

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINADOR FLORES Y AGUILAR, DEFENDANT AND APPELLANT.

G. R. No. 45089. September 17, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Dominador Flores y Aguilar from the judgment of the Court of First Instance of Manila finding him self-confessed and guilty of the crime of frustrated theft provided for and punished in article 309, case 5, in connection with article 50, of the Revised Penal Code, and sentencing him to the principal penalty of eleven days of arresto menor and the additional penalty of two years, four months and one day of prison correctional for being a habitual delinquent, with the accessory penalties of the law and costs.

In support of his appeal, the appellant contends that the court a quo erred in sentencing him to the principal penalty of eleven days of arresto menor.

The penalty prescribed by article 309, case 5, of the Revised Penal Code for the crime of consummated theft is arresto mayor to its full extent, if the value of the thing stolen is over P5 but does not exceed P50. As the crime of which the defendant-appellant pleaded guilty is frustrated theft, the penalty which should be imposed upon him is the one next lower in degree to arresto mayor, which is arresto menor, in accordance with the provisions of article 50, in connection with articles 61 and 70 of said Code. Inasmuch as the aggravating circumstance of recidivism (art. 14, subsec. 9 of the Revised Penal Code), which is compensated by the mitigating circumstance of the plea of guilty (art. 13, subsec. 7, of said Code), was present at the commission of the crime, said penalty of arresto menor should be imposed in its medium period, or from eleven to twenty days of arresto menor, pursuant to rules 1 and 4 of article 64 of said Code. The principal penalty imposed by the trial court is, therefore, in accordance with law.

The defendant-appellant does not assign as error the fact that he was declared a habitual delinquent and imposed the corresponding additional penalty by the trial court. Having pleaded guilty of the crime of frustrated theft with which he is charged in the information, and having admitted thereby only the facts alleged therein, which facts are insufficient to prove the existence of habitual delinquency because neither the dates of the former convictions nor those of the commission of the crimes of which he was convicted are specified in said information, the additional penalty prescribed for habitual delinquency cannot "be imposed upon him and, therefore, the court a quo committed an error of law in declaring the defendant-appellant a habitual delinquent. (People vs. Santiago, 55 Phil., 266; People vs. De la Cruz, G. R. No. 33786, promulgated February 7, 1931, not reported; People vs. Ventura, 56 Phil., 1; Paguntalan vs. Director of Prisons, 57 Phil., 140; People vs. Morales, 61 Phil., 222; People vs. Artigas, G. R. No. 43901, promulgated November 27, 1935 [62 Phil., 972]; People vs. De la Rama, G. R. No. 43744, promulgated November 27, 1935 [62 Phil., 972]; People vs. Venus, p. 435, ante.)

Wherefore, the appealed sentence is reversed in so far as it declares the accused a habitual delinquent and imposes the corresponding additional penalty upon him, and it is affirmed in all other respects, with the costs of both

instances to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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