

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS OF THE PERSON OF ARMY MAJOR JASON LAUREANO AQUINO, PA MARIA FE S. AQUINO, PETITIONER, VS. LT. GEN. HERMOGENES C. ESPERO...

G.R. NO. 174994. August 31, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, seeking to nullify the Decision[1] dated 31 August 2006, of the Court of Appeals in CA-G.R. SP. No. 95341, which denied petitioner Maria Fe S. Aquino's Petition for the Issuance of a Writ of Habeas Corpus for the person of her husband, Army Major Jason Laureano Aquino (Major Aquino) of the First Scout Ranger Regiment, Special Operation Command of the Philippine Army, and the Resolution[2] dated 5 October 2006, of the same court which denied reconsideration of its earlier Decision.

The facts leading to the arrest of Major Aquino, as set forth in the Solicitor General's brief,[3] show that on 3 February 2006, Major Aquino, along with several military men, namely, Major Leomar Jose M. Doctolero, Captain Joey T. Fontiveros, Captain Montano B. Aldomovar,[4] Captain Isagani Criste, and Captain James Sababa, allegedly met at the resthouse of Captain Aldomovar near Camp Tecson, San Miguel, Bulacan to plot a breach of the Camp Defense Plan of Camp General Emilio Aguinaldo and to take over Camp Aguinaldo, as well as the Headquarters of the Philippine Army. On 26 February 2006, in the wake of the group's alleged withdrawal of support from the Armed Forces of the Philippines chain of command and the current administration of President Gloria Macapagal-Arroyo, Major Aquino was ordered arrested and confined at the Intelligence Service Group of the Philippine Army in Fort Bonifacio, Taguig, upon the order of Lt. Gen. Hermogenes C. Esperon, (Lt. Gen. Esperon) who was then the Commanding General of the Philippine Army. On the same day, Lt. Gen. Esperon ordered the Army Inspector General to conduct an investigation to determine: 1) the circumstances attending Major Aquino's alleged withdrawal of support; 2) the veracity of reports anent the alleged troop movement[5] of some Philippine Military personnel from their respective stations to Manila to join the protest march at Epifanio Delos Santos Avenue on 24 February 2006 with Brigadier General Danilo Lim (Brig. Gen. Lim); and 3) the participation, responsibility and culpability of all Philippine Military personnel involved, if any. For this purpose, a panel of investigators[6] was formed. During the investigation, Major Aquino denied the accusations hurled against him. He intimated, inter alia, that he had no plan nor did he make any pronouncement of withdrawing support from the chain of command, and that he pledged to continue to support the same and the duly constituted authorities.[7]

On 4 March 2006, the panel of investigators submitted its Investigation Report to the Commanding General of the Philippine Army. In its report, the panel of investigators found that the troop movement[8] by some military personnel from their respective stations to Manila was illegal, implicating Major Aquino therein, thus:

14.2 Based on the account of MAJ AQUINO, it may be reasonably observed that said Officer and BGEN LIM were closely coordinating the progress of the latter's talks with CSAFP [Chief of Staff of the Armed Forces of the Philippines] on the night of 23 February 2006. Moreover, there are other circumstances which seem to indicate that the leadership of FSRR [First Scout Ranger Regiment] was preparing some of its personnel to move should the talks succeed, i.e. movement of the 7SRC & 9SRC personnel to Manila. Notedly, the following attendant circumstances put to doubt the real intention of FSRR in ordering the aforementioned troop movement, to wit:

- i) There is no indication that CO, 3SRB sought clearance or informed CO, 901[st] Bde or CG, 91 D of said troop movement;
- ii) There was no order or call from HPA or SOCOM for the immediate fill up or augmentation of the 10[th] SRC at Fort Bonifacio;
- iii) There is no showing that the troop movement was coordinated, approved and/or cleared with the AOC, the AFPCC or SOLCOM, AFP;
- iv) When CO, 901[st] Bde called CO, 3SRB to inquire about any troop movement, the latter answered in the negative and immediately ordered his men to go back to command post
- v) When the twenty six (26) 7SRC personnel were apprehended, they were in civilian attire but brought with them their bandoleer with magazines and ammunitions which were placed inside their backpack.[9]

The panel of investigators recommended that: 1) all implicated officers therein mentioned be immediately relieved from their respective posts; and 2) appropriate charges be filed before the General Court Martial against Major Aquino, among other military officers/personnel, for violations of Article 67[10] (Attempting to Begin or Create Mutiny); and Article 97[11] (Disorders and Neglects Prejudicial to Good Order and Military Discipline) of the Articles of War, to wit:

