

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. FIDEL TAN, DEFENDANT-APPELLEE.

*G.R. No. 21805. February 25, 1967*

Ponente: REYES, J. B. L., J.

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### REYES, J. B. L., J.:

Appeal from the order, dated 4 January 1963, of the Court of First Instance of Samar, in its Criminal Case No. 4097, denying the government's motion for the re-arrest of the accused-appellee, Fidel Tan.

The aforesaid appellee was, under a modified Judgment, sentenced by said court to suffer --

"an indeterminate penalty ranging from TWO (2) YEARS & FOUR (4) MONTHS, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS, as maximum, both of prision correccional, with the accessory penalties provided by law, indemnify the heirs of Sinforoso Volfango P3,000.00, and pay the costs."

He appealed, but upon his own motion the Court of Appeals dismissed the appeal, in a resolution of 1 August 1958.

The sentence having become final, the accused was committed to the Director of Prisons, on 2 March 1959, through the provincial warden.

The provincial warden did not, however, commit the prisoner to the national penitentiary but retained him in the Samar provincial jail.

Thereafter, the warden took it upon himself to apply the provisions of Article 97 and 99 of the Revised Penal Code as well as Act No. 2489, and credited the prisoner with good conduct time allowance. After the prisoner's actual confinement in Jail for 2 years, 8 months and 21 days, the warden released him on 23 November 1961.

On 6 September 1962, the provincial fiscal moved for the re-arrest of the accused and to order him recommitted to the national penitentiary, on the ground that the provincial warden had no authority to release him with good conduct time allowance. The motion was unopposed.

Acting on the motion, the court required the warden to explain why the prisoner was kept in the provincial Jail and not "sent to Manila" and to answer the fiscal's allegation that he released the prisoner without an order from the Director of Prisons and before the service of the full term of the sentence.

The warden explained as follows:

"That said prisoner was not made to serve his imprisonment in the national penitentiary because sometime in 1959 our office received a communication from the Director of Prisons to withhold transfers of prisoners from the provincial jails to the New Bilibid Prison due to congestion resulting in the bloody riots. In same year when my attention was called why prisoner Fidel Tan, was not yet sent to Muntinlupa in spite of the cessation of the riots, I have explained in a letter dated October 1, 1959, to the Assistant Director of Prisons, that same prisoner could not be sent as he was undergoing close medical treatment of his left lumbar region where

previous wound was located, his left thigh, and presence of blood in the urine as evidenced by a medical certificate sent together with my explanation. Being of the opinion and belief then that if this prisoner be transferred to the national penitentiary he might be involved in another occasional and undetermined riots, where his physical condition cannot resist the fear and which may aggravate his ailment, that for the sake of humanity, until his physical condition should improve but which did not until his time of release.

"That said prisoner was released without order from the Director of Prisons on the ground that he cannot be made to still be lodged in the provincial jail when the date of his release was already due, much less send him to Muntinlupa when the term of his sentence minus good behavior credit has expired.

"That said prisoner was released after having served the term diminished by the credit of good conduct time allowance in accordance with the provisions of Art. X1, Sec. 1 (a) and (b) of the Revised Rules and Regulations for the Government of Insular and Provincial Prisoners in the Philippines. That the computation made by me was correct according to my interpretation in good faith of the afore-mentioned provision based on the maximum term of sentence of 4 years 2 months."

On 21 September 1962, the lower court issued an order requiring the appearance of the warden to show the veracity of his information and, on 4 January 1963, it issued the order that is now the subject of this appeal denying the fiscal's petition to recommit the accused.

The excuses tendered by the provincial warden are clearly unacceptable. The alleged fear that the convict Tan might be involved in occasional riots in the Insular Penitentiary is but a flimsy pretext for evading the warden's plain duty of remitting the prisoner to his proper place of confinement. Having been sentenced to more than one year of imprisonment, the convict was not a provincial prisoner but an insular prisoner (Adm. Code, section 1740), and there being no showing that his life would be endangered by the trip to Muntinlupa penitentiary, the warden's failure to send him thither was a breach of duty for which said officer should be held accountable. It needs no stressing that to allow provincial wardens to retain insular prisoners without proper authorization would open the way to all sorts of discrimination in the treatment of prisoners and constitute a standing invitation for the commission of abuses and anomalies for personal or political motives.

