

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF CAPT. GARY ALEJANO, PN (MARINES) CAPT. NICANOR FAELDON, PN (MARINES) CAPT. GERARDO GAMBALA, PA LT. SG JAMES LAYUG, PN CAPT. MI...

G.R. NO. 160792. August 25, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] seeks to nullify the Decision[2] of the Court of Appeals dated 17 September 2003 and Resolution dated 13 November 2003 in CA-G.R. SP No. 78545. The Court of Appeals' Decision and Resolution dismissed the petition for habeas corpus filed by lawyers Homobono Adaza and Roberto Rafael Pulido ("petitioners") on behalf of their detained clients Capt. Gary Alejano (PN-Marines), Capt. Nicanor Faeldon (PN-Marines), Capt. Gerardo Gambala (PA), Lt. SG James Layug (PN), Capt. Milo Maestrecampo (PA), and Lt. SG Antonio Trillanes IV (PN) ("detainees").

Petitioners named as respondent Gen. Pedro Cabuay ("Gen. Cabuay"), Chief of the Intelligence Service of the Armed Forces of the Philippines ("ISAFP"), who has custody of the detainees. Petitioners impleaded Gen. Narciso Abaya ("Gen. Abaya"), Sec. Angelo Reyes and Roilo Golez, who are respectively the Chief of Staff of the Armed Forces of the Philippines ("AFP"), Secretary of National Defense and National Security Adviser, because they have command responsibility over Gen. Cabuay.

Antecedent Facts

Early morning of 27 July 2003, some 321 armed soldiers, led by the now detained junior officers, entered and took control of the Oakwood Premier Luxury Apartments ("Oakwood"), an upscale apartment complex, located in the business district of Makati City. The soldiers disarmed the security officers of Oakwood and planted explosive devices in its immediate surroundings. The junior officers publicly renounced their support for the administration and called for the resignation of President Gloria Macapagal-Arroyo and several cabinet members.

Around 7:00 p.m. of the same date, the soldiers voluntarily surrendered to the authorities after several negotiations with government emissaries. The soldiers later defused the explosive devices they had earlier planted. The soldiers then returned to their barracks.

On 31 July 2003, Gen. Abaya, as the Chief of Staff of the AFP, issued a directive to all the Major Service Commanders to turn over custody of ten junior officers to the ISAFP Detention Center. The transfer took place while military and civilian authorities were investigating the soldiers' involvement in the Oakwood incident.

On 1 August 2003, government prosecutors filed an Information for coup d'etat with the Regional Trial Court of Makati City, Branch 61, against the soldiers involved in the 27 July 2003 Oakwood incident. The government

prosecutors accused the soldiers of coup d'etat as defined and penalized under Article 134-A of the Revised Penal Code of the Philippines, as amended. The case was docketed as Criminal Case No. 03-2784. The trial court later issued the Commitment Orders giving custody of junior officers Lt. SG Antonio Trillanes IV ("Trillanes") and Capt. Gerardo Gambala to the Commanding Officers of ISAFP.

On 2 August 2003, Gen. Abaya issued a directive to all Major Service Commanders to take into custody the military personnel under their command who took part in the Oakwood incident except the detained junior officers who were to remain under the custody of ISAFP.

On 11 August 2003, petitioners filed a petition for habeas corpus with the Supreme Court. On 12 August 2003, the Court issued a Resolution, which resolved to:

(a) ISSUE the WRIT OF HABEAS CORPUS; (b) require respondents to make a RETURN of the writ on Monday, 18 August 2003, at 10:00 a.m. before the Court of Appeals; (c) refer the case to the Court of Appeals for RAFFLE among the Justices thereof for hearing, further proceedings and decision thereon, after which a REPORT shall be made to this Court within ten (10) days from promulgation of the decision.[3]

Thus, the Court issued a Writ of Habeas Corpus dated 12 August 2003 directing respondents to make a return of the writ and to appear and produce the persons of the detainees before the Court of Appeals on the scheduled date for hearing and further proceedings.

On the same date, the detainees and their other co-accused filed with the Regional Trial Court of Makati City a Motion for Preliminary Investigation, which the trial court granted.

