

IN RE: THE WRIT OF HABEAS CORPUS FOR REYNALDO DE VILLA (DETAINED AT THE NEW BILIBID PRISONS, MUNTINLUPA CITY)

G.R. No. 158802. November 17, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a petition for the issuance of a writ of habeas corpus under Rule 102 of the Rules of Court. Petitioner Reynaldo de Villa, joined by his son, petitioner-relator June de Villa, seeks a two-fold relief: First, that respondent Director of Prisons justify the basis for the imprisonment of petitioner Reynaldo de Villa; and second, that petitioner be granted a new trial.[1] These reliefs are sought on the basis of purportedly exculpatory evidence, gathered after performing deoxyribonucleic acid (DNA) testing on samples allegedly collected from the petitioner and a child born to the victim of the rape.

By final judgment dated February 1, 2001, in *People of the Philippines v. Reynaldo de Villa*,[2] we found petitioner guilty of the rape of Aileen Mendoza, his niece by affinity; sentenced him to suffer the penalty of *reclusión perpetua*; and ordered him to pay the offended party civil indemnity, moral damages, costs of the suit, and support for Leahlyn Corales Mendoza, the putative child born of the rape. Petitioner is currently serving his sentence at the New Bilibid Prison, Muntinlupa City.

As summarized in our Decision dated February 1, 2001, Aileen Mendoza charged petitioner Reynaldo de Villa with rape in an information dated January 9, 1995, filed with the Regional Trial Court of Pasig City. When arraigned on January 26, 1995, petitioner entered a plea of “not guilty.”[3]

During the trial, the prosecution established that sometime in the third week of April 1994, at about 10:00 in the morning, Aileen Mendoza woke up in her family’s rented room in Sagad, Pasig, Metro Manila, to find petitioner on top of her. Aileen was then aged 12 years and ten months. She was unable to shout for help because petitioner covered her mouth with a pillow and threatened to kill her. Aileen could not do anything but cry. Petitioner succeeded in inserting his penis inside her vagina. After making thrusting motions with his body, petitioner ejaculated. This encounter allegedly resulted in Aileen’s pregnancy, which was noticed by her mother, Leonila Mendoza, sometime in November 1994. When confronted by her mother, Aileen revealed that petitioner raped her. Aileen’s parents then brought her to the Pasig Police Station, where they lodged a criminal complaint against petitioner.[4]

Dr. Rosaline Cosidon, who examined Aileen, confirmed that she was eight months pregnant and found in her hymen healed lacerations at the 5:00 and 8:00 positions. On December 19, 1994, Aileen gave birth to a baby girl whom she named Leahlyn Mendoza.[5]

In his defense, petitioner alleged that, at the time of the alleged rape, he was already 67 years old. Old age and sickness had rendered him incapable of having an erection. He further averred that Aileen’s family had been holding a grudge against him, which accounted for the criminal charges. Finally, he interposed the defense of alibi, claiming that at the time of the incident, he was in his hometown of San Luis, Batangas.[6]

The trial court found petitioner guilty beyond reasonable doubt of the crime of qualified rape, and sentenced him to death, to indemnify the victim in the amount of P50,000.00, to pay the costs of the suit and to support the child, Leahlyn Mendoza.[7]

On automatic review,[8] we found that the date of birth of Aileen's child was medically consistent with the time of the rape. Since it was never alleged that Aileen gave birth to a full-term nine-month old baby, we gave credence to the prosecution's contention that she prematurely gave birth to an eight-month old baby by normal delivery.[9] Thus, we affirmed petitioner's conviction for rape, in a Decision the dispositive portion of which reads:

WHEREFORE, the judgment of the Regional Trial Court, finding accused-appellant guilty beyond reasonable doubt of the crime of rape, is AFFIRMED with the MODIFICATIONS that he is sentenced to suffer the penalty of *reclusión perpetua* and ordered to pay the offended party P50,000.00 as civil indemnity; P50,000.00 as moral damages; costs of the suit and to provide support for the child Leahlyn Corales Mendoza.

SO ORDERED.[10]

Three years after the promulgation of our Decision, we are once more faced with the question of Reynaldo de Villa's guilt or innocence.