15.3.1 In addition to the relief of BGEN DANILO D LIM 0-7665 AFP which in itself is already a disciplinary action, recommend that subj Officer and MAJ JASON LAUREANO Y AQUINO O-10503 (INF) PA be charged before the PAGCM for violation of AW 67 (CAUSING OR EXCITING A MUTINY) and AW 97 (DISORDERS AND NEGLECTS PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE).[12]

Further, the panel's Investigation Report was referred by Lt. Gen. Esperon to the Judge Advocate General's Office (JAGO) of the Philippine Army for review. On 17 March 2006, the JAGO found the existence of probable cause against Major Aquino, among other military officers, for violations of Article 96[13] (Conduct Unbecoming an Officer and a Gentleman), Article 97 (Disorders and Neglects Prejudicial to Good Order and Military Discipline), and Article 67 (Attempting to Begin or Create Mutiny) of the Articles of War.

The JAGO's recommendation reads:

6.3. For publishing, distributing and discussing the pamphlet entitled "The New Order - The Solution to the Filipino Political Problem," which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, and which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines, MAJ AQUINO should likewise be charged of (sic) violating AW 96 (CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN) and AW 97 (Disorders and Neglects Prejudicial to Good Order and Military Discipline) under a separate specification.

6.4. In the (sic) light of the new averments revealed in the Supplemental Affidavit of 1Lt REYES, there is now basis for charging MAJ AQUINO, MAJ DOCTOLERO, CPT FONTIVEROS, CPT ALDOMOVAR, CPT CRISTE, CPT SABABAN for violation of AW 67 (ATTEMPT TO CREATE A MUTINY). Per said Supplemental Affidavit, it was revealed that subj Officers met at the resthouse of CPT ALDOMOVAR near the so-called tower area in Camp Tecson, San Miguel, Bulacan, on the evening of 03 Feb 2006, discuss and

plot their plan to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and hatch a plan to take over Camp Aguinaldo and [the] Headquarters [of the] Philippine Army. x x x.[14]

On the basis of JAGO's recommendations, Col. Jose R. Recuenco (Col. Recuenco), then Army Provost Marshal, signed under oath a charge sheet[15] against Major Aquino, charging the latter with violations of Article 67 (Attempting to Begin or Create Mutiny)[16] and Article 96[17] (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, which was indorsed to the Chief of Staff of the Armed Forces of the Philippines (AFP).

On 12 July 2006, Lt. Gen. Esperon issued an Order[18] to the Commanding Officer, 191st, MP Bn to exercise custodial responsibility of Major Aquino, together with the other implicated military personnel who withdrew their support from the chain of command in February 2006, and to place them in confinement at the Philippine Army Detention Center, Camp Capinpin, Tanay, Rizal. The same Order also designated the aforementioned Commanding Officer to exercise direct supervision and control over the concerned detainees.[19]

On 20 July 2006, the charge sheet against Major Aquino was amended to set forth more detailed specifications of the charges.[20] It, however, retained the charges against Major Aquino as stated in the original charge sheet--i.e. violation of Article 67 (Attempting to Begin or Create a Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War.

On 20 July 2006, the Judge Advocate General of the AFP General Headquarters of the AFP issued Office Order Number 14-06, creating a Pre-trial Investigation Panel[21] for the case of Major Aquino, et al.

On 21 July 2006, petitioner filed a Petition for Habeas Corpus[22] with the Court of Appeals, praying that the AFP Chief of Staff and the Commanding General of the Philippine Army, or whoever are acting in their place and stead, be directed to immediately produce the body of Major Aquino and explain forthwith why he should not be set at liberty without delay. The case was docketed as CA-G.R. SP No. 95341.

In the meantime, the Pre-trial Investigation Panel of the AFP issued a Subpoena/Notice of Pre-trial Investigation[23] to Major Aquino, summoning him to appear in person before the panel and to submit his counter-affidavits and affidavits of witnesses.[24]

After hearing,[25] the Court of Appeals rendered a Decision[26] dated 31 August 2006, denying the Petition for Habeas Corpus.

