IN THE MATTER OF THE PETITION OF AMZI B. KELLY, FOR THE ISSUANCE OF HABEAS CORPUS FOR IVON PUMUTKIN ET AL., PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. 20478. March 14, 1923

Ponente: MALCOLM, J.

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MALCOLM, J.:

Amzi B. Kelly, a member of the Philippine Bar, has made application in this court for the issuance of the writ of habeas corpus to set at liberty sixteen young Russians, members of the crew of a fleet of boats now at anchor within the jurisdiction of the Philippine Islands. The return of the Attorney-General states that these Russian subjects are confined in Bilibid Prison, at the request of the Admiral of the Russian ships, and pursuant to the orders of the Governor-General. The Attorney-General further states that the said persons do not desire that any writ of habeas corpus be issued in their behalf, and accept and abide by the order of the Governor-General pending such disposition as it is the wish of the Chief Executive to make in their respective cases. This last statement is supported by an affidavit subscribed and sworn to by the sixteen Russians before the Director of Prisons.

The writ of habeas corpus may be prosecuted by a person unlawfully imprisoned or restrained of his liberty, or by some person in his behalf. Where the application is made in the prisoner's behalf by a third person, and where the prisoner repudiates the action taken, the writ will be denied. The writ of habeas corpus ought not to issue if the restraint is voluntary because unnecessary.

Petition denied without costs. So ordered.

Araullo, C.J., Street, Avanceña, Ostrand, Johns, and Romualdez, JJ., concur.

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