

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. MIGUEL PONCE DE LEON Y BALLESTEROS, DEFENDANT AND APPELLEE.

G. R. No. 34228. December 31, 1931

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the Government, represented by the Attorney-General, from the judgment rendered by the Court of First Instance of the City of Manila, dismissing the information filed against the accused Miguel Ponce de Leon y Ballesteros, for the violation of a conditional pardon.

On March 13, 1923 the appellee was found guilty of parricide by the Court of First Instance of Manila, and sentenced to three years of banishment from within a radius of 25 kilometers from the Roman Catholic Church in Santa Ana. On February 16, 1924 His Excellency the Governor-General pardoned him on condition that he should never again be guilty of any misconduct. A few weeks later the appellee was introduced by Captain Panopio to Godofredo Dancel of the Governor-Generals Office, indicating thereby that he accepted the conditional pardon. On October 6, 1928 the appellee was charged with the violation of section 2692 of the Revised Administrative Code for illegal possession of a number of cartridges and a clip for an automatic pistol, and having pleaded guilty, was sentenced to pay a fine of P25.

On June 7, 1930, Assistant Fiscal F.B. Albert, of the City of Manila, revived criminal case No. 40135 of said court and filed an information against the appellee charging him with the violation, as aforesaid, of the conditional pardon granted him and by him accepted, praying that after the proper investigation he be compelled to serve the unexpired portion of the penalty of banishment. After due hearing, the court dismissed the information on the ground that it had no jurisdiction to order the remedy sought by the prosecution. The Government, represented by the Attorney-General, appealed.

This appeal raises two questions: First, whether the decision is appealable; and second, whether the court had jurisdiction to order the appellee to serve the unexpired portion of the penalty of banishment inasmuch as he had violated the condition of his pardon.

Act No. 1524 which provides the manner of enforcing the conditions imposed by the Governor-General in the exercise of his power to grant conditional pardons, does not establish the right to appeal from the order or judgment rendered by the Court of First Instance denying or dismissing a petition for the enforcement of said conditions. For this reason counsel for the appellee contends that the judgment from which the Attorney-General has appealed is not open to such a recourse. But section 44 of General Orders, No. 58 as amended by section 4 of Act No. 2886 recognizes the right of the Government to appeal from orders sustaining a demurrer or dismissing a complaint or information. Of course there is no question that no appeal can be taken from an order dismissing an information, when the accused is thereby acquitted or set at liberty. Inasmuch as the law cited above is silent with reference to appeals by the State, we see no good reason why the general provisions of section 44, General

Orders, No. 58, should not also be applicable to the order in question. The ground upon which rests the principle prohibiting an appeal from a judgment or order of acquittal, is that the accused is placed in double jeopardy of conviction for one and the same offense. This fundamental reason does not exist in the present case: the appellee was not placed in double jeopardy of conviction for one and the same offense, for what the prosecution sought was that he be compelled to serve out the unexpired portion of the penalty of banishment from which he had been relieved by a conditional pardon. In case it is finally decided that he must serve out the unexpired portion of the penalty of banishment, he is not sentenced to a new penalty or found guilty of the same crime of which he was convicted, but he is merely restored to the status in which he was before being pardoned.

With reference to the second question, we find that section 4 of Act No. 1524 is applicable. It reads as follows:

"SEC. 4. If the court shall find from said investigation that one or more of the conditions of such pardon, heretofore or hereafter granted, has been violated by the person so pardoned, the court shall order the re-commitment and confinement of such person in the proper prison for the unexpired portion of his original sentence. Such order of the court shall be sufficient authority to the custodian of any public prison designated therein to receive and safely keep the body of the person so conditionally pardoned during the unexpired portion of his original sentence."

In dismissing the information presented in this case, the court relied upon the phrase employed in the law, "shall order the re-commitment and confinement of such person." It was argued that since the appellee could not be re-imprisoned because he had been sentenced to banishment, the law was inapplicable and the court had no jurisdiction to grant the fiscal's petition. We are convinced that the legal precepts and legislative intention have been misinterpreted.

What is meant in that section is that if the investigation shows that the accused has violated the condition of the pardon, he shall be recommitted or confined with a view to serving that portion of his sentence which has remained unextinguished on account of the conditional pardon. Of course, if the penalty imposed is not commitment but banishment, for example, he will not be ordered to suffer or serve imprisonment, but merely that period of banishment from which he was relieved by his acceptance of the conditional pardon. To place another interpretation upon the law would be to thwart its purpose which is, as we have said, to enforce the conditions of the pardon, as its very title clearly declares, and to restore the accused to the same status in which he was before the pardon.