The Court of Appeals held that the remedy of the writ of habeas corpus is futile because charges had already been preferred[27] against Major Aquino.[28] In tracing the factual antecedents leading to the preferment of charges against Major Aquino, the Court of Appeals significantly noted that after the Investigating Panel found probable cause against him for violation of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, Lt. Gen. Esperon forwarded the panel's recommendation to the JAGO for review, which sustained the same.[29] In view of such developments, a charge sheet against Major Aquino was signed under oath by Col. Recuenco, then Army Provost Marshall. The latter, thereafter, endorsed the charge sheet to the AFP Chief of Staff for appropriate Action. Then, the Pre-trial Investigation Panel conducted a pre-trial investigation whereby Major Aquino appeared before the said body. The Court of Appeals said:

Significantly, even if at the time Major AQUINO was arrested there was yet no formal charge filed against him, however[,] the remedy of habeas corpus being resorted to by the Petitioner is still unavailing, considering that, as the records disclosed, charges have been preferred against him even before the filing by the Petitioner of the instant petition. Basic is the rule that once a person detained is duly charged in court, he may no longer question his detention via a petition for the issuance of a writ of habeas corpus.[30]

Petitioner filed a Motion for Reconsideration of the 31 August 2006 Decision, but, the Court of Appeals denied the same and found no reason to disturb its judgment.[31]

Hence, the instant Petition for Review on Certiorari.

For this Court's consideration, petitioner elevates three issues, to wit:

I

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT THE PREFERMENT OF THE CHARGE SHEET AGAINST ARMY MAJOR AQUINO IS EQUIVALENT TO FORMALLY CHARGING THE LATTER AS CONTEMPLATED IN ARTICLE 70 OF THE ARTICLES OF WAR.

II

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT THERE IS LEGAL BASIS IN PLACING ARMY MAJOR AQUINO IN SOLITARY CONFINEMENT IN A MAXIMUM SECURITY DETENTION FACILITY.

III

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT ARMY MAJOR AQUINO'S SOLITARY CONFINEMENT IN A MAXIMUM SECURITY DETENTION FACILITY IS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 70 OF THE ARTICLES OF WAR.[32]

The paramount issue posed for resolution is whether the confinement of Major Aquino is legal.

Anent the first issue, petitioner assails the legality of Major Aquino's confinement on the ground that the latter had not been formally charged. It is petitioner's theory that charges can only be deemed formally filed after a thorough and impartial investigation shall have been made.[33] Thus, petitioner suggests that the word "charge" as used in Article 70[34] of the Articles of War means that a person is formally charged only after the conduct of a mandatory pre-trial investigation. According to petitioner, the charge sheet and the furnishing thereof to any person subject to military law is the act of preferment, which act is evidently different from the act of filing. Otherwise stated, the charge sheet is not the "charge" contemplated in Article 70 of the Articles of War for the arrest or confinement of any person subject to military law. Thus, according to petitioner, the filing of a formal charge can only be done after the conclusion of the pre-trial investigation, when the case is referred to the general court-martial, akin to the conduct of a preliminary investigation in civilian courts.[35]

We are not persuaded.

First, it is established that Major Aquino is governed by military law. Article 2 of the Articles of War[36] circumscribes the jurisdiction of military law only over persons subject thereto. Major Aquino, G3 of the First Scout Ranger Regiment (FSRR) of the Special Operation Command of the Philippine Army, is subject to military law. Thus:

Art. 2. Persons Subject to Military Law. - The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law", whenever used in these articles:

(a) All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

(b) Cadets, flying cadets, and probationary second lieutenants;

(c) All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;

(d) All persons under sentence adjudged by courts-martial.

(As amended by Republic Acts 242 and 516).

As a regular officer of the Armed Forces of the Philippines, Major Aquino falls squarely under Article 2 of the Articles of War. Consequently, he is subject to the applicable provisions of the Articles of War and Executive Order No. 178;^[37] or the Manual for Courts-Martial, Philippine Army.

Second, a scrutiny of the confinement of Major Aquino proves that the same is valid.

Article 70 of the Articles of War governs the cases of arrest or confinement, viz.:

Art. 70. Arrest or Confinement. - Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

Evidently, Article 70 of the Articles of War empowers the commanding officer to place, in confinement or in arrest, any person subject to military law charged with a crime or with a serious offense under the Articles of War. Article 70 is the authority for enabling the proper military personnel to put an instant end to criminal or unmilitary conduct, and to impose such restraint as may be necessary upon the person of a military offender, with a view of his trial by court-martial.^[38]

We juxtapose Article 70 with Article 71 of the Articles of War. Under military law, the conduct of investigations is governed by Article 71 of the Articles of War,^[39] to wit:

Art. 71. Charges; Action Upon. - Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation[,] full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.

