

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CARLOS SOLER Y RODRIGUEZ (ALIAS DANKLIN SOLER), DEFENDANT AND APPELLANT.

G. R. No. 45263. December 29, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Carlos Soler (alias Danklin Soler) from the judgment of the Court of First Instance of Rizal, the dispositive part of which reads:

"By virtue of the plea of guilty entered by the accused in open court, the court finds him guilty of theft as provided for and punished in article 309, case 3, of the Revised Penal Code, with the aggravating circumstance of recidivism which is compensated by the mitigating circumstance of the plea of guilty entered by the accused upon arraignment and, consequently, sentences him to the penalty of one year, eight months and twenty-one days of prision correctional, with the accessory penalties provided by law, and to indemnify the offended party Ralph A. McKibben in the sum of P159.60 representing the value of the unrecovered articles, with subsidiary imprisonment in case of insolvency and costs.

"As a habitual delinquent, this being his fourth conviction, he is sentenced to the additional penalty of seven years, four months and one day of prision mayor, with the accessory penalties provided by law, in accordance with the provisions of article 62, subsection 5, paragraph (6), of the Revised Penal Code.

"It is ordered that the recovered articles be returned to the owner thereof under receipt."

The attorney de oficio appointed by this court to defend the defendant-appellant in this instance states in his brief that he has found no error in the appealed judgment and that he is of the opinion that it should be affirmed.

The principal penalty of one year, eight months and twenty-one days of prision correctional imposed by the trial court for the crime of theft provided for and punished in article 309, case 3, of the Revised Penal Code and committed by the defendant-appellant with the aggravating circumstance of recidivism compensated by the mitigating circumstance of the plea of guilty entered by the defendant upon arraignment, is in accordance with law. Such is not the case, however, with the additional penalty of seven years, four months and one day of prision mayor and the accessory penalties of the law imposed upon him for being a habitual delinquent under article 62, subsection 5, paragraph (5), of the Revised Penal Code, because in as much as he was a minor when he committed two crimes of theft on March 31, 1926, robbery in an inhabited house on November 7, 1927, another theft in an inhabited house on November 14, 1927; and qualified theft on May 7, 1928, for which he was ordered confined in the Philippine Training School for Boys until he attained majority, without having passed sentence of conviction against him as it was suspended in accordance with the provision of section 3 of Act No. 3203, and inasmuch as to be a habitual delinquent it is necessary. that the defendant be found guilty of any of the crimes of robo, hurto, estafa, or falsificacion a third time or oftener within a period of ten years from the date of his release or last conviction of said crime, the herein defendant-appellant cannot be deemed to be a habitual delinquent, not having

ever been convicted of any of said crimes prior to the commission of the crime of theft with which he has been charged and of which he pleaded guilty and was convicted in this case.

The fiscal, however, is of the opinion that the herein defendant-appellant is not entitled to enjoy the benefit afforded by Act No. 4103, as amended by Act No. 4225, which establishes indeterminate sentence on the ground that "he has twice escaped from the Philippine Training School for Boys where he was confined, in accordance with the provision of section 2 of said Act No. 4103, as amended by section 2 of Act No. 4225.

The pertinent part of the Spanish text of section 2 of Act No. 4103, as amended by section 2 of Act No. 4225, reads as follows:

"Art. 2. Esta Ley no se aplicara * * * a los presos fugados o a las personas que han evadido el cumplimiento de sentencia; * * *."

The pertinent part of the English text of said section reads:

"Sec. 2. This Act shall not apply * * * to those who shall have escaped from confinement or evaded sentence; * * *."

If we are to abide by the Spanish text, the herein defendant-appellant is entitled to the benefit afforded by said Indeterminate Sentence Law. Preso, according to the Enciclopedia Juridica Española, volume 25, page 499, is "The person subjected to imprisonment, either preventively or restrictively." The herein defendant-appellant was never sentenced to prison while he was under age but, on the contrary, when he was prosecuted for the above-stated crimes, no sentence of conviction was imposed upon him but all further proceedings were suspended and he was ordered confined in the Philippine Training School for Boys which is not a prison but purely an educational institution. The herein defendant-appellant, therefore, never bore the stigma of a preso and the fact that he had escaped from the Philippine Training School for Boys did not give him the status of a preso fugado (escaped prisoner).