On 18 August 2003, pursuant to the directives of the Court, respondents submitted their Return of the Writ and Answer to the petition and produced the detainees before the Court of Appeals during the scheduled hearing. After the parties filed their memoranda on 28 August 2003, the appellate court considered the petition submitted for decision.

On 17 September 2003, the Court of Appeals rendered its decision dismissing the petition. Nonetheless, the appellate court ordered Gen. Cabuay, who was in charge of implementing the regulations in the ISAFP Detention Center, to uphold faithfully the rights of the detainees in accordance with Standing Operations Procedure No. 0263-04. The appellate court directed Gen. Cabuay to adhere to his commitment made in court regarding visiting hours and the detainees' right to exercise for two hours a day.

The Ruling of the Court of Appeals

The Court of Appeals found the petition bereft of merit. The appellate court pointed out that the detainees are already charged of coup d'etat before the Regional Trial Court of Makati. Habeas corpus is unavailing in this case as the detainees' confinement is under a valid indictment, the legality of which the detainees and petitioners do not even question.

The Court of Appeals recognized that habeas corpus may also be the appropriate remedy to assail the legality of detention if there is a deprivation of a constitutional right. However, the appellate court held that the constitutional rights alleged to have been violated in this case do not directly affect the detainees' liberty. The appellate court ruled that the regulation of the detainees' right to confer with their counsels is reasonable under the circumstances.

The appellate court declared that while the opening and reading of Trillanes' letter is an abhorrent violation of his right to privacy of communication, this does not justify the issuance of a writ of habeas corpus. The violation does not amount to illegal restraint, which is the proper subject of habeas corpus proceedings.

The Court of Appeals thus dismissed the petition and ordered Gen. Cabuay to fulfill the promise he made in open

court to uphold the visiting hours and the right of the detainees to exercise for two hours a day. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the foregoing considered, the instant petition is hereby DISMISSED. Respondent Cabuay is hereby ORDERED to faithfully adhere to his commitment to uphold the constitutional rights of the detainees in accordance with the Standing Operations Procedure No. 0263-04 regarding visiting hours and the right of the detainees to exercise for two (2) hours a day.

SO ORDERED.[4]

The Issues

Petitioners raise the following issues for resolution:

- THE COURT OF APPEALS ERRED IN REVIEWING AND REVERSING A DECISION OF THE SUPREME COURT;
- THE COURT OF APPEALS ERRED IN NOT ACKNOWLEDGING THE APPROPRIATENESS OF THE REMEDY PETITIONERS SEEK; and
- THE COURT OF APPEALS ERRED IN ASSERTING THE LEGALITY OF THE CONDITIONS OF THE DETAINED JUNIOR OFFICERS' DETENTION.[5]

The Ruling of the Court

The petition lacks merit.

Petitioners claim that the Court's 12 August 2003 Order granted the petition and the Court remanded the case to the Court of Appeals only for a factual hearing. Petitioners thus argue that the Court's Order had already foreclosed any question on the propriety and merits of their petition.

Petitioners' claim is baseless. A plain reading of the 12 August 2003 Order shows that the Court referred to the Court of Appeals the duty to inquire into the cause of the junior officers' detention. Had the Court ruled for the detainees' release, the Court would not have referred the hearing of the petition to the Court of Appeals. The Court would have forthwith released the detainees had the Court upheld petitioners' cause.

In a habeas corpus petition, the order to present an individual before the court is a preliminary step in the hearing of the petition.[6] The respondent must produce the person and explain the cause of his detention.[7] However, this order is not a ruling on the propriety of the remedy or on the substantive matters covered by the remedy. Thus, the Court's order to the Court of Appeals to conduct a factual hearing was not an affirmation of the propriety of the remedy of habeas corpus.

For obvious reasons, the duty to hear the petition for habeas corpus necessarily includes the determination of the propriety of the remedy. If a court finds the alleged cause of the detention unlawful, then it should issue the writ and release the detainees. In the present case, after hearing the case, the Court of Appeals found that habeas corpus is inapplicable. After actively participating in the hearing before the Court of Appeals, petitioners are estopped from claiming that the appellate court had no jurisdiction to inquire into the merits of their petition.