Before directing the trial of any charge by general court-martial[,] the appointing authority will refer it to his Staff Judge Advocate for consideration and advice.

When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary

delay in investigating or carrying the case to a final conclusion shall be punished as a court-martial may direct. When a person is held for a trial by general court-martial, the commanding officer, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. In time of peace[,] no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him. (As amended by RA 242). (Emphasis supplied.)

The formal written accusation in court-martial practice consists of two parts, the technical charge and the specification.[40] The charge, where the offense alleged is a violation of the articles, merely indicates the article the accused is alleged to have violated while the specifications sets forth the specific facts and circumstances relied upon as constituting the violation.[41] Each specification, together with the charge under which it is placed, constitutes a separate accusation.[42] The term "charges" or "charges and specifications" is applied to the formal written accusation or accusations against an accused.[43]

The first part of Article 71 of the Articles of War categorically provides that charges and specifications must be signed by a person subject to military law, who under oath states that he either has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief. Further, the second paragraph of Article 71 explicitly provides that no charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. A charge is made followed by a thorough and impartial investigation and if the result of the investigation so warrants, the charge is referred to the general court martial. Contrary to petitioner's contention, Article 71 makes no qualification that there can be a "charge" against a person subject to military law only if a pre-trial has been completed and the case has been referred to a court martial. What Article 71 instructs is that no charges, i.e. charges and specifications signed by a person subject to military law under oath, may be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. Article 71 does not make the thorough and impartial investigation a prerequisite before charges may be filed against a person subject to military law. Clearly, the thorough and impartial investigation is a prerequisite not to making a charge against a person subject to military law, but to the referral of the charge to the general court martial. It is the charge which comes prior to the investigation, and which sets into motion the investigation.

We find that there was compliance with the requirements of the Articles of War. As shown by the evidence on record, the amended charge sheets[44] against Major Aquino, containing the charges and the specifications for violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, were personally signed under oath by Capt. Armando P. Paredes, a person subject to military law. The amended charge sheets were sworn to by the accuser, Capt. Armando P. Paredes in the manner provided under Article 71.[45] As it is, Major Aquino stands charged in court martial proceedings for alleged violations of the Articles of War.

In *Kapunan, Jr. v. De Villa*,[46] this Court denied the writ of habeas corpus prayed for, and upheld the legality of the confinement even when there was merely a substantial compliance with the procedural requisites laid down in Article 71. In said case, the Court held that the fact that the charge sheets were not certified in the manner provided by the pertinent law, i.e., that the officer administering the oath has personally examined the affiant and is satisfied that the latter voluntarily executed and understood his affidavit, does not invalidate said charge sheets.[47] With more reason do we herein uphold the validity of the amended charge sheets against Major

Aquino considering that they were executed in accordance with the law, and without breach of Article 71 of the Articles of War. The preferment of charges under Article 71 is a ground for the confinement or arrest^[48] of Major Aquino pursuant to Article 70^[49] of the Articles of War.

It bears stressing that subsequent to the preferment of charges under Article 70, the Judge Advocate General of the General Headquarters of the AFP, issued Office Order Number 14-06, creating a Pre-trial Investigation Panel to investigate the case of Major Aquino and his co-accused. In addition, the Office of the Judge Advocate General issued a subpoena and a notice of pre-trial investigation to Major Aquino summoning him to appear in person before the Pre-trial Investigation Panel. Furthermore, Major Aquino was given the opportunity to submit counter-affidavits and affidavits of his witnesses. More significantly, Major Aquino was present during the scheduled investigation. His arrest and confinement cannot be said to be without due process of law.

Perforce, we do not find that the Court of Appeals erred in denying petitioner's Petition for Habeas Corpus for the person of Major Aquino. A writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled to it.^[50] As a general rule, the writ of habeas corpus will not issue where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so.^[51] Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal.^[52] In the case at bar, Major Aquino stands charged in court martial proceedings for alleged violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War. The legality of Major Aquino's restraint having been settled, the privilege of the writ is unavailing.

We proceed to discuss jointly the second and third issues raised by the petitioner before this Court.

Petitioner contends that in his confinement, Major Aquino was not restricted to his barracks, quarters or tent as mandated by Article 70 of the Articles of War; rather, he was placed in solitary confinement in a maximum security detention cell. When petitioner proceeded to the detention cell, she alleged that she was restricted from visiting her husband.^[53] Petitioner asserts that these are extreme punishments akin to treating Major Aquino as a convicted criminal.^[54]

We are not impressed.

