

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TEODORICO MARTIN, DEFENDANT AND APPELLANT.

G.R. No. 46432. May 17, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellant Teodorico Martin was sentenced in the Court of First Instance of Cavite for the crime of abduction to the penalty of fourteen years, eight months and one day of reclusion temporal, having commenced to serve this sentence on January 17, 1917. On February 5, 1923, after having served eight years, one month and seventeen days, leaving still unserved six years, six months and fourteen days, he was pardoned on condition that he should not again be found guilty of any crime punishable by the laws of the Philippines. Subsequently the appellant was tried for the crime of attempted robbery in band with physical injuries and sentenced, by final judgment dated October 27, 1932, to pay a fine of 330 pesetas, with subsidiary imprisonment in case of insolvency.

The appellant is charged with a violation of the conditions of his pardon for having committed the crime for which he was sentenced on October 27, 1932. The Court of First Instance of Rizal, which took cognizance of this case, found him guilty and sentenced him to suffer the penalty which was remitted in the pardon, namely, six years, six months and fourteen days of reclusion temporal.

It is alleged that the Court of First Instance of Cavite, and not that of Rizal, had jurisdiction to take cognizance of this case. We find no merit in this contention. While the Court of First Instance of Cavite was the one which imposed on the appellant the penalty of which he was subsequently pardoned, nevertheless the violation of the conditions of that pardon, which is the subject matter of the present prosecution, took place in the Province of Rizal. The present proceeding is not a continuation or a part of the former one. It is a new proceeding, complete in itself and independent of the latter. It refers to other subsequent facts which the law (art. 159 of the Revised Penal Code) punishes as a distinct crime the penalty for which is not necessarily that remitted by the pardon.

The prescription of the violation is another defense put up by the appellant. He contends that this violation being punished with prision correccional in its minimum degree which should be imposed in its medium period, that is, from one year, one month and eleven days to one year, eight months and twenty days (art. 159 of the Revised Penal Code), it prescribes after four years under section 1 of Act No. 3585. This Act provides:

"Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; * * *."

We likewise find no merit in this defense. In the first place, the penalty prescribed for the violation is not that of prision correccional in its minimum grade, but the penalty remitted by the pardon. Article 159 of the Revised Penal Code reads:

"Other cases of evasion of service of sentence.—The penalty of prision correccional 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."

In the case at bar the penalty remitted was six years, six months and fourteen days, or more than six years. The appellant's contention that there should be deducted from this remitted penalty the allowance of time provided in article 97 of the Revised Penal Code, is unsound. This allowance is given in consideration of the good conduct of the prisoner while serving his sentence. Not having served this remitted penalty, there is no reason for the allowance, namely, the good conduct of the appellant while serving his sentence. The penalty imposable for the violation being more than six years, this does not prescribe after four years, but after eight, under the aforesaid Act No. 3585 the pertinent portion of which has been quoted.

Moreover, the violation in question is penalized by the Revised Penal Code (art. 159 aforesaid), which is not & special law, and the prescription thereof, as regulated by article 90 of the same Code, is ten years.

Wherefore, the period of eight years not having elapsed from the time the appellant was found guilty of the crime of attempted robbery in band with injuries by final judgment rendered on October 27, 1932, nor from the time he committed this crime on October 27, 1930, the violation of the conditions of his pardon with which he is charged, has not prescribed either under Act No. 3585 or under the Revised Penal Code,

The appealed judgment is affirmed, with the costs to the appellant. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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