

TIMOTEO EVANGELISTA, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G. R. No. 40450. January 29, 1934

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition for a writ of habeas corpus filed by Timoteo Evangelista praying that, after proper proceedings, an order be issued directed to the respondent Director of Prisons, commanding him to immediately release the petitioner from custody on the ground that he is illegally detained.

It appears that on June 27, 1928 petitioner was convicted by the Court of First Instance of Laguna, in case No. 7977 of said court, of the crime of usurpation of official functions and sentenced to suffer imprisonment for one year, eight months and twenty-one days. On appeal this judgment was affirmed by this court on February 11, 1929 (See G. R. No. 30124) [1] On November 6, 1928, petitioner was also convicted by the Court of First Instance of Manila of the crimes of robbery and of impersonating a public officer, in criminal cases Nos. 35916 and 35917 of said court. The sentences in these cases remained unexecuted because of the petitioner having absconded. Later he was found in Hongkong, and extradition proceedings were instituted to procure his rendition upon his conviction of the crime of robbery by the Court of First Instance of Manila. As a result of the extradition proceedings petitioner was brought to Manila and immediately detained in Bilibid Prison, there to await the final outcome of his cases pending appeal in this court. While thus detained, an order was issued by the Court of First Instance of Laguna committing the petitioner to the custody of the respondent to serve the sentence imposed upon him by that court. It is the legality of his imprisonment under this order that is now in question.

Petitioner was extradited from Hongkong under the treaty between the United States and Great Britain concluded July 12, 1889, and proclaimed March 25, 1890. (U. S. Stat. at L., vol. 26, p. 1508.) The specific question thus presented is whether, under the provisions of said treaty, a person extradited may be imprisoned upon a former conviction for an offense other than that for which his extradition has been demanded. The determination of this question is governed by the case of *Johnson vs. Browne* (205 U. S., 309; 51 Law. ed., 816). That case involved the construction of article 2, paragraph 2, and article 3 of the extradition treaty between the United States and Great Britain. Said article 2, paragraph 2, reads as follows:

"No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, for any political crime or offence, or for any act connected therewith, committed previously to his extradition."

and article 3 provides:

"No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offence, committed prior to his extradition, other than the offence for which he was¹ surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered."

Commenting on this treaty stipulations, the Supreme Court of the United States, through Justice Peckham, said:

"It will be perceived that the second article provides that no person surrendered shall be triable or tried, or be punished, for any political crime or offense, while article three provides that no person surrendered shall be triable or be tried (leaving out the words 'or punished') for any crime or offense committed prior to the extradition, other than the offense for which he was surrendered, until he shall have had an opportunity for returning to the country from which he was surrendered. Hence it is urged that, as punishment for another offense of which the person had been convicted is not in so many words expressly prohibited in and by article 3, a requisition may be obtained for one crime under that article, and, when possession of the person is thus obtained, he may be punished for another and totally different crime of which he had been convicted before extradition.

"We do not concur in this view. Although if the words " were contained in the 3d article the question in this case could not, of course, arise, yet we are satisfied that the whole treaty, taken in connection with that of 1842, fairly construed, does not permit of the imprisonment of an extradited person under the facts in this case.

"The mere failure to use these words in the 3d article does not so far change and alter 'the manifest scope and object' of the two treaties as to render this imprisonment legal. The general scope of the two treaties makes manifest an intention to prevent a state from obtaining jurisdiction of an individual whose extradition is sought on one ground and for one expressed purpose, and then, having obtained possession of his person, to use it for another and different purpose. Why the words were left out in the 3d article of the convention of 1889, when their insertion would have placed the subject entirely at rest, may perhaps be a matter of some possible surprise, yet their absence cannot so far alter the otherwise plain meaning of the two treaties as to give them a totally different construction." (Johnson vs. Browne, supra, 819, 820.)

Upon the foregoing premises, it must be regarded as settled that, under the existing extradition treaty between the United States and Great Britain, a person extradited can not be imprisoned upon a former conviction for an offense other than for which his extradition has been demanded. It follows that the petitioner's confinement in Bilibid Prison in pursuance of the order of commitment of the Court of First Instance of Laguna, dated September 5, 1933, in case No. 7977 of said court, was and is illegal and void.

It appearing, however, that the petitioner is now confined in Bilibid Prison by reason of his conviction of the crimes for which he was extradited, the petition for a writ of habeas corpus must be, and the same is, hereby denied.

Street, Butte, and Diaz, JJ., concur.

[1] People vs. Evangelista, not reported.

Avancena, C. J., participated in this decision, and voted to deny the petition, but his name does not appear signed hereto for the reason that he was on leave at the time of the promulgation of the decision.—STREET, J.

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