Petitioner-relator in this case, June de Villa, is the son of Reynaldo. He alleges that during the trial of the case, he was unaware that there was a scientific test that could determine once and for all if Reynaldo was the father of the victim's child, Leahlyn. Petitioner-relator was only informed during the pendency of the automatic review of petitioner's case that DNA testing could resolve the issue of paternity.[11] This information was apparently furnished by the Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force, which took over as counsel for petitioner.

Thus, petitioner's brief in *People v. de Villa* sought the conduct of a blood type test and DNA test in order to determine the paternity of the child allegedly conceived as a result of the rape.[12] This relief was implicitly denied in our Decision of February 21, 2001.

On March 16, 2001, Reynaldo de Villa filed a Motion for Partial Reconsideration of the Decision, wherein he once more prayed that DNA tests be conducted.[13] The Motion was denied with finality in a Resolution dated November 20, 2001.[14] Hence, the Decision became final and executory on January 16, 2002.[15]

Petitioner-relator was undaunted by these challenges. Having been informed that DNA tests required a sample that could be extracted from saliva, petitioner-relator asked Billy Joe de Villa, a grandson of Reynaldo de Villa and a classmate of Leahlyn Mendoza, to ask Leahlyn to spit into a new, sterile cup.[16] Leahlyn readily agreed and did so. Billy Joe took the sample home and gave it to the petitioner-relator, who immediately labeled the cup as "Container A."

Petitioner-relator then gathered samples from four grandchildren of Reynaldo de Villa. These samples were placed in separate containers with distinguishing labels and temporarily stored in a refrigerator prior to transport to the DNA Analysis Laboratory at the National Science Research Institute (NSRI).[17] During transport, the containers containing the saliva samples were kept on ice.

Petitioner-relator requested the NSRI to conduct DNA testing on the sample given by Leahlyn Mendoza, those given by the grandchildren of Reynaldo de Villa, and that given by Reynaldo de Villa himself. The identities of the donors of the samples, save for the sample given by Reynaldo de Villa, were not made known to the DNA Analysis Laboratory.[18]

After testing, the DNA Laboratory rendered a preliminary report on March 21, 2003, which showed that Reynaldo de Villa could not have sired any of the children whose samples were tested, due to the absence of a match between the pertinent genetic markers in petitioner's sample and those of any of the other samples, including Leahlyn's.[19]

Hence, in the instant petition for habeas corpus, petitioner argues as follows:

DNA ANALYSIS ON PATERNITY SHOWS CONCLUSIVELY THAT PETITIONER DE VILLA IS NOT THE FATHER OF LEAHLYN MENDOZA; HIS CONVICTION FOR RAPE, BASED ON THE FACT THAT LEAHLYN WAS SIREN AS A RESULT OF THE ALLEGED RAPE, CANNOT STAND AND MUST BE SET ASIDE.[20]

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A NEW TRIAL TO CONSIDER NEWLY DISCOVERED EVIDENCE IS PROPER AND MAY BE ORDERED BY THIS COURT IN VIEW OF THE RESULTS OF THE DNA TESTS CONDUCTED.[21]

Considering that the issues are inter-twined, they shall be discussed together.

In brief, petitioner relies upon the DNA evidence gathered subsequent to the trial in order to re-litigate the factual issue of the paternity of the child Leahlyn Mendoza. Petitioner alleges that this issue is crucial, considering that his conviction in 2001 was based on the factual finding that he sired the said child. Since this paternity is now conclusively disproved, he argues that the 2001 conviction must be overturned.

In essence, petitioner invokes the remedy of the writ of habeas corpus to collaterally attack the 2001 Decision. The ancillary remedy of a motion for new trial is resorted to solely to allow the presentation of what is alleged to be newly-discovered evidence. This Court is thus tasked to determine, first, the propriety of the issuance of a writ of habeas corpus to release an individual already convicted and serving sentence by virtue of a final and executory judgment; and second, the propriety of granting a new trial under the same factual scenario.

