

IGNACIO P. PAGUNTALAN, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. 37959. August 31, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This petition for the writ of habeas corpus was filed by prisoner Ignacio P. Paguntalan praying that after proper proceedings the Director of Prisons be ordered to set him at liberty immediately, on the ground that he is being illegally detained.

The illegality of his detention consists, according to the petitioner, in that he is not an habitual criminal, according to the definition given in article 62, paragraph 5, of the Revised Penal Code and to the doctrine laid down by this court in *People vs. Santiago* (55 Phil., 266); and, having already served four years, nine months, and sixteen days of imprisonment, the remainder of the penalty imposed upon him is not authorized by law.

Article 62, paragraph 5, of the Revised Penal Code reads as follows:

"Art. 62. Effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency.—Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

"5. Habitual delinquency shall have the following effects:

"(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prision correccional in its medium and maximum periods;

"(b) Upon a fourth conviction the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its minimum and medium periods; and

"(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period.

"Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

"For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of robo, kurto, estafa, or falsification, he is found guilty of any of said crimes a third time or oftener."

In *People vs. Santiago*, supra, this court enunciated the following doctrine:

"Criminal Law; Habitual Delinquency.—When an habitual criminal has committed several crimes, without

being first convicted of any of them before committing the others, he cannot be sentenced for each of said crimes to the gradually increasing additional penalty, and for the purposes of the law, said crimes must be considered as one, applying the additional penalty to one of them, and ignoring the rest."

The facts in the present proceedings, upon which the petitioner bases his action, are as follows:

On January 7, 1915, the petitioner was sentenced by the Court of First Instance of Occidental Negros to two years, four months, and one day of prision correccional for the crime of abduction, and set at liberty on March 4, 1917.

On December 8, 1921, the same petitioner was sentenced by the Court of First Instance of Manila to two months and one day of arresto mayor for the crime of estafa.

On December 9, 1921, he was again sentenced by the Court of First Instance ,of Manila to three years, six months, and twenty-one days of prision correccional for the crime of robbery.

On the same day, December 9, 1921, the petitioner was sentenced by the municipal court of Manila to two months and one day of arresto mayor, and an indemnity of P145 for the crime of estafa.

On January 31, 1922, the same petitioner was sentenced by the Court of First Instance of Manila to one year, eight months, and twenty-one days of prision correccional for the crime of robbery.

Having served the last three sentences, the petitioner was released on September 14, 1926.

On October 24, 1927, he was sentenced by the Court of First Instance of Batangas to 10 years imprisonment for the crime of robbery, besides an additional penalty of five years for habitual delinquency.

In the present case the petitioner does not invoke the benefit of article 22 of the Revised Penal Code, giving retroactive effect to penal provisions so far as they are favorable to the accused, provided he is not an habitual criminal, but seeks the review of a sentence which has proved erroneous in view of a subsequent doctrine laid down by this court the error consisting in that, instead of counting the various convictions as one only, due to the proximity and almost simultaneity of the commission of the several crimes of which the petitioner was convicted, the same were considered as separate convictions for the purposes of the law establishing habitual delinquency. This error could have been corrected by appeal, for it was rather an error of judgment and not an undue exercise of judicial powers which vitiates and nullifies the proceeding. This court has repeatedly held that mere errors of fact or law which do not nullify the proceedings taken by a court in the exercise of its functions, having 'jurisdiction over the crime and over the defendant, cannot be corrected through the special remedy of habeas corpus. (Trono Felipe vs. Director of Prisons, 24 Phil., 121; U. S. vs. Jayme, 24 Phil., 90; McMicking vs. Schields, 238 U. S., 99; 41 Phil., 97.1.)

In view of the foregoing considerations and the doctrines laid down by this court, the herein petitioner being committed in Bilibid Prison by virtue of a legal and valid judgment without having served his full sentence, the petition for habeas corpus is hereby denied, without special pronouncement of costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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