The Court of Appeals correctly ruled that the remedy of habeas corpus is not the proper remedy to address the detainees' complaint against the regulations and conditions in the ISAFP Detention Center. The remedy of habeas corpus has one objective: to inquire into the cause of detention of a person.[8] The purpose of the writ is to determine whether a person is being illegally deprived of his liberty.[9] If the inquiry reveals that the detention is illegal, the court orders the release of the person. If, however, the detention is proven lawful, then the habeas

corpus proceedings terminate. The use of habeas corpus is thus very limited. It is not a writ of error.[10] Neither can it substitute for an appeal.[11]

Nonetheless, case law has expanded the writ's application to circumstances where there is deprivation of a person's constitutional rights. The writ is available where a person continues to be unlawfully denied of one or more of his constitutional freedoms, where there is denial of due process, where the restraints are not merely involuntary but are also unnecessary, and where a deprivation of freedom originally valid has later become arbitrary.[12]

However, a mere allegation of a violation of one's constitutional right is not sufficient. The courts will extend the scope of the writ only if any of the following circumstances is present: (a) there is a deprivation of a constitutional right resulting in the unlawful restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty is imposed and such sentence is void as to the excess.[13] Whatever situation the petitioner invokes, the threshold remains high. The violation of constitutional right must be sufficient to void the entire proceedings.[14]

Petitioners admit that they do not question the legality of the detention of the detainees. Neither do they dispute the lawful indictment of the detainees for criminal and military offenses. What petitioners bewail is the regulation adopted by Gen. Cabuay in the ISAFP Detention Center preventing petitioners as lawyers from seeing the detainees - their clients - any time of the day or night. The regulation allegedly curtails the detainees' right to counsel and violates Republic Act No. 7438 ("RA 7438").[15] Petitioners claim that the regulated visits made it difficult for them to prepare for the important hearings before the Senate and the Feliciano Commission.

Petitioners also point out that the officials of the ISAFP Detention Center violated the detainees' right to privacy of communication when the ISAFP officials opened and read the personal letters of Trillanes and Capt. Milo Maestrecampo ("Maestrecampo"). Petitioners further claim that the ISAFP officials violated the detainees' right against cruel and unusual punishment when the ISAFP officials prevented the detainees from having contact with their visitors. Moreover, the ISAFP officials boarded up with iron bars and plywood slabs the iron grills of the detention cells, limiting the already poor light and ventilation in the detainees' cells.

Pre-trial detainees do not forfeit their constitutional rights upon confinement.[16] However, the fact that the detainees are confined makes their rights more limited than those of the public.[17] RA 7438, which specifies the rights of detainees and the duties of detention officers, expressly recognizes the power of the detention officer to adopt and implement reasonable measures to secure the safety of the detainee and prevent his escape. Section 4(b) of RA 7438 provides:

Section 4. Penalty Clause. - a) x x x

b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister or by his counsel, from visiting and conferring privately chosen by him or by any member of his immediate family with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (P4,000.00).

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape. (Emphasis supplied)

True, Section 4(b) of RA 7438 makes it an offense to prohibit a lawyer from visiting a detainee client "at any hour of the day or, in urgent cases, of the night." However, the last paragraph of the same Section 4(b) makes the

express qualification that "notwithstanding" the provisions of Section 4(b), the detention officer has the power to undertake such reasonable measures as may be necessary to secure the safety of the detainee and prevent his escape.

The last paragraph of Section 4(b) of RA 7438 prescribes a clear standard. The regulations governing a detainee's confinement must be "reasonable measures x x x to secure his safety and prevent his escape." Thus, the regulations must be reasonably connected to the government's objective of securing the safety and preventing the escape of the detainee. The law grants the detention officer the authority to "undertake such reasonable measures" or regulations.

Petitioners contend that there was an actual prohibition of the detainees' right to effective representation when petitioners' visits were limited by the schedule of visiting hours. Petitioners assert that the violation of the detainees' rights entitle them to be released from detention.