The extraordinary writ of habeas corpus has long been a haven of relief for those seeking liberty from any unwarranted denial of freedom of movement. Very broadly, the writ applies "to all cases of illegal confinement or detention by which a person has been deprived of his liberty, or by which the rightful custody of any person has been withheld from the person entitled thereto".[22] Issuance of the writ necessitates that a person be illegally deprived of his liberty. In the celebrated case of *Villavicencio v. Lukban*,[23] we stated that "[a]ny restraint which will preclude freedom of action is sufficient." [24]

The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief be illegally deprived of his freedom of movement or placed under some form of illegal restraint. If an individual's liberty is restrained via some legal process, the writ of habeas corpus is unavailing. Concomitant to this principle, the writ of habeas corpus cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not deprived or ousted of this jurisdiction through some anomaly in the conduct of the proceedings.

Thus, notwithstanding its historic function as the great writ of liberty, the writ of habeas corpus has very limited availability as a post-conviction remedy. In the recent case of *Feria v. Court of Appeals*,[25] we ruled that review of a judgment of conviction is allowed in a petition for the issuance of the writ of habeas corpus only in very specific instances, such as when, as a consequence of a judicial proceeding, (a) there has been a deprivation of a constitutional right resulting in the restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.[26]

In this instance, petitioner invokes the writ of habeas corpus to assail a final judgment of conviction, without, however, providing a legal ground on which to anchor his petition. In fine, petitioner alleges neither the deprivation of a constitutional right, the absence of jurisdiction of the court imposing the sentence, or that an excessive penalty has been imposed upon him.

In fine, petitioner invokes the remedy of habeas corpus in order to seek the review of findings of fact long passed upon with finality. This relief is far outside the scope of habeas corpus proceedings. In the early case of *Abriol v. Homeres*,^[27] for example, this Court stated the general rule that the writ of habeas corpus is not a writ of error, and should not be thus used. The writ of habeas corpus, whereas permitting a collateral challenge of the jurisdiction of the court or tribunal issuing the process or judgment by which an individual is deprived of his liberty, cannot be distorted by extending the inquiry to mere errors of trial courts acting squarely within their jurisdiction.^[28] The reason for this is explained very simply in the case of *Velasco v. Court of Appeals*:^[29] a habeas corpus petition reaches the body, but not the record of the case.^[30] A record must be allowed to remain extant, and cannot be revised, modified, altered or amended by the simple expedient of resort to habeas corpus proceedings.

Clearly, mere errors of fact or law, which did not have the effect of depriving the trial court of its jurisdiction over the case and the person of the defendant, are not correctible in a petition for the issuance of the writ of habeas corpus; if at all, these errors must be corrected on certiorari or on appeal, in the form and manner prescribed by law.^[31] In the past, this Court has disallowed the review of a court's appreciation of the evidence in a petition for the issuance of a writ of habeas corpus, as this is not the function of said writ.^[32] A survey of our decisions in habeas corpus cases demonstrates that, in general, the writ of habeas corpus is a high prerogative writ which furnishes an extraordinary remedy; it may thus be invoked only under extraordinary circumstances.^[33] We have been categorical in our pronouncements that the writ of habeas corpus is not to be used as a substitute for another, more proper remedy. Resort to the writ of habeas corpus is available only in the limited instances when a judgment is rendered by a court or tribunal devoid of jurisdiction. If, for instance, it can be demonstrated that there was a deprivation of a constitutional right, the writ can be granted even after an individual has been meted a sentence by final judgment.

Thus, in the case of *Chavez v. Court of Appeals*,^[34] the writ of habeas corpus was held to be available where an accused was deprived of the constitutional right against self-incrimination. A defect so pronounced as the denial of an accused's constitutional rights results in the absence or loss of jurisdiction, and therefore invalidates the trial and the consequent conviction of the accused. That void judgment of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus.^[35] Later, in *Gumabon v. Director of the Bureau of Prisons*,^[36] this Court ruled that, once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.^[37] Although in *Feria v. Court of Appeals*^[38] this Court was inclined to allow the presentation of new evidence in a petition for the issuance of a writ of habeas corpus, this was an exceptional situation. In that case, we laid down the general rule, which states that the burden of proving illegal restraint by the respondent rests on the petitioner who attacks such restraint. Where the return is not subject to exception, that is, where it sets forth a process which, on its face, shows good ground for the detention of the prisoner, it is incumbent on petitioner to allege and prove new matter that tends to invalidate the apparent effect of such process.^[39]

In the recent case of *Calvan v. Court of Appeals*,^[40] we summarized the scope of review allowable in a petition for the issuance of the writ of habeas corpus. We ruled that the writ of habeas corpus, although not designed to interrupt the orderly administration of justice, can be invoked by the attendance of a special circumstance that

requires immediate action. In such situations, the inquiry on a writ of habeas corpus would be addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which a person has been restrained is a complete nullity. The probe may thus proceed to check on the power and authority, itself an equivalent test of jurisdiction, of the court or the judge to render the order that so serves as the basis of imprisonment or detention.[41] It is the nullity of an assailed judgment of conviction which makes it susceptible to collateral attack through the filing of a petition for the issuance of the writ of habeas corpus.