If we are to abide by the English translation, said defendant-appellant is not entitled to said benefit as the term "confinement" means "The state of being confined; restraint within limits; restraint within doors by sickness * * *: any restraint of liberty by force or other obstacle or necessity; hence imprisonment." (12 Corpus Juris, 422.) Upon being confined in the Philippine Training School for Boys by judicial order, the herein defendant-appellant suffered restraint of liberty by force and in escaping from said institution, he acquired the qualification of "escaped from confinement" which is one of the causes of exclusion under section 2 of Act No. 4103, as amended by section 2 of Act No. 4225.

We are, therefore, confronted with a conflict between two texts—one English and the other Spanish—of the same legal provision, and to solve it we are compelled to resort to a law passed by the Philippine Legislature establishing rules therefor.

Section 13 of Act No. 2657, as amended by section 1 of Act No. 2717, provides:

"SEC. 13. Language that should prevail in the interpretation of laws.—In the interpretation of a law officially promulgated in English and Spanish, the English text shall govern, but in case of ambiguity, omission or mistake, the Spanish may be consulted to explain the English text. The converse rule shall, however, be applied if so provided in the particular statute: Provided, however, That in the interpretation of laws enacted by the Philippine Legislature after October sixteenth, nineteen hundred and sixteen, the language of the text used by the House that finally passed the same shall prevail, and in case of ambiguity, omission or mistake; the official translation filed in the office of the Secretary of said House may be consulted."

The records division of the National Assembly informs us that Act No. 4225, amending Act No. 4103, of the

Philippine Legislature, was passed in Spanish. Under the above-cited legal provision, the Spanish text of Act No. 4225 should prevail in the interpretation of its provisions. The terms used in the Spanish text of the law in question being *presos fugados* (escaped prisoners), the said defendant-appellant not having been sentenced to prison by final judgment prior to the commission of the crime of which he is charged herein, and as his confinement in the Philippine Training School for Boys, from which he escaped, cannot be legally considered imprisonment, the exception contained in section 2 of Act No. 4103, as amended by section 2 of Act No. 4225, is not applicable to him. Said defendant-appellant, therefore, is entitled to the enjoyment of the benefit afforded by said Indeterminate Sentence Law.

Under section 1 of Act No. 4103, as amended by section 1 of Act No. 4225, the indeterminate sentence to be imposed upon said defendant-appellant should consist of the penalty which, in view of the attending circumstances could be properly imposed under the rules of the Revised Penal Code, as the maximum term, and a penalty within the range of the penalty next lower to that prescribed by said Code for the offense, as the minimum. In this case, the penalty prescribed by article 309, case 3, of the Revised Penal Code for the crime of theft is *prision correccional* in its minimum and medium periods, or from 6 months and 1 day to 4 years and 2 months. As the presence of the aggravating circumstance of nocturnity compensated by the mitigating circumstance of plea of guilty must be considered, said penalty should be imposed in its medium period, or from 1 year, 8 months and 21 days to 2 years, 11 months and 10 days of *prision correccional*. The penalty next lower to *prision correccional* in its minimum and medium periods is *arresto mayor* in its medium and maximum periods (art. 61, No. 5, of the Revised Penal Code) from which the minimum limit of the indeterminate sentence should be taken. Taking into consideration all the circumstances of the case, we are of the opinion that the of the indeterminate sentence should be fixed at four months and one day of *arresto mayor* with the maximum of one year, eight months and twenty-one days of *prision correccional*.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That orders issued for the confinement of a minor in the Philippine Training School for Boys, whatever their number, do not constitute condemnatory prison sentences; (2) that confinement in the Philippine Training School for Boys is not imprisonment, and the minor so confined, who escapes from said institution, does not have the status of a *preso fugado* (escaped prisoner), and is not excluded from the benefits afforded by the Indeterminate Sentence Law.

Wherefore, with the modification that the additional penalty for habitual delinquency be eliminated from the appealed sentence, and that the defendant-appellant be sentenced to an indeterminate penalty of from four months and one day of *arresto mayor* to one year, eight months and twenty-one days of *prision correccional*, it is affirmed in all other respects, with the costs to the appellant. So ordered.

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

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