At this juncture, it must be stressed that respondents deny the solitary confinement of Major Aquino.^[55] According to respondents, Major Aquino is confined in a U-shaped building without any division/partition.^[56] The place is described as a long hall with 50 double-deck beds.^[57] Respondents also asseverate that Major Aquino is confined along with 16 other military personnel who were similarly charged in the 23-24 February 2006 incident.^[58]

While it is true that the extraordinary writ of habeas corpus is the appropriate remedy to inquire into questions of violations of constitutional right,^[59] this Court, however, does not find the conditions of Major Aquino's confinement to be a proper subject of inquiry in the instant Petition.

This Court has declared that habeas corpus is not the proper mode to question conditions of confinement.

In *Alejano v. Cabuay*,^[60] lawyers of soldiers and pre-trial detainees accused of coup d'etat before the Regional Trial Court of Makati came to this Court bemoaning the regulations adopted by the Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) who had custody over their clients. Therein petitioners claimed that their constitutional rights were violated because they were prevented from seeing the detainees--their clients--at any time of the day or night. They also alleged that the detainees-- constitutional right to privacy of

communication were violated because ISAFP officials opened and read the personal letters of some of the detainees. They also challenged, as unusual and excessive punishment, the presence of the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood. In denying the petition, this Court declared that the fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment.[61] Said the Court in *Alejano*:

Bell v. Wolfish [441 U.S. 520 (1979)] 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. The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. 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. Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves.[62] (Emphasis supplied.)

Furthermore, the following guidelines were given by the Court to determine if an action constitutes punishment, to wit: (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate.[63] It is also an additional requisite that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.[64] We do not see the attendance of the foregoing factors in the instant case. There are no specific facts that are brought to the attention of this Court to indicate the punitive character of the confinement. The confinement is not herein imposed as a punishment. We do not see that the confinement of Major Aquino causes him to suffer some harm or disability. There is no punitive hardship that exists in the case at bar. In fact, petitioner does not even allege a single act which would show such harm or such "disability" as to prove that the same is significantly greater than, or independent of, the inherent discomforts of confinement.

To be sure, the first part of Article 70 of the Articles of War grants discretion to military authorities over the imposition of arrest or confinement of persons subject to military law charged with crime or with serious offense, viz:

Art. 70. Arrest or Confinement. - Any person subject to military law charged with crime or with a serious offense under these Articles shall be placed in confinement or in arrest, as circumstances may require, but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct. (Emphasis supplied.)

Major Aquino is charged with violations of Article 67, for attempting to begin or create mutiny, and Article 97, for Conduct Unbecoming an Officer and Gentleman. According to Article 67, any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny shall suffer death or such other punishment as a court-martial may direct. It cannot be gainsaid that in determining the "circumstances" of arrest and confinement in Article 70 of persons charged with crime or with serious offense, such circumstances as the gravity of the offense charged may be considered.

Anent petitioner's allegation that she was restricted from visiting Major Aquino, the Court had in the past

underscored the "hands-off doctrine"-a deference given by courts to military custodians over prison matters, especially on blanket restrictions on contact visit.

In *Alejano*, we gave reasons for the allowance of such restrictions, thus:

Block v. Rutherford [468 U.S. 576 (1984)], 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. Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes. Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband. The restriction on contact visit was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons. The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees.

Block v. Rutherford held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security. 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.[65]

As a rule, therefore, the writ of habeas corpus does not extend into questions of conditions of confinement; but only to the fact and duration of confinement. The high prerogative writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint.[66] Its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee.[67] It is not a means for the redress of grievances or to seek injunctive relief or damages. We reiterate the pronouncement of this Court in *Alejano*:

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. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement.[68] (Emphasis supplied.)

In sum, we find the present Petition to be devoid of merit.

WHEREFORE, the Petition is DENIED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Quisumbing, Sandoval-Gutierrez, and Austria-Martinez, JJ., concur.

* Lt. Gen. Hermogenes Esperon is currently the Chief of Staff of the Armed Forces of the Philippines. He was succeeded by Lt. General Romeo Tolentino as Commanding General of the Philippine Army.

** Lt. General Romeo Tolentino, in his capacity as the Commanding General of the Philippine Army was included as party-respondent in the Petition for Issuance of a Writ of Habeas Corpus filed before the Court of Appeals (CA-G.R. SP No. 95341).

*** Vice Associate Justice Antonio Eduardo B. Nachura, per Raffle dated 13 August 2007. Justice Nachura was the Solicitor General when respondent People of the Philippines filed its Manifestation and Motion to Adopt

Comment as Memorandum before this Court.