Upon a perusal of the records not merely of this case but of *People v. de Villa*, we find that the remedy of the writ of habeas corpus is unavailing.

First, the denial of a constitutional right has not been alleged by petitioner. As such, this Court is hard-pressed to find legal basis on which to anchor the grant of a writ of habeas corpus. Much as this Court sympathizes with petitioner's plea, a careful scrutiny of the records does not reveal any constitutional right of which the petitioner was unduly deprived.

We are aware that other jurisdictions have seen fit to grant the writ of habeas corpus in order to test claims that a defendant was denied effective aid of counsel.[42] In this instance, we note that the record is replete with errors committed by counsel, and it can be alleged that the petitioner was, at trial, denied the effective aid of counsel. The United States Supreme Court requires a defendant alleging incompetent counsel to show that the attorney's performance was deficient under a reasonable standard, and additionally to show that the outcome of the trial would have been different with competent counsel.[43] The purpose of the right to effective assistance of counsel is to ensure that the defendant receives a fair trial.[44]

The U.S. Supreme Court asserts that in judging any claim of ineffective assistance of counsel, one must examine whether counsel's conduct undermined the proper functioning of the adversarial process to such an extent that the trial did not produce a fair and just result.[45] The proper measure of attorney performance is "reasonable" under the prevailing professional norms, and the defendant must show that the representation received fell below the objective standard of reasonableness.[46] For the petition to succeed, the strong presumption that the counsel's conduct falls within the wide range of reasonable professional assistance must be overcome.[47]

In the case at bar, it appears that in the middle of the appeal, the petitioner's counsel of record, a certain Atty. Alfonso G. Salvador, suddenly and inexplicably withdrew his appearance as counsel, giving the sole explanation that he was "leaving for the United States for an indefinite period of time by virtue of a petition filed in his favor." [48] In the face of this abandonment, petitioner made an impassioned plea that his lawyer be prevented from this withdrawal in a handwritten "Urgent Motion for Reconsideration and Opposition of Counsel's Withdrawal of Appearance with Leave of Court" received by this Court on September 14, 1999.[49] Petitioner alleged that his counsel's withdrawal is an "untimely and heartbreaking event", considering that he had placed "all [his] trust and confidence on [his counsel's] unquestionable integrity and dignity." [50]

While we are sympathetic to petitioner's plight, we do not, however, find that there was such negligence committed by his earlier counsel so as to amount to a denial of a constitutional right. There is likewise no showing that the proceedings were tainted with any other jurisdictional defect.

In fine, we find that petitioner invokes the remedy of the petition for a writ of habeas corpus to seek a re-examination of the records of *People v. de Villa*, without asserting any legal grounds therefor. For all intents and purposes, petitioner seeks a reevaluation of the evidentiary basis for his conviction. We are being asked to reexamine the weight and sufficiency of the evidence in this case, not on its own, but in light of the new DNA evidence that the petitioner seeks to present to this Court. This relief is outside the scope of a habeas corpus

petition. The petition for habeas corpus must, therefore, fail.

Coupled with the prayer for the issuance of a writ of habeas corpus, petitioner seeks a new trial to re-litigate the issue of the paternity of the child Leahlyn Mendoza.

It must be stressed that the issue of Leahlyn Mendoza's paternity is not central to the issue of petitioner's guilt or innocence. The rape of the victim Aileen Mendoza is an entirely different question, separate and distinct from the question of the father of her child. Recently, in the case of *People v. Alberio*,^[51] we ruled that the fact or not of the victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Pregnancy is not an essential element of the crime of rape. Whether the child which the victim bore was fathered by the purported rapist, or by some unknown individual, is of no moment in determining an individual's guilt.