In *United States vs. Ignacio* (33 Phil., 202), this court said:

"The defendant accepted the conditional pardon and thereby secured his release from imprisonment. Having accepted the conditional pardon, he is bound by its terms. The record shows that he had been guilty of misconduct after his conditional pardon. By such misconduct, he forfeited his pardon and his right to liberty thereunder. When a pardoned person violates the conditions of his pardon, he is left in the exact situation in which he was when the pardon was granted, and the original sentence may be enforced against him. (Ex parte Wells, 18 Howard [U. S.], 307; Ex parte Hawkins, 61 Ark., 321; 30 L. R. A., 736; 54 Am. St. Rep., 209; Kennedy's Case, 135 Mass., 48; Ex parte Marks, 64 Cal., 29.)

"If the condition of the pardon upon which the accused secures his release from imprisonment has been violated by him, after his release, the pardon thereby becomes void and the petitioner may be arrested and compelled to undergo so much of the original sentence as he had not suffered at the time of his release. (Ex parte Alvarez vs. State of Florida, 50 Fla., 24; 111 Am. St. Rep., 102, Fuller vs. State, 122 Ala., 32; 45 L. R. A., 502; Ex parte Marks, supra; State vs. Home, 7 L. R. A. [N. S.], 719.)

"The law is well settled that where the criminal accepts the pardon he accepts it subject to all its valid conditions and limitations, and will be held bound to compliance there with. (Ex parte Alvarez vs. State of

Florida, *supra*.)"

If the purpose of the action taken by the prosecution was but to restore the appellee to the status he was in before receiving and accepting the conditional pardon, and if the principal penalty imposed upon him in the criminal case for parricide was banishment and not imprisonment, it stands to reason that he must now extinguish the unexpired portion of the former penalty, and not of any other penalty to which he has not been sentenced. And to this end, there is no doubt that Courts of First Instance have plenary power and jurisdiction, under said section 4, Act No. 1524.

Our attention has been called to the fact that the procedure established by Act No. 1524 cannot be followed in cases where the condition was violated after the period of the defendant's sentence had expired. In view of the provisions of Act No. 1524, we believe this objection has no legal weight. This law contains no exception or limitation of the time within which the action provided for may be instituted, and we do not see how the objection can stand. Of course, we do not mean to apply this decision to a case where the offense has already prescribed by express provision of the law.

"On forfeiture of a pardon by a breach of its conditions, a convict becomes liable to serve the balance of his unexpired term, although the time for which he was sentenced has expired, the essential part of the sentence being the punishment, and not the time when it shall begin and end. (State vs. Home, 52 Fla., 125; 42 S., 388; 7 L. R. A. [N. S.]t 719; [rehden 52 Fla., 143; 42 S., 714] ; State vs. Yates, 183 N. C., 753; 111 S. E., 337.)" (46 C. J., 1203.)

Wherefore the appealed judgment is reversed, and let the accused Miguel Ponce de Leon y Ballesteros serve the period of banishment to which he was sentenced and which remained unextinguished by reason of the conditional padon granted him, with the costs of this instance against said appellee. So ordered.

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

DISSENTING

MALCOLM, J.:

Conceding that, pursuant to Act No. 1524, the trial court, under the power granted to order "the re-commitment and confinement" of a person violating the conditions of his pardon, may re-banish a conditionally pardoned person— which certainly is a broad construction of the law—conceding further that the fact that Act No. 1524 contains no provisions for an appeal from the trial court to the Supreme Court is not fatal, and conceding finally that section 44, as amended, of the Code of Criminal Procedure is applicable, I am clearly of the opinion that the case is legally non-appealable. The cited section of the Code of Criminal Procedure permits of an appeal by the People of the Philippine Islands from a judgment for a defendant rendered on a demurrer to an information or complaint and from an order dismissing a complaint or information. Whatever else may be said, the consequence of this criminal proceeding instituted by the People of the Philippine Islands against the accused terminated in a judgment directing his discharge. No appeal lies from such a judgment which, right or wrong, has the effect of an acquittal, and thus of placing the accused in jeopardy. The law applicable to the enforcement of conditions made by the Governor-General in granting pardons may be defective in phraseology, but those defects may not be supplied by loose judicial amplification. Accordingly, my vote is to dismiss the appeal in this case interposed by the Government.

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