

EUFEMIO P. TESORO, PETITIONER AND APPELLANT, VS. THE DIRECTOR OF PRISONS, RESPONDENT AND APPELLEE.

G.R. No. 46437. May 23, 1939

Ponente: MORAN, J.

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MORAN, J.:

On October 10, 1934, petitioner, Eufemio P. Tesoro, was convicted in the Court of First Instance of Manila of the crime of falsification of a public document and sentenced to an indeterminate penalty of from two (2) to three (3) years, six (6) months and twenty-one (21) days, to pay a fine of one hundred pesos (P100), or undergo subsidiary imprisonment in case of insolvency. This penalty was to expire on October 28, 1937. On November 14, 1935, the then Governor-General Frank Murphy granted the petitioner a parole, which the latter accepted, subject to the following conditions:

"1. That he will live in the City of Manila and will not change his residence without first obtaining the consent of the Board of Indeterminate Sentence;

"2. That he will not commit any other crime and will conduct himself in an orderly manner;

"3. That he will report, during the period of his parole, to the Executive Secretary of the Board of Indeterminate Sentence, during the first year, once a month, and thereafter, once every three months.

"Should any of the conditions stated be violated, the sentence imposed shall again be in full force and effect."

On December 3, 1937, petitioner was charged in the justice of the peace court of San Juan, Rizal, with the crime of adultery alleged to have been committed with one Concordia Dairo, wife of petitioner's brother-in-law, Jose Nagar. To the complaint were attached the affidavits of the complainant Jose Nagar, of Luz Nagar and of Epimaco Nagar. The case was thereafter forwarded to the Court of First Instance of Rizal where the provincial fiscal filed the corresponding information which, however, was dismissed for nonappearance of the complainant.

Sometime in the month of February, 1938, the same Jose Nagar lodged a complaint with the Board of Indeterminate Sentence, and upon the same facts supporting the criminal action aforementioned, charged the petitioner with violation of the conditions of his parole. On February 3, 1938, petitioner was summoned to appear before the board for a hearing on the aforesaid complaint, but petitioner asked for postponement until the day following. On February 4, 1938, petitioner addressed a letter to the board denying the charge of illicit relations with the complainant's wife and included therewith the supposed retraction of Epimaco Nagar of what the latter had stated in his former affidavit. On the same date Simeon Figalang, a parole officer assigned to investigate the case, submitted his report to the board, and, on the strength thereof and the papers supporting it, the acting chairman of the board addressed a communication to the President of the Philippines, recommending the arrest and reincarceration of the petitioner. And on February 19, 1938, the President issued the following order:

"To any lawful officer:

"Whereas, Eufemio P. Tesoro, convicted by the Court of First Instance of Manila of the crime of falsification

of an official document, and sentenced to an indeterminate term of from 2 years to 3 years, 6 months and 21 days' imprisonment, plus P100 fine, was granted pardon on parole by His Excellency, the Governor-General, on November 14, 1935, under certain conditions, one of which provides that he will not commit any other crime and will conduct himself in an orderly manner, and

"Whereas, said Eufemio P. Tesoro has violated this condition in that, in the latter part of September, 1937, and continuously thereafter, he betrayed the confidence of his brother-in-law, Jose Nagar, by maintaining adulterous relations with the latter's wife, under the following circumstances: Upon the death on September 18, 1937, of parolee Tesoro's wife (sister of Jose Nagar) and in order to mitigate the grief of the bereaved family and to help in the keeping of the house and caring of the children of said parolee, Jose Nagar and his wife came to live with the parolee in San Juan, Rizal; but taking advantage of the frequent absences of Jose Nagar from the house, parolee Tesoro made advances to Jose Nagar's wife, Concordia Dairo, succeeded in having illicit relations with her and even went to the extent of taking away the woman from her legitimate husband, after the couple had moved from his home, and he is now living with her in adultery.

