

JOSE D. ZENAROSA, PETITIONER, VS. EULALIO GARCIA, JUDGE OF FIRST INSTANCE OF CAMARINES NORTE, RESPONDENT.

G. R. No. 45047. March 19, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The petition before us is for a writ of mandamus with preliminary injunction, filed by Jose D. Zenarosa against the respondent judge, to require the latter to pass upon a certain motion alleged to have been filed by the petitioner, praying that he be granted the benefits of the Probation Law (Act No. 4221), which took effect on August 7, 1935.

It appears that in criminal case G. R. No. 42937,¹ the People of the Philippine Islands vs. Jose D. Zenarosa, et al. (criminal case No. 901 of the Court of First Instance of Camarines Norte), a final judgment was entered sentencing said accused, the herein petitioner, for the crime of abduction, to an indeterminate penalty of from eight to seventeen years, four months, and one day; that before the petitioner began service of his sentence, he tiled a motion with the respondent judge on January 15, 1936 (Exhibit A-1), asking that the benefits of the Probation Law be extended to him, alleging that he is eighteen years of age and that the crime for which he was sentenced is not one of the exceptions or bar to the application of the provisions of said law; that the resolution of the respondent denying petitioner's motion is based not only upon respondent's belief that he has no jurisdiction to grant the motion because the provincial board of Camarines Norte, within whose jurisdiction the crime for which petitioner was sentenced was committed, has not provided for the salary of a probation officer in said province, but also upon the fact that, in his judgment, even assuming that he has jurisdiction, the grounds stated in the motion are not sufficient to justify the granting thereof, and that there is no probation officer appointed for the Province of Camarines Norte, and in fact the petitioner is under arrest because his incidental petition for a writ of preliminary injunction to enjoin the respondent from issuing an order for his arrest, was denied in a separate resolution.

While it is true that the crime of abduction is not one of the exceptions provided in the Probation Law to the application of its provisions, it is no less true that it is discretionary with courts to suspend the execution of a final judgment and to extend or deny the benefits of said law to applicants therefor, inasmuch as sections 1 and 2 thereof use the verb "may" which undoubtedly implies the exercise of discretion.

Act No. 4221 does not require that the provincial fiscal should be heard before denying a petition for the application of the benefits thereof, but on the contrary, the said law provides that no such petition should be granted without first hearing the fiscal, as is evident *from the last part of section 1 thereof reading, "* * * No person, however, shall be placed on probation until an investigation and report by the probation officer shall have been made to the court of the circumstances of his offense, his criminal record, if any, and his social history and until the provincial fiscal shall have been given an opportunity to be heard. The court shall enter in the minutes the reasons for its action/" which means that the purpose of the law is to restrict or avoid the commission of abuses by indiscriminately granting probation to guilty persons whether they apply for it or not.

The respondent in fact resolved the petitioner's motion on the merits in denying the same as he did, exercising thereby a power granted to him by law, according to his sound judgment, for the reason stated in his resolution, namely, that said motion does not state sufficient grounds justifying the granting to the petitioner of the benefits applied for by him. For all the foregoing reasons, we rule that the petition is without merit.

It is our judgment that we should deny, as we do hereby, the said petition, with costs to the petitioner. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

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