

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO NERI, DEFENDANT AND APPELLANT.

G.R. No. 3684. September 28, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of embezzlement in the Court of First Instance of the Province of Bohol. Upon being arraigned in the lower court, the defendant pleaded "guilty," upon which plea the court sentenced him to pay a fine of P40.32, and to temporary disqualification for two years and one day, to be reckoned from this date, and in case of nonpayment of the fine to suffer subsidiary disqualification at the rate of one day for every twelve and one-half pesetas which he should fail to pay, or in case of insolvency to sixteen days of subsidiary disqualification, and to pay the costs.

Immediately after the announcement of this sentence by the judge of the lower court, the defendant presented a motion asking for permission to withdraw the plea of "guilty." This motion of the defendant was denied, the lower court giving as his reasons therefor the fact that the defendant was represented by an attorney, understood the language in which the complaint was written, fully understood the crime with which he was charged, and had sufficient opportunity to consult with his lawyer.

From this decision overruling his motion, the defendant appealed to this court.

It appears from the record that the defendant had been president of the pueblo of Dausi, and that as such president had received from the provincial treasurer of the Province of Bohol a quantity of rice and that he had converted a portion of the same to his own use, amounting in value to the sum of P322.63, and that he had returned either the rice so converted or its value to the treasurer of said province.

The defendant in this court assigns as error the fact that the lower court refused to permit him to withdraw his plea of "guilty" after sentence and to interpose the plea of "not guilty."

Section 25 of General Orders, No. 58, provides that—

"A plea of guilty can be put in only by the defendant himself in open court. The court may at any time before judgment upon a plea of guilty permit it to be withdrawn and a plea of not guilty substituted."

This section expressly provides that the court may before judgment permit the plea of guilty to be withdrawn and another plea substituted therefor. It was entirely within the discretion of the lower court to permit the defendant to change his plea after sentence. The lower court having denied the defendant this right, we refuse to interfere with such discretion. The court was justified, under the circumstances, in denying said motion. The fine imposed by the lower court upon the defendant was justified by paragraph 3 of article 392 of the Penal Code.

The lower court, however, should have been a little more specific in that part of the sentence relating to the

suspension of the defendant. This suspension should have been from public office, the right of suffrage (active or passive), profession, or trade for a period of two years and one day.

It is therefore the judgment of this court that the sentence of the lower court be affirmed, with this modification, to wit: That the defendant be sentenced to pay a fine of P40.32, and to temporary disqualification for two years and one day from holding public office and from the right of suffrage, active and passive, and from the exercise of a profession or trade, and, in case of nonpayment of the fine, to suffer subsidiary disqualification at the rate of one day for every twelve and one-half pesetas which he should, fail to pay, or, in case of insolvency, to sixteen days of subsidiary disqualification and to pay the costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey JJ., concur.

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