In the instant case, however, we note that the grant of child support to Leahlyn Mendoza indicates that our Decision was based, at least in small measure, on the victim's claim that the petitioner fathered her child. This claim was given credence by the trial court, and, as a finding of fact, was affirmed by this Court on automatic review.

The fact of the child's paternity is now in issue, centrally relevant to the civil award of child support. It is only tangentially related to the issue of petitioner's guilt. However, if it can be conclusively determined that the petitioner did not sire Leahlyn Mendoza, this may cast the shadow of reasonable doubt, and allow the acquittal of the petitioner on this basis.

Be that as it may, it appears that the petitioner once more relies upon erroneous legal grounds in resorting to the remedy of a motion for new trial. A motion for new trial, under the Revised Rules of Criminal Procedure, is available only for a limited period of time, and for very limited grounds. Under Section 1, Rule 121, of the Revised Rules of Criminal Procedure, a motion for new trial may be filed at any time before a judgment of conviction becomes final, that is, within fifteen (15) days from its promulgation or notice. Upon finality of the judgment, therefore, a motion for new trial is no longer an available remedy. Section 2 of Rule 121 enumerates the grounds for a new trial:

SEC. 2. Grounds for a new trial.—The court shall grant a new trial on any of the following grounds:

- (a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;
- (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

In the case at bar, petitioner anchors his plea on the basis of purportedly “newly-discovered evidence”, i.e., the DNA test subsequently conducted, allegedly excluding petitioner from the child purportedly fathered as a result of the rape.

The decision sought to be reviewed in this petition for the issuance of a writ of habeas corpus has long attained finality, and entry of judgment was made as far back as January 16, 2002. Moreover, upon an examination of the evidence presented by the petitioner, we do not find that the DNA evidence falls within the statutory or jurisprudential definition of “newly- discovered evidence”.

A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative,

corroborative or impeaching; and (d) that the evidence is of such weight that that, if admitted, it would probably change the judgment.[52] It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it.[53]

In this instance, although the DNA evidence was undoubtedly discovered after the trial, we nonetheless find that it does not meet the criteria for “newly-discovered evidence” that would merit a new trial. Such evidence disproving paternity could have been discovered and produced at trial with the exercise of reasonable diligence.

Petitioner-relator’s claim that he was “unaware” of the existence of DNA testing until the trial was concluded carries no weight with this Court. Lack of knowledge of the existence of DNA testing speaks of negligence, either on the part of petitioner, or on the part of petitioner’s counsel. In either instance, however, this negligence is binding upon petitioner. It is a settled rule that a party cannot blame his counsel for negligence when he himself was guilty of neglect.[54] A client is bound by the acts of his counsel, including the latter’s mistakes and negligence.[55] It is likewise settled that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure.[56]

Even with all of the compelling and persuasive scientific evidence presented by petitioner and his counsel, we are not convinced that Reynaldo de Villa is entitled to outright acquittal. As correctly pointed out by the Solicitor General, even if it is conclusively proven that Reynaldo de Villa is not the father of Leahlyn Mendoza, his conviction could, in theory, still stand, with Aileen Mendoza’s testimony and positive identification as its bases.[57] The Solicitor General reiterates, and correctly so, that the pregnancy of the victim has never been an element of the crime of rape.[58] Therefore, the DNA evidence has failed to conclusively prove to this Court that Reynaldo de Villa should be discharged. Although petitioner claims that conviction was based solely on a finding of paternity of the child Leahlyn, this is not the case. Our conviction was based on the clear and convincing testimonial evidence of the victim, which, given credence by the trial court, was affirmed on appeal.

WHEREFORE, in view of the foregoing, the instant petition for habeas corpus and new trial is DISMISSED for lack of merit.

No costs.

SO ORDERED.

Puno, Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

Carpio, J., please see separate concurring opinion.

Callejo, Sr., J., please see separate opinion.

Davide, Jr., C.J., and Panganiban, J., join separate opinion of J. Carpio and J. Callejo, Sr..

Corona, J., on leave.

[1] Rollo, p. 9.

[2] G.R. No. 124639, 1 February 2001, 351 SCRA 25.

[3] *Id.*, p. 27.

[4] *Id.*

[5] *Id.*, pp. 27, 31-32.