Petitioners' contention does not persuade us. The schedule of visiting hours does not render void the detainees' indictment for criminal and military offenses to warrant the detainees' release from detention. The ISAFP officials did not deny, but merely regulated, the detainees' right to counsel. The purpose of the regulation is not to render ineffective the right to counsel, but to secure the safety and security of all detainees. American cases are instructive on the standards to determine whether regulations on pre-trial confinement are permissible.

In *Bell v. Wolfish*,^[18] the United States (U.S.) Supreme Court held that regulations must be reasonably related to maintaining security and must not be excessive in achieving that purpose. Courts will strike down a restriction that is arbitrary and purposeless.^[19] However, *Bell v. Wolfish* expressly discouraged courts from skeptically questioning challenged restrictions in detention and prison facilities.^[20] The U.S. Supreme Court commanded the courts to afford administrators "wide-ranging deference" in implementing policies to maintain institutional security.^[21]

In our jurisdiction, the last paragraph of Section 4(b) of RA 7438 provides the standard to make regulations in detention centers allowable: "such reasonable measures as may be necessary to secure the detainee's safety and prevent his escape." In the present case, the visiting hours accorded to the lawyers of the detainees are reasonably connected to the legitimate purpose of securing the safety and preventing the escape of all detainees.

While petitioners may not visit the detainees any time they want, the fact that the detainees still have face-to-face meetings with their lawyers on a daily basis clearly shows that there is no impairment of detainees' right to counsel. Petitioners as counsels could visit their clients between 8:00 a.m. and 5:00 p.m. with a lunch break at 12:00 p.m. The visiting hours are regular business hours, the same hours when lawyers normally entertain clients in their law offices. Clearly, the visiting hours pass the standard of reasonableness. Moreover, in urgent cases, petitioners could always seek permission from the ISAFP officials to confer with their clients beyond the visiting hours.

The scheduled visiting hours provide reasonable access to the detainees, giving petitioners sufficient time to confer with the detainees. The detainees' right to counsel is not undermined by the scheduled visits. Even in the hearings before the Senate and the Feliciano Commission,^[22] petitioners were given time to confer with the detainees, a fact that petitioners themselves admit.^[23] Thus, at no point were the detainees denied their right to counsel.

Petitioners further argue that the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood amount to unusual and excessive punishment. This argument fails to impress us. *Bell v. Wolfish* pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance

with due process of law, detention inevitably interferes with a detainee's desire to live comfortably.[24] The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment.[25] It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish.[26] Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose.[27] Jail officials are thus not required to use the least restrictive security measure.[28] They must only refrain from implementing a restriction that appears excessive to the purpose it serves.[29]

We quote *Bell v. Wolfish*:

One further point requires discussion. The petitioners assert, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondents' argument that the Government's interest in ensuring a detainee's presence at trial is the only objective that may justify restraints and conditions once the decision is lawfully made to confine a person. "If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention." The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment.[30]

An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate.[31] Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.[32] *Block v. Rutherford*,[33] which reiterated *Bell v. Wolfish*, upheld the blanket restriction on contact visits as this practice was reasonably related to maintaining security. The safety of innocent individuals will be jeopardized if they are exposed to detainees who while not yet convicted are awaiting trial for serious, violent offenses and may have prior criminal conviction.[34] Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes.[35] Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband.[36] The restriction on contact visits was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons.[37] The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees.[38]

Block v. Rutherford held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security.[39] This case reaffirmed the "hands-off" doctrine enunciated in *Bell v. Wolfish*, a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise.[40]

In the present case, we cannot infer punishment from the separation of the detainees from their visitors by iron bars, which is merely a limitation on contact visits. The iron bars separating the detainees from their visitors prevent direct physical contact but still allow the detainees to have visual, verbal, non-verbal and limited physical

contact with their visitors. The arrangement is not unduly restrictive. In fact, it is not even a strict non-contact visitation regulation like in *Block v. Rutherford*. The limitation on the detainees' physical contacts with visitors is a reasonable, non-punitive response to valid security concerns.