"Therefore, by virtue of the authority conferred upon me by section 64 (i) of the Administrative Code, you are hereby ordered to arrest parolee Eufemio P. Tesoro and to commit him to the custody of the Director of Prisons, Manila, who is hereby authorized to confine said person for the service of the unexpired portion of the maximum sentence for which he was originally committed to prison."

By virtue of this order, the petitioner was arrested and recommitted to the custody of the Director of Prisons. Thereupon, petitioner sued for a writ of habeas corpus against the Director of Prisons and, upon denial thereof by the trial court, took the present appeal.

Section 64 (i) of the Administrative Code, by virtue of which the petitioner was granted parole, gives the Governor-General the following powers and duties:

"To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remit fines, and order the discharge of any convicted person upon parole, subject to such condition³ as he may impose; and to authorize the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence."

Paragraph 6, section 11, Article VII, of the Constitution of the Philippines, provides as follows:

"The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly."

Appellant contends that section 64 (i) of the Administrative Code, above quoted, in so far as it confers upon the Chief Executive the power to grant and revoke paroles, has been impliedly repealed by the aforecited constitutional provision, as the latter omitted to specify such power in connection with the powers granted therein to the President of the Philippines. This contention is untenable. The power to pardon given the President by the Constitution, "upon such conditions and with such restrictions and limitations as he may deem proper to impose," includes the power to grant and revoke paroles. (20 R. C. L., 577; 46 C. J., 1205.) If the omission of the power of parole in the Constitution is to be construed as a denial thereof to the President, the effect would be to discharge unconditionally parolees, who, before the adoption of the Constitution, have been released conditionally by the Chief Executive. That such effect was never intended by the Constitutional Convention is obviously beyond question.

Appellant also contends that the Board of Indeterminate Sentence has no legal authority to investigate the conduct

of the petitioner, and recommend the revocation of his parole. By the terms of his parole, petitioner agreed to report to the executive secretary of the board once a month during the first year of his parole, and, thereafter, once every three months. By his consent to this condition, petitioner has placed himself under the supervision of the board. The duty to report on the part of the petitioner implies a corresponding power on the part of the board to inquire into his conduct, and a fortiori to make recommendations to the President by whose authority it was acting. Besides, the power to revoke paroles necessarily carries with it the power to investigate and to inquire into the conduct of the parolees, if such power of revocation is to be rational and intelligent. In the exercise of this incidental power of inquiry and investigation, the President of the Philippines is not precluded by law or by the Constitution from making use, of any agency of the government, or even of any individual, to secure the necessary assistance. When, therefore, the President chose to intrust his power of inquiry upon the Board of Indeterminate Sentence, a government agency created precisely for the concern of persons released on parole, he acted both upon legal authority and good judgment.

Appellant further contends that judicial pronouncement to the effect that he has committed a crime is necessary before he can be properly adjudged as having violated his conditional parole. Under condition No. 2 of his parole, petitioner agreed that he "will not commit any other crime and will conduct himself in an orderly manner." (Underscore, ours.) It was, therefore, the mere commission, not his conviction by court, of any other crime, that was necessary in order that the petitioner may be deemed to have violated his parole. And under section 64 (i) of the Administrative Code, the Chief Executive is authorized to order "the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence." (Underscore ours,)

Appellant impugns the findings of the President regarding the violation of the conditional parole. He claims that, according to the weight of the evidence, the violation took place, not "in the latter part of September, 1937," as found by the President, but after October 28, 1937, the date when the parole was supposed to expire. Be that as it may, where, as in the instant case, the determination of the violation of the conditional parole rests exclusively in the sound judgment of the Chief Executive, the courts will not interfere, by way of review, with any of his findings. The petitioner herein having consented to place his liberty on parole upon the judgment of the power that has granted it, lie cannot invoke the aid of the courts, however erroneous the findings may be upon which his recommitment was ordered.

Besides, even conceding that the petitioner's violation of the parole took place after October 28, 1937, when his maximum penalty was to have expired, we still find no error in the order of arrest and recommitment. It is the petitioner's contention that, upon the expiration of his maximum term of imprisonment, his conditional parole also expires, and, therefore, his liberty becomes absolute subject to no conditions contained in his parole. In other words, he holds the view that the period during which he was out on parole should be counted as service of his original sentence. We do not subscribe to this contention.