- [6] Id., pp. 28, 30.
- [7] Id., p. 28.
- [8] Id.
- [9] Id., pp. 31-32.
- [10] Id., pp. 34-35.
- [11] Rollo, pp. 4-5.
- [12] Rollo, *People v. de Villa*, pp. 121-123.
- [13] Rollo, p. 94.
- [14] Id., p. 102.
- [15] Id., p. 103.
- [16] Id., p. 5.
- [17] Id.
- [18] Id.
- [19] Id., pp. 12-13, 124.
- [20] Id., p. 6.
- [21] Id., p. 8.
- [22] RULES OF COURT, Rule 102, sec. 1.
- [23] 39 Phil. 778 (1919).
- [24] *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919).
- [25] 382 Phil. 412 (2000).
- [26] *Feria v. Court of Appeals*, 382 Phil. 412, 421 (2000). (Citations omitted)
- [27] 84 Phil. 525 (1949).
- [28] *Abriol v. Homeres*, 84 Phil. 525, 530, 533 (1949). (Citations omitted)
- [29] G.R. No. 118644, 7 July 1995, 245 SCRA 677.
- [30] *Velasco v. Court of Appeals*, G.R. No. 118644, 7 July 1995, 245 SCRA 677, 684.
- [31] *Felipe v. Director of Prisons*, 24 Phil. 121 (1913), cited in *In re Garcia*, G.R. No. 141443, 30 August 2000. (Citations omitted)
- [32] *Ngo Yao Tit v. Sheriff of Manila*, 27 Phil. 378, 382 (1914).
- [33] *Calvan v. Court of Appeals*, G.R. No. 140823, 3 October 2000. (Citations omitted)
- [34] G.R. No. 29169, 19 August 1968, 24 SCRA 663.
- [35] *Chavez v. Court of Appeals*, 133 Phil. 661, 682-683 (1968).

[36] 147 Phil. 363 (1971).

[37] Gumabon v. Director of the Bureau of Prisons, 147 Phil. 363, 369 (1971).

[38] 382 Phil. 412 (2000).

[39] Feria v. Court of Appeals, 382 Phil. 412, 423 (2000). (Citations omitted)

[40] G.R. No. 140823, 3 October 2000.

[41] Calvin v. Court of Appeals, *supra*.

[42] ANTIEAU, THE PRACTICE OF EXTRAORDINARY REMEDIES: HABEAS CORPUS AND THE OTHER COMMON LAW WRITS 169, citing *Strickland v. Washington* (1984) 466 US 668, 104 S Ct 2052, 80 L Ed 2d; *Cuyler v. Sullivan* (1980) 446 US 335, 100 S Ct 1708, 64 L Ed 333; *Scalf v. Bennet* (1967) 260 Iowa 393, 147 NW 2d 860; *Smith v. Woodley* (ND 1969) 164 NW 2d 594; *Kime v. Brewer* (Iowa 1970) 182 NW 2d 154; *Crosby v. State* (1962) 241 SC 40, 126 SE 2d 843; *United States ex rel. Thomas v. Zelker* (SD NY 1971) 332 F Supp 595; *Sand v. Estelle* (5[th] Cir. 1977) 551 F 2d 49, 559 F 2d 364, cert dnd 434 US 1076; *McQueen v. Swenson* (8[th] Cir. 1977) 560 F 2d 959; *Davis v. Alabama* (5[th] Cir. 1979) 596 F 2d 1214; *Kemp v. Leggett* (5[th] Cir. 1981) 635 F 2d 453; *Goodwin v. Balkcom* (11[th] Cir. 1982) 684 F 2d 794; *Ex parte Barnes* (Tex Crim App 1972) 478 SW 2d 547; *In re Larkin* (Tex Crim App 1967) 420 SW 2d 958; *Vela v. Estelle* (5[th] Cir 1983) 708 F 2d 954.

[43] ANTIEAU, THE PRACTICE OF EXTRAORDINARY REMEDIES: HABEAS CORPUS AND THE OTHER COMMON LAW WRITS 169, citing *Strickland v. Washington* (1984) 466 US 668, 104 S Ct 2052, 80 L Ed 2d 674.

[44] FLANGO, HABEAS CORPUS IN STATE AND FEDERAL COURTS 49.

