory injunction, the petitioner's release with finality from his detention as well as a writ of prohibition enjoining absolutely and perpetually the proceedings in BSI-D.C. No. ADD-02-251.

On July 12, 2002, the trial court convicted petitioner of the crime charged in Criminal Case No. 02-0576 for illegal possession of explosive materials. The dispositive portion of the decision read:

WHEREFORE, accused AGUS DWIKARNA is hereby found GUILTY beyond reasonable doubt of the crime of violation of Section 3 of P.D. No. 1866, as amended by R.A. No. 8294.

Accordingly, said accused is hereby sentenced to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, and to pay a fine of P50,000.00

The Branch Clerk of this court is hereby directed to immediately turn over to the Firearms and Explosives Division of the Philippine National Police all the explosives subject of this case for the latter to dispose of the same in accordance with law.

The cost of the suit is on the accused.

So ordered.[8]

Petitioner moved for a reconsideration of the decision and the reopening of the case for new trial. Both motions were denied. Petitioner failed to appeal from said denials. His conviction became final and executory and was entered in the book of entries of judgment. Petitioner moved to reconsider the entry of judgment but his motion was denied. He appealed said denial directly to us. His appeal was dismissed outright for being the wrong mode of appeal. The trial court then directed the Director of the National Bilibid Prisons, Bureau of Corrections, to implement the decision in Criminal Case No. 02-0576 and ordered petitioner incarcerated at the National Bilibid Prisons.[9]

The only issue to be resolved in this case is whether or not petitioner is entitled to the extraordinary remedies of certiorari, prohibition and mandamus, and whether he should be released from detention.

We have held in a litany of cases[10] that the extraordinary remedies of certiorari, prohibition and mandamus are

available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The writ of certiorari does not lie where an appeal may be taken or where another adequate remedy is available for the correction of the error. Likewise, mandamus is granted only in cases where no other remedy is available which is sufficient to afford redress. Furthermore, a writ of mandamus will not generally lie from one branch of the government to a coordinate branch, for the obvious reason that neither is inferior to the other. As correctly argued by the Office of the Solicitor General, petitioner is not without “other plain, speedy and adequate remedy in the ordinary course of law.”

Before coming to us, petitioner should have first appealed his conviction in Criminal Case No. 02-0576 to the Court of Appeals by way of a petition for review under Rule 45 of the Revised Rules of Court. Unfortunately, despite the availability of an appeal, petitioner pursued the wrong mode by filing directly with us a petition for review on certiorari with mandamus in G.R. No. 155575. Said petition was denied outright in a resolution dated December 16, 2002.[11] Petitioner’s conviction attained finality when the period to file an appeal lapsed. He cannot now come to us through this petition for certiorari, among others, because certiorari is not a substitute for the lost remedy of appeal. An appeal is a statutory privilege and it may only be exercised in the manner provided by law.[12]

On the deportation case against him in D.C. ADD 02-004, resort to court is proper only after a decision is rendered by the Board of Commissioner of the Bureau of Immigration. The Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[13] By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.[14] If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.

There is, therefore, nothing irregular and illegal with petitioner’s continued detention. He has been duly charged in court and convicted by final judgment of illegal possession of explosive materials and sentenced to imprisonment. Even if he is eventually ordered deported by the Bureau of Immigration, his continued incarceration would nevertheless still be legally justified. Section 37 (a) (9) of the Philippine Immigration Act of 1940, as amended, explicitly states that:

Section 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of another officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

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(9) x x x Provided, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported. Provided, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head; x x x.[15] (emphasis supplied)

The law is thus clear that a person convicted of a crime and ordered deported at the same time must first serve his sentence before he is deported. His imprisonment may, however, be waived by the Commissioner of Immigration.

Without such waiver, he cannot be released from prison.

WHEREFORE, foregoing premises considered, the instant petition is hereby DENIED. The prayer for a temporary mandatory injunction for the release of petitioner is likewise DENIED.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Carpio-Morales, J., no part.

[*] Now the Secretary of the Department of Transportation and Communications. He was replaced by Hermogenes Ebdane as PNP Chief.

[1] Annex “D,” Rollo, p. 34.

[2] Annex “K,” Rollo, p.42.

[3] Annex “L,” Rollo, p. 44.

[4] Annex “M,” Rollo, p. 46.

[5] Annex “R,” Rollo, p. 66.

[6] Annex “S,” Rollo, p. 67.

[7] Penned by Associate Justice Conchita Carpio Morales, now an Associate Justice of the Supreme Court.

[8] Penned by Judge Henrick F. Gingoyon, Annex “2,” Rollo, p. 139.

[9] Annex “7,” Rollo, p. 285.

[10] Marawi Marantao General Hospital, Inc. vs. Court of Appeals, 349 SCRA 321 [2001]; Heirs of Pedro Atega vs. Garilao, 357 SCRA 203 [2001]; Zarate, Jr. vs. Olegario, 263 SCRA 1 [1996]; Filoteo, Jr. vs. Sandiganbayan, 263 SCRA 222 [1996]; Solis vs. National Labor Relations Commission, 263 SCRA 629 [1996]; Ongsitco vs. Court of Appeals, 255 SCRA 703 [1996].

[11] Resolution, Annex “3,” Rollo, p. 276.

[12] Mito vs. Court of Appeals, 354 SCRA 180 [2001].

[13] Olaguer vs. Domingo, 359 SCRA 78 [2001].

[14] Palele vs. Court of Appeals, 362 SCRA 141 [2001].

[15] The Philippine Immigration Act of 1940, as amended.

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