The boarding of the iron grills is for the furtherance of security within the ISAFP Detention Center. This measure intends to fortify the individual cells and to prevent the detainees from passing on contraband and weapons from one cell to another. The boarded grills ensure security and prevent disorder and crime within the facility. The diminished illumination and ventilation are but discomforts inherent in the fact of detention, and do not constitute punishments on the detainees.

We accord respect to the finding of the Court of Appeals that the conditions in the ISAFP Detention Center are not inhuman, degrading and cruel. Each detainee, except for Capt. Nicanor Faeldon and Capt. Gerardo Gambala, is confined in separate cells, unlike ordinary cramped detention cells. The detainees are treated well and given regular meals. The Court of Appeals noted that the cells are relatively clean and livable compared to the conditions now prevailing in the city and provincial jails, which are congested with detainees. The Court of Appeals found the assailed measures to be reasonable considering that the ISAFP Detention Center is a high-risk detention facility. Apart from the soldiers, a suspected New People's Army ("NPA") member and two suspected Abu Sayyaf members are detained in the ISAFP Detention Center.

We now pass upon petitioners' argument that the officials of the ISAFP Detention Center violated the detainees' right to privacy when the ISAFP officials opened and read the letters handed by detainees Trillanes and Maestrecampo to one of the petitioners for mailing. Petitioners point out that the letters were not in a sealed envelope but simply folded because there were no envelopes in the ISAFP Detention Center. Petitioners contend that the Constitution prohibits the infringement of a citizen's privacy rights unless authorized by law. The Solicitor General does not deny that the ISAFP officials opened the letters.

Courts in the U.S. have generally permitted prison officials to open and read all incoming and outgoing mail of convicted prisoners to prevent the smuggling of contraband into the prison facility and to avert coordinated escapes.[41] Even in the absence of statutes specifically allowing prison authorities from opening and inspecting mail, such practice was upheld based on the principle of "civil deaths." [42] Inmates were deemed to have no right to correspond confidentially with anyone. The only restriction placed upon prison authorities was that the right of inspection should not be used to delay unreasonably the communications between the inmate and his lawyer.[43]

Eventually, the inmates' outgoing mail to licensed attorneys, courts, and court officials received respect.[44] The confidential correspondences could not be censored.[45] The infringement of such privileged communication was held to be a violation of the inmates' First Amendment rights.[46] A prisoner has a right to consult with his attorney in absolute privacy, which right is not abrogated by the legitimate interests of prison authorities in the administration of the institution.[47] Moreover, the risk is small that attorneys will conspire in plots that threaten prison security.[48]

American jurisprudence initially made a distinction between the privacy rights enjoyed by convicted inmates and pre-trial detainees. The case of *Palmigiano v. Travisono* [49] recognized that pre-trial detainees, unlike convicted prisoners, enjoy a limited right of privacy in communication. Censorship of pre-trial detainees' mail addressed to public officials, courts and counsel was held impermissible. While incoming mail may be inspected for contraband and read in certain instances, outgoing mail of pre-trial detainees could not be inspected or read at all.

In the subsequent case of *Wolff v. McDonnell*, [50] involving convicted prisoners, the U.S. Supreme Court held that prison officials could open in the presence of the inmates incoming mail from attorneys to inmates. However, prison officials could not read such mail from attorneys. Explained the U.S. Supreme Court:

The issue of the extent to which prison authorities can open and inspect incoming mail from attorneys to inmates, has been considerably narrowed in the course of this litigation. The prison regulation under challenge provided that "(a)ll incoming and outgoing mail will be read and inspected," and no exception was made for attorney-prisoner mail. x x x

Petitioners now concede that they cannot open and read mail from attorneys to inmates, but contend that they may open all letters from attorneys as long as it is done in the presence of the prisoners. The narrow issue thus presented is whether letters determined or found to be from attorneys may be opened by prison authorities in the presence of the inmate or whether such mail must be delivered unopened if normal detection techniques fail to indicate contraband.

