

FELIPE GONZALES, PETITIONER AND APPELLANT, VS. FLORENTINO C. VIOLA AND VALENTIN MANIQUIS, RESPONDENTS AND APPELLEES.*G.R. No. 43195. August 23, 1935*

Ponente: ABAD SANTOS, J.

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This is an appeal from an order of the Court of First Instance of Bulacan, denying the petition for a writ of habeas corpus filed by the appellant. The order of denial was entered by the court below after due hearing, on the ground that the appellant was legally detained.

The facts which gave rise to this case are fully set forth in the order appealed from. In deciding this appeal, it is sufficient to observe that the record shows that on January 18, 1935, at about 11:30 a. m., appellant was placed under arrest by order of the appellees and detained in the municipal jail of San Miguel, Province of Bulacan; that a few hours later a criminal complaint was filed by the appellee Maniquis against the appellant in the justice of the peace court of the aforesaid municipality; and that on the same day, at about 8 p. m., he was released on bail. When the hearing on the petition for a writ of habeas corpus was had in the court below the appellant was already out on bail.

In passing upon a petition for a writ of habeas corpus, a court or judge must first inquire whether the petitioner is restrained of his liberty. If he is not, the writ will be refused. Only where such restraint obtains is the court required to inquire into the cause of the detention, and if the alleged cause is found to be unlawful then the writ should be granted and the petitioner discharged. (Code of Civil Procedure, sections 525, 541; *Wales vs. Whitney*, 114 U. S., 564; 29 Law. ed., 277.)

The law is well settled that a person out on bail is not so restrained of his liberty as to be entitled to a writ of habeas corpus. The restraint of liberty which would justify the issuance of the writ must be more than a mere moral restraint; it must be actual or physical. "There is no very satisfactory definition to be found in the adjudged cases, of the character of the restraint or imprisonment suffered by a party applying for the writ of habeas corpus, which is necessary to sustain the writ. This can hardly be expected from the variety of restraints for which it is used to give relief. Confinement under civil and criminal process may be so relieved. Wives restrained by husbands, children withheld from the proper parent or guardian, persons held under arbitrary custody by private individuals, as in a mad-house, as well as those under military control, may all become proper subjects of relief by the writ of habeas corpus. Obviously, the extent and character of the restraint which justifies the writ must vary according to the nature of the control which is asserted over the party in whose behalf the writ is prayed. * * * Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it." (*Wales vs. Whitney*, supra.)

Under the circumstances of the present case, the court below would have been justified in refusing the writ solely on the ground that the appellant was not, within the meaning of section 525 of the Code of Civil Procedure,

deprived or restrained of his liberty; and upon that very ground the order appealed from is affirmed with costs against the appellant. So ordered.

Hull, Vickers, Diaz, and Recto, JJ., concur.

Order affirmed.

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