

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARCOS K. ARELLANO, DEFENDANT AND APPELLANT.

G.R. No. 46501. October 05, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is before this court by virtue of the appeal taken by the accused Marcos K. Arellano from the judgment rendered by the Court of First Instance of Pangasinan, imposing, upon him an indeterminate sentence of from one to three months imprisonment, to pay a fine in the sum of P100 with the corresponding subsidiary imprisonment in case of insolvency, plus the costs, for violation of section 2645 of the Revised Administrative Code.

The facts upon which the trial court based its decision holding the accused-appellant criminally liable under section 2645 of the Revised Administrative Code, are as follows:

On October 29, 1937, the appellant applied for the registration of his name as voter in the municipality of San Manuel, Province of Pangasinan, and to that effect he subscribed the corresponding voter's affidavit (Exhibit B). The affidavit in question contains the following question and answer: "Q. Have you ever been sentenced by final judgment for not less than eighteen months imprisonment, if so, have you been granted plenary pardon ? A. Yes, with plenary pardon." The pardon granted the accused-appellant from the judgment of conviction rendered against him in criminal case No. 22840 of the Court of First Instance of Manila, wherein the penalty of one year, eight months and twenty-one days of prison correccional was imposed upon him (Exhibits A and A-1), was not absolute but conditional (Exhibit 1).

In his first and second assignments of error, the appellant contends that the facts proved at the trial do not constitute the violation provided for and punished in section 2645 of the Revised Administrative Code, as amended by Commonwealth Act No. 233, but that provided for and punished by section 2647 of the same Code, as amended by Act No. 3894.

Section 2645 of the Revised Administrative Code provides as follows:

"Sec. 2645. Perjury in election matter.—Any person who knowingly takes or subscribes any false oath, affidavit, or affirmation before any election officer, or before any court or other officer in relation to any material fact in any registration or election proceeding, shall be punished by imprisonment for not less than one month nor more than two years and by a fine of not less than one hundred pesos nor more than one thousand pesos, and in all cases by deprivation of the right of suffrage and disqualification from public for a period of not more than four years."

And the pertinent part of section 2647 of the same Revised Administrative Code reads as follows:

"Sec. 2647. Unlawful registration.—Any person who causes or attempts to cause his name to be registered, knowing that he is not a qualified voter in the district in which he registers, or who attempts to register, * * * and any person who falsely represents himself as some other person to any election officer or board of registry, or who willfully gives a false answer relative to any matter relating to the registration of a voter or to the right

of any person to vote, * * * Provided, however, That when any person causes, or attempts to cause his name to be registered, knowing that he is not a qualified voter in the district in which he attempts to register, or, having previously registered in any other polling place, does not first request the necessary cancellation or cancellations, and is criminally prosecuted and it is shown in the trial that, in the first case, he did not vote in the election in which the unlawful registration took place, or, in the second, that he did not vote or voted only once, such fact shall constitute a valid and efficacious defense."

What is punished in the above-quoted legal provision is the taking or subscribing knowingly of a false oath, affidavit, or affirmation before any election officer, or before any court or other officer in relation to any material fact in any registration or election proceeding. One of the acts punished in section 2647, of said Revised Administrative Code is that of a person who causes or attempts to cause his name to be registered, knowing that he is not a qualified voter in the district in which he has registered or attempts to register, or who willfully gives a false answer relative to any matter relating to the registration of a voter or to the right of any person to vote, said person being able to defend himself, however, in case of criminal prosecution, by showing that he has not voted. In the present case the accused-appellant did not vote.

The question now to be decided is whether the affidavit subscribed by the accused-appellant, wherein he claims to have been absolutely pardoned from the final judgment which had imposed a penalty of not less than eighteen months imprisonment upon him, constitutes a violation of section 2645 (a) or of section 2647 of the Revised Administrative Code. It should be noted that the above-quoted section 2645 of the Revised Administrative Code bears the epigraph "Perjury in election matter". Said section, as amended by Commonwealth Act No. 233, punishes any person who knowingly takes or subscribes any false oath, affidavit, or affirmation before any election officer, or before any court or other officer. On the other hand, section 2647 of said Revised Administrative Code bears the epigraph "Unlawful registration" and punishes any person who causes or attempts to cause his name to be registerde, knowing that he is not a qualified voter in the district in which he registers or attempts to register. The act committed by the accused-appellant falls within the scope of the above-quoted section 2645 of the Administrative Code. In the case of *United States vs. Estavillo* (19 Phil., 478), this court, interpreting section 30, paragraphs 4 and 6, of the old Election Law, Act No. 1582 of the Philippine Commission, which section is virtually the same as section 2647, with the exception of that part which refers to the penalty and to the defense in case the person registered has not voted, has stated as follows:

"The fourth paragraph defines and fixes the penalty for the crime of perjury committed in an election proceeding, and the sixth paragraph makes it a crime for anyone who causes or attempts to cause his name to be registered, knowing that he is not a qualified voter.

* * * * *

"If a person knowingly takes or subscribes any false oath, affidavit, or affirmation in these proceedings in relation to any material matter, he then and there commits the crime defined and punished in paragraph 4 of section 30 of the Election Law." (*U. S. vs. Labadan*, 26 Phil., 239; *U. S. vs. Mante*, 27 Phil., 134; *U. S. vs. Abejo*, 36 Phil., 800; *U. S. vs. Custan*, 28 Phil., 19.)

The two sections 2645 and 2647 of the Revised Administrative Code define and punish two distinct and separate offenses, and cannot be taken together.

The defense invoked by the accused that it has not been established beyond reasonable doubt that he had intentionally subscribed a false oath; that at the time he subscribed the oath here under consideration, he did not know that his pardon was not absolute but conditional; that he delivered the affidavit blank to one of the election inspectors for the latter to fill in; and, that he refrained from voting upon discovering later that his pardon was conditional, can not be taken into consideration as evidence of the fact that he did not subscribe his oath

knowingly, inasmuch as he had, or at least he must have had, his pardon in his possession. The conditions of his pardon appear in Governor General Wood's communication pardoning him and ordering his release.

The penalty imposed by the trial court upon the herein accused-appellant is the indeterminate sentence of from one to three months imprisonment. Inasmuch as the maximum limit of the penalty imposed does not exceed one year, the accused-appellant is not entitled to the benefits of an indeterminate sentence, in accordance with the provisions of section 2 of Act No. 4103, as amended by Act No. 4225, for which reason the minimum limit of one month should be eliminated from the judgment appealed from.

Wherefore, with the sole modification that the accused-appellant Marcos K. Arellano be sentenced to suffer the penalty of three months imprisonment and deprivation of the right of suffrage and disqualification from occupying any public office for four years, the judgment appealed from is affirmed in all other respects, with costs to said appellant. So ordered.

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

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