x x x

x x x If prison officials had to check in each case whether a communication was from an attorney before opening it for inspection, a near impossible task of administration would be imposed. We think it entirely appropriate that the State require any such communications to be specially marked as originating from an attorney, with his name and address being given, if they are to receive special treatment. It would also certainly be permissible that prison authorities require that a lawyer desiring to correspond with a prisoner, first identify himself and his client to the prison officials, to assure that the letters marked privileged are actually from members of the bar. As to the ability to open the mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read. Neither could it chill such communications, since the inmate's presence insures that prison officials will not read the mail. The possibility that contraband will be enclosed in letters, even those from apparent attorneys, surely warrants prison officials' opening the letters. We disagree with the Court of Appeals that this should only be done in "appropriate circumstances." Since a flexible test, besides being unworkable, serves no arguable purpose in protecting any of the possible constitutional rights enumerated by respondent, we think that petitioners, by acceding to a rule whereby the inmate is present when mail from attorneys is inspected, have done all, and perhaps even more, than the Constitution requires.[51]

In *Hudson v. Palmer*,[52] the U.S. Supreme Court ruled that an inmate has no reasonable expectation of privacy inside his cell. The U.S. Supreme Court explained that prisoners necessarily lose many protections of the Constitution, thus:

However, while persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are "justified by the considerations underlying our penal system." The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison facilities, chief among which is internal security. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.[53]

The later case of *State v. Dunn*,[54] citing *Hudson v. Palmer*, abandoned *Palmigiano v. Travisono* and made no distinction as to the detainees' limited right to privacy. *State v. Dunn* noted the considerable jurisprudence in the United States holding that inmate mail may be censored for the furtherance of a substantial government interest such as security or discipline. *State v. Dunn* declared that if complete censorship is permissible, then the lesser act of opening the mail and reading it is also permissible. We quote *State v. Dunn*:

[A] right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order. We are satisfied that society would insist that the prisoner's expectation of privacy always yield to what must be considered a paramount interest in institutional security. We believe that it is accepted by our society that "[l]oss of freedom of choice and privacy are inherent incidents of confinement."

The distinction between the limited privacy rights of a pre-trial detainee and a convicted inmate has been blurred as courts in the U.S. ruled that pre-trial detainees might occasionally pose an even greater security risk than convicted inmates. *Bell v. Wolfish* reasoned that those who are detained prior to trial may in many cases be individuals who are charged with serious crimes or who have prior records and may therefore pose a greater risk of escape than convicted inmates.[55] *Valencia v. Wiggins*[56] further held that "it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security."

American cases recognize that the unmonitored use of pre-trial detainees' non-privileged mail poses a genuine threat to jail security.[57] Hence, when a detainee places his letter in an envelope for non-privileged mail, the detainee knowingly exposes his letter to possible inspection by jail officials.[58] A pre-trial detainee has no reasonable expectation of privacy for his incoming mail.[59] However, incoming mail from lawyers of inmates enjoys limited protection such that prison officials can open and inspect the mail for contraband but could not read the contents without violating the inmates' right to correspond with his lawyer.[60] The inspection of privileged mail is limited to physical contraband and not to verbal contraband.[61]

Thus, we do not agree with the Court of Appeals that the opening and reading of the detainees' letters in the present case violated the detainees' right to privacy of communication. The letters were not in a sealed envelope. The inspection of the folded letters is a valid measure as it serves the same purpose as the opening of sealed letters for the inspection of contraband.

The letters alleged to have been read by the ISAFP authorities were not confidential letters between the detainees and their lawyers. The petitioner who received the letters from detainees Trillanes and Maestrecampo was merely acting as the detainees' personal courier and not as their counsel when he received the letters for mailing. In the present case, since the letters were not confidential communication between the detainees and their lawyers, the officials of the ISAFP Detention Center could read the letters. If the letters are marked confidential communication between the detainees and their lawyers, the detention officials should not read the letters but only open the envelopes for inspection in the presence of the detainees.

That a law is required before an executive officer could intrude on a citizen's privacy rights[62] is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned. The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees and convicted prisoners have a diminished expectation of privacy rights.