In *People vs. Tapel* (35 Off. Gaz., 1603), we said:

"When a conditional pardon is violated, the prisoner is placed in the same state in which he was at the time the pardon was granted. He may be rearrested and recommitted to prisons (See *V. S. vs. Ignacio* [1916], 33 Phil., 202, 204; *U. S. vs. Villalon* [1917], 37 Phil., 322.) And the rule is well-settled that, in requiring the convict to undergo so much of the punishment imposed by his original sentence as he had not suffered at the time of his release, the court should not consider the time during which the convict was at large by virtue of the pardon as time served on the original sentence. (20 R. C. L., p. 570; *State vs. Home* [1906], 52 Fla., 125; 42 So., 388; 7 L. R. A. [N. S.], 719, 725. Vide, also, *Ex parte Bell* [1879], 56 Miss., 282.)"

This rule applies, by analogy, to conditional parole. (46 C. J., 1209.)

The foregoing discussion brings us to the last contention of the appellant as to the duration of the penalty he has yet to serve after his recommitment. Act No. 1561 provided that a convict released on parole and who, thereafter, violates its conditions, shall serve the full sentence of the court as though no parole has ever been granted him, the time between the parole and the subsequent arrest not being considered as part of the term of his sentence in computing the period of his subsequent confinement. But this Act has been repealed by the Administrative Code, and section 64 (i) thereof omitted such provision. Act No. 4103, section 8, provides that any prisoner released on parole who violates any condition thereof, shall, upon re-arrest and confinement, serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison. This Act is not, however, applicable to the present case, as the petitioner was paroled not under the provision thereof, but by virtue of section 64 (i) of the Administrative Code. There is, thus, no statutory provision squarely governing the case with respect to the duration of the petitioner's confinement after his recommitment. In the absence of such statutory provision, the terms of the parole shall govern. From the express terms of the parole that "should any of the conditions stated be violated, the sentence imposed shall again be in full force and effect," it is evident that the petitioner herein should serve the unexpired portion of the penalty originally imposed upon him by the court.

Judgment is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, and Diaz, JJ., concur.
Laurel, and Concepcion, JJ., concurring in the result.

CONCURRING OPINION

LAUREL, J.:

I concur in the result, but withhold my assent to the statement, unnecessarily made in my opinion that Act No 4103—as amended by Act No. 4225—is inapplicable to the present case.

CONCURRING AND DISSENTING

CONCEPCION, J.:

I concur in the result, but I dissent with respect to the interpretation given by the majority to the second condition of the appellant's parole. Said the decision: "Under condition No. 2 of his parole, petitioner agreed that he 'will not commit any other crime and will conduct himself in an orderly manner.' (Underscore ours.) It was, therefore, the mere commission, not his conviction by court, of any other crime, that was necessary in order that the petitioner may be deemed to have violated his parole."

I am of the opinion that the "commission" of a crime may only be determined upon the "conviction" of the accused. It is not sufficient that a person be charged with having committed a crime in order to consider that he is convicted thereof. His innocence is a legal presumption which is overcome only by his conviction after he is duly and legally prosecuted. And the courts of justice are the only branch of the government which has exclusive jurisdiction under the law to make a pronouncement on the conviction of an accused.

In the present case, however, a judicial pronouncement can not be required regarding the commission of the crime imputed to the appellant because the information for adultery lodged against him was dismissed for failure of the complaining witness to appear.

In these circumstances and as an exception to the general rule, the Board of Indeterminate Sentence was justified

in conducting the investigation of the crime complained of and in recommending to the President of the Philippines the arrest and recommitment of the appellant for violation of his conditional pardon, for it is not just that by the omission or negligence of a witness who fails to appear in court, the violation of the pardon granted conditionally to the appellant should be left unpunished.

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