[45] FLANGO, HABEAS CORPUS IN STATE AND FEDERAL COURTS 49, citing *Strickland v. Washington* (1984) 466 US 668, 104 S Ct 2052, 80 L Ed 2d, at 687.

[46] *Id.*, p. 688.

[47] *Id.*, p. 690.

[48] Rollo, G.R. No. 124639, p. 76.

[49] *Id.*, pp. 72-75.

[50] *Id.*, p. 72.

[51] G.R. No. 152584, 6 July 2004.

[52] REVISED RULES OF CRIMINAL PROCEDURE, Rule 121, Section 2 (b); *People v. Judavar*, G.R. No. 135521, 11 April 2002.

[53] *Colinares v. Court of Appeals*, G.R. No. 90828, 5 September 2000, 339 SCRA 609, 618, citing *Tumang v. Court of Appeals*, 172 SCRA 328, 334 (1989); *Garrido v. Court of Appeals*, 236 SCRA 450, 456 (1994).

[54] *Villanueva v. People*, G.R. No. 135098, 330 SCRA 695, 703 (2000); citing *Macapagal v. Court of Appeals*, 271 SCRA 491, 502 (1997).

[55] *Id.*, pp. 702-703.

[56] See *Spouses Mesina v. Meer*, G.R. No. 146845, 2 July 2002, p. 10.

[57] *People v. Molleda*, G.R. No. 153219, 1 December 2003.

[58] *People v. Mendoza*, G.R. Nos. 46693-94, 31 July 2003.

SEPARATE CONCURRING OPINION

CARPIO, J.:

I concur with the ponencia. The DNA evidence presented by petitioner-relator is not material and relevant to the crime of rape. Even assuming petitioner is not the father of the child that was conceived within the period of the rape, such fact does not prove that petitioner could not have committed the crime. The remedies of habeas corpus and new trial are thus unavailing in this case.

However, this case should not close the door to a convicted felon who after final judgment acquires DNA results exonerating him of the crime for which he was convicted. Legal relief is still available, for instance, to a felon convicted by final judgment of rape who subsequently gains access to DNA results showing that the semen in the victim's vagina does not match that of the convicted felon.

While final judgments enjoy the presumption of correctness, the confining and traditional legal procedures must respond to the revolutionary way that DNA results have been proving the innocence of convicts. American jurisprudence has shown the way in this regard.

Before the enactment of statutes in some states providing for post-conviction DNA testing, American courts had no precedents to work on to justify post-conviction DNA testing and the reversal of final judgments of conviction when the DNA results turned out to be exculpatory. Before the passage of the DNA testing statutes, it was unclear under what right and procedure a convict was entitled to post-conviction DNA testing. Even in the absence of statutes, American courts allowed post-conviction DNA testing by requiring the convict to apply for such testing before the verdict could be vacated.[1] The application enables the courts to determine the basis for the application and to set the standards in case the request is granted. Once the DNA result confirms the innocence of the convict, American courts conduct a motion in limine hearing on admissibility or order a new trial.[2] The prosecution usually refuses to re-try the case and the convict is released.

Under American jurisprudence, post-conviction DNA testing is availed through a petition for habeas corpus and motion for new trial. These conventional modes of relief, however, have built-in restrictions that pose problems to the granting of post-conviction DNA testing.

In habeas corpus cases, relief could not be had unless a constitutional violation was committed during the convict's trial. In a motion for new trial, the convict must show that the DNA test is a newly discovered evidence and must not be time-barred to warrant a new trial. Despite these legal obstacles, American courts granted, albeit restrictively, the request for post-conviction DNA testing on a case-by-case basis. The approach to the legal issues varied from jurisdiction to jurisdiction.

In *Summerville v. Warden State Prison*[3] the Supreme Court of Connecticut ruled that when evidence is so strong that innocence is highly likely and that evidence alone establishes innocence, that in itself is already a basis for habeas corpus review of convictions and imprisonment. Thus, habeas corpus warranted the granting of a new trial based on the petitioner's claim of actual innocence. In *People v. Callace*,[4] the New York court considered post-conviction DNA testing as newly discovered evidence because the type of DNA analysis available at the

post-conviction stage was not available at the time of the trial. In *State v. Thomas*,^[5] fundamental fairness allowed the convict to post-conviction DNA testing even when the request was already stale.