In assessing the regulations imposed in detention and prison facilities that are alleged to infringe on the constitutional rights of the detainees and convicted prisoners, U.S. courts "balance the guarantees of the Constitution with the legitimate concerns of prison administrators." [63] The deferential review of such regulations stems from the principle that:

[s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.[64]

The detainees in the present case are junior officers accused of leading 300 soldiers in committing coup d'etat, a crime punishable with reclusion perpetua.[65] The junior officers are not ordinary detainees but visible leaders of the Oakwood incident involving an armed takeover of a civilian building in the heart of the financial district of the country. As members of the military armed forces, the detainees are subject to the Articles of War.[66]

Moreover, the junior officers are detained with other high-risk persons from the Abu Sayyaf and the NPA. Thus, we must give the military custodian a wider range of deference in implementing the regulations in the ISAFP

Detention Center. The military custodian is in a better position to know the security risks involved in detaining the junior officers, together with the suspected Abu Sayyaf and NPA members. Since the appropriate regulations depend largely on the security risks involved, we should defer to the regulations adopted by the military custodian in the absence of patent arbitrariness.

The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, habeas corpus is not the proper mode to question conditions of confinement.[67] The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement.[68]

WHEREFORE, we DISMISS the petition. We AFFIRM the Decision of the Court of Appeals in CA-G.R. SP No. 78545.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., CJ., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Romeo A. Brawner and Arturo D. Brion, concurring.

[3] Rollo, p. 24.

[4] Ibid., pp. 52-53.

[5] Ibid., p. 23.

[6] See Sections 6-8, Rule 102 of the Rules of Court.

[7] Section 6, Rule 102 of the Rules of Court.

[8] In Re: Petition for Habeas Corpus of David Cruz y Gonzaga, 379 Phil. 558 (2000).

[9] Section 1, Rule 102 of the Rules of Court.

[10] In the Matter of Petition for the Privilege of the Writ of Habeas Corpus: Re: Azucena L. Garcia, 393 Phil. 718 (2000).

[11] Galvez v. Court of Appeals, G.R. No. 114046, 24 October 1994, 237 SCRA 685.

[12] Ilusorio v. Bildner, 387 Phil. 915 (2000); Moncupa v. Enrile, 225 Phil. 191 (1986).

[13] Andal v. People, 367 Phil. 154 (1999).

[14] Calvin v. Court of Appeals, G.R. No. 140823, 3 October 2000, 341 SCRA 806.

[15] An Act Defining Certain Rights of the Person Arrested, Detained or Under Custodial Investigation, as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations Thereof.

[16] Ford v. City of Boston, 154 F. Supp.2d 123 (2001).

[17] Ibid.

[18] 441 U.S. 520 (1979).

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Rollo, pp. 16-18.

[23] Ibid., p. 16.

[24] Supra note 18.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid.; Fischer v. Winter, 564 F. Supp. 281 (1983).

[32] Ibid.

[33] 468 U.S. 576 (1984).

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] In re Jordan, Cr. 15734, 15755 (1972).

[42] Ibid.

[43] Ibid.

[44] Corpus Juris Secundum, § 120, June 2005.

[45] Ibid. See also In re Jordan, supra note 41.

[46] Ibid.

[47] In re Jordan, supra note 41.

[48] Ibid.

[49] 317 F. Supp. 776 (1970).

[50] 418 U.S. 539 (1974).

[51] Citations omitted.

[52] 468 U.S. 517 (1984).

[53] Citations omitted.

[54] 478 So.2d 659 (La.App. 2 Cir. 1985).

[55] Supra note 18.

[56] 981 F.2d 1440 (1993).

[57] Corpus Juris Secundum, supra note 44.

[58] Ibid.

[59] Ibid.

[60] In re Jordan, supra note 41.

[61] Ibid.

[62] Section 3 of Article III of the 1987 Philippine Constitution declares that:

The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. (Emphasis supplied)

[63] *Wirsching v. Colorado*, 360 F.3d 1191 (2004).

[64] Ibid.

[65] Article 135 of the Revised Penal Code.

[66] Commonwealth Act No. 408, as amended.

[67] *Peterson v. Ward*, 823 So. 2d 1146 (2002).

[68] Ibid.

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