**** Designated to sit as additional member per Raffle dated 13 August 2007.

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Amelita G. Tolentino and Fernanda Lampas Peralta, concurring; rollo, pp. 53-66.

[2] Id. at 37-38.

[3] Id. at 92-141.

[4] It is also spelled in some records as "ALMODOVAR".

[5] The facts show that on 24 February 2006, four Scout Ranger Teams of 26 enlisted personnel from the 7[th] SRC, 3[rd] SRB under 1LT Jaco S. Cordero, were apprehended by the 31[st] Infantry Battalion, 9[th] Infantry Division at Sipocot, Camarines Sur. Those apprehended were in civilian outfits but they were found to have with them their military uniforms, bandoleers, berets, and P2,000.00 each as food allowance and transportation fee; id. at 94-95.

[6] Composed of MGen Ferdinand M. Bocobo, AFP as Chairman, Col. Jose R. Recuenco INF (GSC) PA as Vice Chairman, and Maj. Crescencio C. Libo-on (QMS) PA, Maj. Romeo F. De Los Santos (AGS) PA, Maj. Ferdinand A. Napuli (INF) PA, Maj. Jose Emmanuel L. Mariano (INF) PA, Cpt. Michael D. Licayao (INF) PA, Cpt. Robert B. Maraon Jags (PA), Cpt. Geraldine C. Ranillo JAGS (PA), and 2Lt. Rodelia L. Hizon (INF), PA, as Members; id. at 158.

[7] Id. at 146.

[8] Id. at 143-158.

[9] Id. at 154-155.

[10] Art. 67. Mutiny or Sedition. - Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

[11] Art. 97. General Article. - Though not mentioned in these Articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or special or summary court-martial according to the nature and degree of the offense, and punished at the discretion of such court.

[12] Rollo, p. 157.

[13] Art. 96. Conduct Unbecoming an Officer and Gentleman. - Any officer, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. (As amended by Republic Acts 242 and 516).

[14] Rollo, pp. 162-163.

[15] Id. at 165.

[16] The charges and specifications for violation of the 67[th] Article of War (Attempting, Beginning, Causing, Exciting to Create a Mutiny) against Major Lim, reads:

Specification 4: In that MAJ JASON LAUREANO Y AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in June to December

2005, excite and/or cause a mutiny by compiling, collating, publishing and/or distributing a pamphlet entitled "The New Order " The Solution to the Filipino Political Problem," which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines to follow the chain of command, support the 1987 Constitution and the duly constituted authorities. Contrary to law.

Specification 5: In that MAJ JASON LAUREANO Y AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in November 2005, excite and/or cause a mutiny by presenting a powerpoint presentation on the salient points of the pamphlet entitled "The New Order- The Solution to the Filipino Political Problem" espousing his political ideas to fellow military officers, which act tends to incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army[,] as well as the Chief of Staff, Armed Forces of the Philippines to follow the chain of command, support the 1987 Constitution and the duly constituted authorities. Contrary to law.

Specification 6: In that MAJ JASON LAUREANO Y AQUINO 0-10503 (INF) PA, MAJ LEOMAR JOSE M DOCTOLERO 0-10112 (INF) PA, CPT DANTE D LANGKIT 0-11957 (INF) PA, CPT JOEY T FONTIVEROS 0-11713 (INF) PA, CPT MONTANO B. ALDOMOVAR 0-11572 (INF) PA, CPT ISAGANI O CRISTE 0-11549 (INF) PA, CPT WILLIAM UPANO 0-11876 (INF) PA and 1LT JERALD A REYES 0-13257 (INF) PA, persons subject to military law, did, at the resthouse of CPT MONTANO B ALDOMOVAR 0-11572 (INF) PA near the so-called tower area in Camp Tecson, San Miguel, Bulacan, in the evening of 03 February 2006, meet then and there, to conspire, confederate and help one another in studying, discussing and plotting how to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and Headquarters Philippine Army, which act or series of acts engenders specific intent to commit mutiny and proximately tending to, but fall short of consummation and as such constitutes an attempt to create a mutiny. Contrary to law. Id. at 166-167.

[17] The charges and specifications for violation of the 96th Article of War (Conduct Unbecoming an

Officer and a Gentleman) against Major Aquino, provides:

Specification 2: In that MAJ JASON LAUREANO Y AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in June to December 2005, compile, collate, publish and/or distribute a pamphlet entitled "The New Order - The Solution to the Filipino Political Problem," which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines, which act dishonors or otherwise disgraces him as an officer and seriously compromises his character and standing as a gentleman and exhibits him to be morally unworthy to remain a member of the noble profession of arms. Contrary to law.