Nor do we find in the record any justification for the warden's usurping the authority of the Director of Prisons in crediting the prisoner with good conduct time allowance. Article 99 of the Revised Penal Code vests such authority exclusively in the Director and no one else.

Assuming that appellee Tan was entitled to good conduct time allowance, his release by the provincial warden, after an imprisonment of only 2 years, 8 months and 1 day, was premature. Under paragraph No. 1, Article 97, of the Revised Penal Code, he may be allowed a deduction of five (5) days for each month of good behavior during his first two years of imprisonment, which would be 24 months multiplied by 5, or 120 days; under paragraph No. 2, he may be allowed a deduction of eight (8) days a month for the next three years. For the balance of eight (8) months, multiplied by 8, we have 64 days; so that the total credit for good behavior would be 184 days, equivalent to 6 months and 4 days.[1] The prisoner's actual confinement of 2 years, 8 months and 21 days, plus his possible total credit of 6 months and 4 days, would give the result of 3 years, 2 months and 25 days. Since the maximum term of his sentence is 4 years and 2 months, appellee Tan, assuming that he is entitled to good conduct time allowance, has an unserved portion of 11 months and 5 days.[2]

The court below denied the fiscal's motion for the re-arrest of the accused-appellee on the following grounds: (a) that when the accused-appellee commenced serving his sentence and was committed to the warden, the court lost jurisdiction over the prisoner's "person with respect to his imprisonment"; (b) that to re-arrest him after his release would amount to double jeopardy, or deprive him of his liberty without due process of law; and (c) that the accused abided by the judgment and served it in good faith, even if the act of the jailer was irresponsible and

erroneous.

We agree with the Solicitor-General that the lower court had already lost jurisdiction to amend or alter its judgment of conviction, but not over its execution or satisfaction. The court's jurisdiction was not terminated by the commitment of the convict to the jail authorities -- the commitment was but the start in carrying out of the court's decision. It is the prerogative of the court meting out the punishment to see to it that the punishment be served until, by act of lawfully authorized administrative agencies of the state, the convict is pardoned or paroled or, on lawful grounds, set at liberty sooner than the expiration of the sentence imposed.

The prisoner's re-arrest<sup>[3]</sup> would not place him twice in jeopardy because his re-incarceration is merely a continuation of the penalty that he had not completely served due to the erroneous act of the warden; it is not a new or subsequent conviction. Neither would his re-arrest deprive him of liberty without due process of law, because he was not yet entitled to liberty at the time he was released. Service of penalties and allowance for good conduct are specifically, even elaborately, governed by the Penal Code and do not depend upon the good faith of the warden and of the prisoner.

For the foregoing reasons, the appealed order is hereby reversed and a new one entered, ordering the re-arrest, and the continuance of the imprisonment, of the accused appellee, Fidel Tan, for one (1) year, five (5) months and eleven (11) days more.

Let a copy of this decision be furnished to the Director of Prisons, who is hereby directed to incarcerate the appellee in the national penitentiary, if present conditions thereat would allow his accommodation, or if not, in any other suitable jail, without prejudice to credit for good behavior from the time he was jailed on 2 March 1959, in accordance with Article 99 of the Revised Penal Code.

Let another copy of this decision be sent to the Secretary of Justice, that he may take action, if warranted, against the warden concerned.

No costs.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez and Castro, JJ., concur.

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[1] The Solicitor-General's computation is 6 months and 10 days.

[2] The Solicitor-General's computation is 10 months and 29 days. The foregoing computations suffer from clerical errors and disregard par. 2, Art. 97.

[3] Some authorities hold that a fresh warrant is not necessary (4 Moran 120, 1963 Ed.).

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