Habeas corpus review and new trial proved to be narrow remedies as American courts still adhere to the strict requirements of these two models of relief. Nonetheless, post-conviction DNA testing has been granted on other grounds. When the application of DNA testing has strong indications that the result could potentially exonerate the convict, American courts recognized the convict's right to exculpatory evidence. In *Dabbs v. Vergari*,^[6] citing *Brady v. Maryland*,^[7] the court categorically upheld the convict's constitutional right to exculpatory evidence despite the absence of a law providing a right to post-conviction discovery. DNA results exonerated Charles Dabbs and his conviction was eventually vacated.^[8] On other cases,^[9] the exculpatory potential of DNA evidence compelled the American courts, in the interest of justice, to allow access to post-conviction DNA testing.

The rectification of a wrong is the underlying reason for the allowance of post-conviction DNA testing and the eventual reversal of the verdict based on exclusionary DNA result. Even the most stringent of rules have to give way upon a showing that there is a strong probability that DNA result could prove the convict's actual innocence. For ultimately, it is the primary duty of the court to prevent the miscarriage of justice.

Every person has a right to avail of a new technology that irrefutably proves his innocence despite a prior final conviction, provided the new technology was not available during his trial. This right is part of a person's constitutional right to due process of law. A person convicted by final judgment does not lose his constitutional right to due process, and he may invoke it whenever there is a compelling and valid ground to do so.

The 1987 Constitution expressly empowers the Court to "[p]romulgate rules concerning the protection and enhancement of constitutional rights."^[10] Even in the absence of a law allowing post-conviction DNA testing, the Court under its constitutional mandate may order a new trial if the post-conviction DNA testing will establish that the convicted felon could not have possibly committed the crime. This is the case when the post-conviction DNA testing shows that the semen in the victim's vagina does not match that of the convicted felon.

A new trial on the ground of post-conviction DNA testing is different from a new trial under Rule 121,^[11] which is available only before final judgment. Unlike a new trial under Rule 121, a new trial for post-conviction DNA testing does not vacate the judgment of conviction, which stands until recalled by the court as a result of the new trial. A new trial after final conviction may be ordered only on the sole ground that DNA testing will establish that the convicted felon could not have committed the crime. Moreover, DNA testing must not have been available or possible during the original trial.

Thus, I submit that a felon convicted by final judgment who could establish through DNA testing that he could not have committed the crime is not without remedy to prove his innocence and regain his liberty.

[1] Postconviction DNA Testing: Recommendations for Handling Requests, <http://www.ncjrs.org>.

[2] *State v. Thomas*, 586 A. 2d 250 (N.J. Super. Ct. App. Div. 1991).

[3] 641 A.2d 1356 (Conn. 1994).

[4] 573 N.Y.S.2d 137 (N.Y. Co. Ct. 1991).

[5] *Supra* note 2.

[6] 570 N.Y.S.2d 765 (Sup.Ct. 1990).

[7] 373 U.S. 83 (S. Ct. 1194 10 L. Ed. 2d. 215 1963).

[8] *People v. Dabbs*, 587 N.Y.S.2d 90 (N.Y. Sup. 1991).

[9] *State v. Thomas*, supra note 2, *Sewell v. State*, 592 N.E.2d 705 (Ind. Ct. App. 3 Dist. 1992), *Commonwealth v. Brison*, 618 A.2d 420 (Pa. Super. Ct. 1992).

[10] Section 5(5), Article VIII, 1987 Constitution.

[11] Section 1 of Rule 121 provides: “New trial or reconsideration – At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration.”

SEPARATE CONCURRING OPINION

CALLEJO, SR., J.:

I concur with the ponencia and the separate concurring opinion of Justice Antonio T. Carpio that the convicted felon must be allowed an opportunity to adduce DNA evidence. However, such a remedy is sui generis to give the convicted felon a chance to adduce DNA evidence until Rule 121 of the Revised Rules of Criminal Procedure is revised anew. Such a remedy is akin to a motion for a new trial in the original case on the ground of newly discovered evidence under Section 2(b), Rule 121 of the Revised Rules of Criminal Procedure, which reads:

SEC. 2. Grounds for a new trial. – The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

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