

LEON ABANILLA, PETITIONER AND APPELLANT, VS. PASTOR VILLAS, ACTING WARDEN OF THE LEYTE PROVINCIAL JAIL, RESPONDENT AND APPELLEE.*G.R. No. 36599, February 02, 1932*

Ponente: STREET, J.

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On March 8, 1931, the petitioner, Leon Abanilla, and two others were charged with the crime of theft in the court of the justice of the peace of San Isidro, Leyte. The subject of the alleged theft was a small quantity of corn, and the offense was one properly within the jurisdiction of the justice of the peace. The justice of the peace before whom the case was presented inhibited himself in the case against the petitioner, for the reason that he was related to the petitioner within the sixth civil degree; but he heard the case and convicted the two other accused, namely, Benjamin Garrido and Catalino Gabarda. From that judgment Garrido and Gabarda appealed, and in the Court of First Instance the case against them was dismissed at the request of the provincial fiscal on the ground that the acts imputed to the accused were not constitutive of a crime, but involved merely a civil liability. The case against Abanilla, owing to the fact that the justice of the peace had inhibited himself, was taken before another justice of the peace, who likewise convicted the petitioner, as his coaccused had been convicted before the first justice of the peace. From this conviction the petitioner took no effective appeal, with the result that he was committed to prison, and is now absolving sentence in the provincial jail. Upon these facts the application for writ of habeas corpus now before us was instituted by the petitioner in the Court of First Instance of Leyte, and upon denial of the petition in that court the present appeal was instituted.

It is quite obvious that the decision of the trial court was right and that there is no merit in this appeal. The petitioner was lawfully convicted in a court of competent jurisdiction, and he is now absolving sentence under the judgment. The writ of habeas corpus is not available to obtain the release of a person lawfully sentenced to imprisonment by a court of competent jurisdiction. Nor is the writ of habeas corpus available in lieu of appeal, for the purpose of inquiring into the merits of the crime for which the petitioner was committed. It is regrettable that the accused should be now undergoing punishment, when his two coaccused, who might possibly have been as guilty as the appellant, or more guilty, were discharged; and if the attention of the Chief Executive had been promptly called to the matter, the present petitioner would doubtless have been released upon pardon. But it is not competent for this court to interfere with the execution of this sentence under the circumstances stated.

We should perhaps add that the recommendation of the fiscal for the dismissal of the case against Garrido and Gabarda on the ground that the alleged offense merely involved civil liability was based, not upon the insufficiency of the complaint but upon lack of material proof on the part of the prosecution to show the existence of a crime.

The petition is dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Romualdez Villa-Real, and Imperial, JJ., concur.

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