Specification 3: In that MAJ JASON LAUREANO Y AQUINO 0-10503 (INF) PA, MAJ LEOMAR JOSE M DOCTOLERO 0-10112 (INF) PA, CPT JOEY T FONTIVEROS 0-11713 (INF) PA, CPT MONTANO B ALDOMOVAR 0-11572 (INF) PA, CPT DANTE D LANGKIT 0-11957 (INF) PA, CPT ISAGANI O CRISTE 0-11549 (INF) PA, CPT WILLIAM UPANO 0-11876 (INF) PA, and 1LT JERALD A REYES 0-13257 (INF) PA, persons subject to military law, did, at the resthouse of CPT MONTANO B. ALDOMOVAR 0-11572 (INF) PA near the so-called tower area in Camp Tecson, San Miguel, Bulacan, on the evening of 03 Feb 2006, meet then and there, conspire, confederate and help one another in studying, discussing and plotting how to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and hatch the plan to take over Camp Aguinaldo and Headquarters Philippine Army, which act dishonors or otherwise

disgraces them as officers and seriously compromises their character and standing as gentlemen and exhibits them to be morally unworthy to remain members of the noble profession of arms. Contrary to law. Id. at 171-172.

[18] Id. at 179-180.

[19] Id. at 180.

[20] The pertinent portions of the amended charge sheet, read, as follows:

CHARGE 1: Violation of the 67[th] Article of War (Attempting to Begin or Create Mutiny)

SPECIFICATION: In that xxx Major JASON LAUREANO Y AQUINO 0-10503 (Infantry) Philippine Army, xxx persons subject to military law, did, on or about February 23, 2006, and on dates prior or subsequent thereto, in Camp Aguinaldo, Quezon City and Fort Bonifacio, Makati City, together with several John Does, conniving, confederating, and mutually helping one another, each committing individual acts towards a common design or purpose, attempted to begin or caused a mutiny by withdrawing their support from President Gloria Macapagal-Arroyo, Commander-in-Chief of the Armed Forces of the Philippines, urging the Chief of Staff of the Armed Forces of the Philippines and other officers and enlisted personnel to likewise withdraw their support from the President, and attempting to join the protest actions of the so-called civil society groups and political oppositions calling for the President's resignation, with the intent to usurp, subvert and/or override lawful authority.

CHARGE 2: Violation of the 96[th] Article of War (Conduct Unbecoming an Officer and Gentleman)

SPECIFICATION: In that Major JASON LAUREANO Y AQUINO 0-10503 (Infantry) Philippine Army, person subject to military law, did, on or about February 3, 2006 at the rest house of Captain Montano B Aldomovar PA at Camp Tecson, San Miguel, Bulacan, together with Major Leomar Jose Doctolero PA, Captain Dante Langkit PA, Captain Joey T Fontiveros, Captain Montano Aldomovar PA, Captain Isagani Criste PA, Captain William Upano PA, Major James Sababan and 1LT Gerald Reyes PA, participated in an attempt to begin or create a mutiny by planning how to breach the Camp Defense Plan of Camp Aguinaldo and take-over Camp Aguinaldo and Headquarters, Philippine Army, and joining Col Ariel Querubin and BGen Danilo Lim and other Army and Marine officers numbering about ten (10) in a meeting at Century Park Sheraton Hotel in Manila where they discussed the plan to talk with CSAFP GEN GENEROSO SENGAL about the withdrawal of support from President Gloria Macapagal-Arroyo, conduct unbecoming an officer and gentleman. Id. at 182-183.

[21] Per Office Order Number 14-06, the following are the Members of the Pre-trial Investigation Panel in the case of MGEN RENATO P MIRANDA 0-6728 AFP, BGEN DANILON D LIM 0-7665 AFP and others [including Major Aquino]: COL AL I FERRERAS 0-10004 (GSC) JAGS (Chairman), MAJ ERWIN VICTORIANO A MACHICA III 0-131286 JAGS (Member) and MAJ AGUSTIN G MATAVIA 0-133273 JAGS (Member-Recorder). Id. at 185.

[22] Id. at 47-51.

[23] Id. at 186.

