

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISIDORO SANARES Y CAERNE, DEFENDANT AND APPELLANT.

G. R. No. 43499. January 11, 1936

Ponente: RECTO, J.

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RECTO, J.:

Isidoro Sanares y Caerne was charged in the Court of First Instance of Manila under the following information:

"That on or about March 1, 1927, the said accused having been granted by His Excellency, the Governor-General, a conditional pardon remitting the un-executed portion of the sentence of imprisonment of six years and one day imposed upon him in criminal case No. 4508 of the Court of First Instance of Cavite, for the crime of theft, which he began to serve on July 9, 1924, and having been released from Bilibid Prison on March 1, 1927, upon accepting the condition of such pardon, to with that he shall not again violate any of the penal laws of the Philippine Islands; on or about February 5, 1935, in the City of Manila, Philippine Islands, the said accused willfully, unlawfully and feloniously violated the condition of such pardon by then and there committing the crime of estafa for which he was finally sentenced to suffer three months and eleven days of imprisonment, and to pay P50 indemnity, imposed upon him by the municipal court of the City of Manila in criminal case No. H-26727."

Upon arraignment, the accused pleaded guilty and the court forthwith ordered his re-commitment for the unexpired portion of his former sentence. The accused appealed from this judgment and prays that he be acquitted or that the penalty be reduced. No reason, alleged or extant in the record, appears in support of the first prayer, for the violation of the law is conceded, and the accused has pleaded guilty thereto. As to the modification of the judgment and the reduction of the penalty, we believe that the point is well taken, as the trial court erroneously applied section 4 of Act No. 1524, which has been expressly repealed by the Revised Penal Code.

The record shows that the conditional pardon whose conditions were violated by the accused referred to a penalty of six years and one day of prision, of which two years, five months and twenty-two days had been served by the accused. The penalty remitted by the pardon was, therefore, three years, seven months and eight days. These facts appear in the information the material allegations of which have been admitted by the accused by virtue of his plea of guilty (U. S. vs. Burlado, 42 Phil., 72; U. S. vs. Barba, 29 Phil., 206; People vs. Cabral, G. R. No. 39200 [58 Phil., 930]).

Article 159 of the Revised Penal Code provides that "the penalty of prision correctional in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence."

The second part of the article just quoted is inapplicable to the case at bar because the unexpired portion of the penalty remitted by reason of the conditional pardon granted the accused does not exceed six years. The first part

thereof, which imposes the penalty of prision correctional in its minimum period upon the convict who, having been granted conditional pardon, shall violate any of its conditions, is, therefore, applicable. The duration of this penalty is from six months and one day to two years and four months. Inasmuch as the mitigating circumstance of having pleaded guilty should be considered in favor of the accused, and there being no aggravating circumstance, the penalty should be imposed in its minimum period which ranges from six months and one day to one year, one month and ten days of prision correctional. The benefits afforded by the Indeterminate Sentence Law are not applicable to the accused, by express provision thereof.

Wherefore, modifying the appealed judgment, we are of the opinion that we should, as we hereby sentence the appellant to eight months of prision correctional, with costs.

Avanceña, C. J., Abad Santos, Hull, and Vickers, JJ., concur.

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