

THE PROVINCE OF SURIGAO, PETITIONER, VS. HONORABLE GERVASIO DIAZ, JUDGE OF THE COURT OF FIRST INSTANCE OF SURIGAO, RESPONDENT.

G. R. No. 32622. January 16, 1930

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32622/>

MALCOLM, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }These are certiorari proceedings begun by the Provincial Fiscal of Surigao to determine if the Judge of First Instance of Surigao acted without jurisdiction in ordering one convicted of a violation of the Opium Law, and properly a provincial prisoner, confined in Bilibid Prison.

In the Court of First Instance of Surigao, Pedro Ceda pleaded guilty to an information charging him with the smoking of opium. The judgment of the trial court sentenced the accused to three months' imprisonment, and to pay a fine of P400, with subsidiary imprisonment in case of insolvency. "Taking into account that the accused is a Filipino and is addicted to the vice of smoking opium," said the judge, "it is ordered that the accused extinguish the penalty in Bilibid Prison, Manila, so that in said institution he may be cured of the opium habit."

The law in force in the Philippines since July 1st, 1914, restricting the use, possession, and importation of opium and its derivatives is Act No. 2381. Turning to this law, it is found to name specific penalties of imprisonment, fine, and deportation, without, however, granting any authority to the courts to depart from general provisions of law determining what persons shall be deemed to be municipal, provincial, or insular prisoners. Nor does any other law confer such power on the courts. On the contrary, the accused in the case under review would be considered a provincial prisoner to be detained in a provincial jail (Administrative Code, sees. 1739, 1740, 1741).

The trial judge relied for authority on another legal provision and two administrative circulars. The legal provision is section 1750 of the Administrative Code reading: "When, in the discretion of the Governor-General, the insanitary or insecure condition of any provincial or municipal jail makes it advisable, or when the public interests require, he may transfer to any Insular prison or penal institution all or any of the prisoners committed to such jail, and may also direct the return of said prisoners to provincial or municipal jails when deemed expedient. * * *." The first administrative circular which is cited in support of the action taken is one under the hand of the Executive Secretary addressed to provincial governors and dated January 18, 1913. It is therein provided:

"It appearing that it will be in the interest of the public to have confined in Bilibid Prison all persons, convicted of using opium in violation of Act No. 1761, as amended, and sentenced to imprisonment, in order that said persons may receive proper medical treatment and be cured of the opium habit, provincial governors are hereby requested by direction of the Governor-General to send thereto by first available transportation and under proper guard, all

such persons whose term of imprisonment shall not expire within sixty days after the receipt hereof.

"All persons subsequently sentenced to imprisonment for using opium in violation of Act No. 1761 shall be immediately transferred to Bilibid Prison.

“*****”

On March 5, 1923, the Chief of the Executive Bureau, with the approval of the Secretary of the Interior, amended the second paragraph of the circular above quoted to read as follows:

"All persons subsequently sentenced to imprisonment for using opium in violation of Act No. 1761, whose term of imprisonment will not expire within sixty (60) days after the rendition of the sentence, shall be immediately transferred to Bilibid Prison, provided that proper medical treatment for the cure of contracted opium or morphine habit cannot be administered in the province where they are convicted."

The law and the circulars above quoted furnish a very insecure basis for the judicial action in this case. The circular of 1923 mentions Act No. 1761, which not only is not now in force, but had not been in force nine years prior thereto. This circular was promulgated by the Chief of the Executive Bureau with the approval of the Secretary of the Interior who were entirely without authority in the premises. As to section 1750 of the Administrative Code, it relates exclusively to the prerogative of the Governor-General. The power conferred by law on the Chief Executive to order prisoners transferred from provincial or municipal jails to an insular prison does not confer power on a Judge of First Instance to do so. Of course, after the Judge of First Instance has pronounced sentence, it lies in the discretion of the Governor-General to have provincial prisoners sent to Bilibid Prison for medical attention, including the cure of the opium habit. The good intentions of a Judge of First Instance will not supply the lack of express judicial power.

Writ granted without costs.

Johnson, Street, Villarnor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.