[24] The pertinent portions of the Subpoena/Notice of Pre-trial Investigation, dated 27 July 2006, provide:

- You are hereby summoned to appear in person before the Pre-Trial Investigation Panel on 021400H Aug 2006 at Court Rm Nr 2, Torres Hall of Justice, Camp Aguinaldo, Quezon City, then and there, to submit your counter-affidavit and affidavits of your witnesses if any, in the Pre-Trial Investigation of the charges against you for violation of AW 67 (Attempting to Begin or Create Mutiny) and AW 96 (Conduct Unbecoming an Officer and

Gentleman).

- Failure to submit the aforementioned Counter-Affidavit on the date above specified shall be deemed a waiver of your right to submit controverting evidence. All motions, including motion to dismiss, will be considered as your counter-affidavit.

- Attached herewith are the Charge Sheets consisting of 4 pages with accompanying documents/documentary evidence. Id.

[25] Respondents produced the person of Major Aquino during the scheduled hearing before the Court of Appeals where the respective arguments of the parties were heard. Id. at 55.

[26] Id. at 53-66.

[27] To prefer is to put forward or present for consideration; esp. (of a grand jury), to bring (a charge or indictment) against a criminal suspect. (Black's Law Dictionary, 8[th] Ed (1999), p. 1217); On this matter the Court of Appeals, held:

Charges, as defined within the purview of the (sic) military law, are the instruments in which the military offense against an accused person is set forth. They are commonly initiated by someone bringing to the attention of the military authorities information concerning a supposed offense committed by a person subject to military law such information may be received from anyone, whether subject to military law or not. But by the usage of the service, all military charges should be formally preferred by a commissioned officer; id. at 62.

[28] Id. at 63.

[29] Id.

[30] Id.

[31] Id. at 37-38.

[32] Id. at 18.

[33] Id. at 20.

[34] Art. 70. Arrest or Confinement. - Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

[35] Rollo, p. 20.

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

[37] PRESCRIBING THE PROCEDURE, INCLUDING MODES OF PROOF, IN CASES BEFORE COURTS-MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS AND OTHER MILITARY TRIBUNALS OF THE ARMY OF THE PHILIPPINES.

[38] Gloria, Philippine Military Law Annotated, (1956 ed.) p. 230, citing Davis, Treatise on Military Law, 1912, p. 61.

[39] Kapunan, Jr. v. De Villa, G.R. No. L-83177, 6 December 1988, 168 SCRA 264, 269.

[40] Sec. 24, Chapter VI (Preparation of Charges), Manual for Courts-Martial, Philippine Army, otherwise known as Executive Order No. 178, "PRESCRIBING THE PROCEDURE, INCLUDING MODES OF PROOF, IN CASES BEFORE COURTS-MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS AND OTHER MILITARY TRIBUNALS OF THE ARMY OF THE PHILIPPINES.

[41] Id.

[42] Id.

[43] Id.

[44] Supra note 20.

[45] Rollo, p. 184.

[46] Supra note 39.

[47] Id. at 272.

[48] See Gamos v. Abu, G.R. No. 163998, 13 September 2004, 438 SCRA 286, 289, where therein petitioner, a person subject to military law admitted to having received a facsimile copy of the Charge Sheet against him. The Court in Gamos declared that therein petitioner stood charged in court martial proceedings for alleged violations of the Articles of War. The filing of the case against therein petitioner was held by this Court to have defeated therein petitioner's Petition for Habeas Corpus.

[49] Rollo, p. 20.

[50] In the matter of the petition for the habeas corpus of Atty. Fernando Arguelles, Jr. v. Maj. Gen. Balajadia, Jr., G.R. 167211, 14 March 2006, 484 SCRA 653, 657.

[51] Navales v. Abaya, G.R. Nos. 162318 and 162341, 25 October 2004, 441 SCRA 393, 420.

[52] Id.

[53] Rollo, p. 14.

[54] Id. at 29.

[55] Id. at 136.

[56] Id.

[57] Id.

[58] Id.

[59] Andal v. People, 367 Phil. 154, 157 (1999).

[60] G.R. No. 160792, 25 August 2005, 468 SCRA 188.

[61] Id. at 205.

[62] Id.

[63] Id. at 206, citing *Fischer v. Winter*, 564 F. Supp. 281 (1983).

[64] Id. at 206-207.

[65] Id. at 207.

[66] *In the Matter of the Petition for the Privilege of the Writ of Habeas Corpus of Azucena L. Garcia*, 393 Phil. 718, 729 (2000).

[67] Id.

[68] *Supra* note 60 at 215.

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