

ANTONIO DIRECTO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. 37108. March 28, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for a writ of habeas corpus filed by Antonio Directo against the Director of Prisons, praying for the reasons given that the latter be ordered to set him at liberty at once.

The ground of the petition is that the petitioner is illegally detained in Bilibid Prison by virtue of a re-amended sentence which is void because it was imposed by the Court of First Instance of Manila after having lost jurisdiction.

The relevant facts necessary for a resolution of the questions raised in this .petition are as follows:

On January 12, 1931, the herein petitioner, Antonio Directo, was committed to Bilibid Prison under a final sentence of the Court of First Instance of Manila for five years, five months, and eleven days of presidio correctional, and to pay an indemnity of P3,200, with subsidiary imprisonment in case of insolvency, for the crime of estafa (criminal case No. 38915).

At the instance of the petitioner himself, Antonio Directo, the Court of First Instance of Manila, taking into account article 22 of the Revised Penal Code, and finding that the penalty fixed in article 315, case No. 2, of said Code is more favorable to the accused, on January 26, 1932 amended its original decision rendered on January 12, 1931, and reduced the penalty therein imposed under article No. 4 of the old Penal Code, from five years, five months, and eleven days, to one year and one day of prision correccional.

The Court of First Instance having discovered that it had committed an error in amending its former decision by imposing a sentence of one year and one day, on February 2, 1932 re-amended the judgment fixing the penalty at one year, eight months, and twenty-one days in accordance with article 315, case 2, of the Revised Penal Code.

It is evident that the Court of First Instance of Manila amended its original decision after it had become final and when the defendant was already serving the sentence imposed upon him. The lapse of the time fixed by the law for an appeal, which causes a decision to become final, and the partial or total service of the sentence therein imposed, deprive the trial court of all jurisdiction over the cause, and such court has no power to amend it, except for the correction of clerical errors. Inasmuch as the Court of First Instance of Manila lost all jurisdiction over criminal case No. 38915, it was without jurisdiction when it amended the original sentence on January 26, 1932. And if the amended sentence was void for lack of jurisdiction, of the court which imposed it, the re-amended sentence imposed on February 2, 1932 was also void, although its purpose was to enforce the provision of the Penal Code which makes penal laws retroactive so far as they favor the accused, for the remedy in such a case would be the writ of habeas corpus.

Considering the present petition from the standpoint of the retroactivity of the Revised Penal Code, as provided in

its article 22, in so far as it favors the accused, the penalty of one year, eight months, and twenty-one days of prision correccional fixed in its article 315, No. 2, which is more favorable than that of five years, five months, and eleven days of presidio correccional fixed in article 534, No. 4 Of the old Penal Code, as amended by Act No. 3244, has not yet been served, inasmuch as there must be added to it a subsidiary imprisonment of six months and twenty-seven days, which is one-third of the principal penalty.

The aggregate penalty, therefore, is two years, three months, and eighteen days, from which shall be deducted three months and twenty-five days as allowance for good conduct, so that the net term of imprisonment to be served by the petitioner is one year, eleven months, and twenty-three days. It appearing that up to this date, March 26, 1932, the petitioner has served only one year, two months, and fourteen days, there is still a balance of about nine months and nine days to be served by him.

In view of the foregoing considerations we are of opinion and hold: (1) That article 22 of the Revised Penal Code which makes penal provisions retroactive so far as they favor the accused, provided he is not an habitual criminal, does not authorize a court whose sentence has become final and executory to make a substantial amendment, and any amendment made in such sentence, though it be to give effect to a penal provision favorable to the accused, would be null and void for lack of jurisdiction; and (2) that the only means of giving retroactive effect to a penal provision favorable to the accused when the trial judge has lost jurisdiction over the case, is the writ of habeas corpus.

By virtue whereof, the petitioner herein not having extinguished the penalty of the Revised Penal Code, the petition for the writ of habeas corpus is hereby denied and dismissed, with costs de officio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Imperial, JJ., concur.

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