

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FIDEL FORTUNO, DEFENDANT-APPELLEE.

G.R. No. 48458. November 07, 1941

Ponente: MORAN, J.

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MORAN, J.:

Defendant Fidel Fortuno rented from "El Hogar Filipino" a room in the Crystal Arcade; and the rental having become due, he issued in favor of the latter a check for P60 drawn against the Bank of the Commonwealth. This check was, upon presentation to the bank for payment, dishonored for lack of funds. An information for estafa was presented against the defendant in the municipal court of Manila where, upon a plea of guilty, he was sentenced to two months and one day of arresto mayor and to pay an indemnity of P60 with subsidiary imprisonment in case of insolvency. Defendant appealed to the Court of First Instance where, after entering a plea of not guilty and thereafter substituting the same with the plea of guilty, he was sentenced to the same penalty imposed by the municipal court. Defendant interposed the present appeal from this mcfement

The issuance of a check with knowledge on the part of the drawer that he has no funds to cover its amount and without informing the payee of such circumstance, does not constitute the crime of estafa if the check was intended as payment of a pre-existing obligation, as in the instant case. The reason for this rule is that deceit, to constitute estafa, should be the efficient cause of the defraudation and as such should either be prior to, or simultaneous with, the act of fraud. (Cf. *People vs. Lilius*, 59 Phil., 339, 342; *People vs. Quesada*, 60 Phil., 515 520.)

Defendant's plea of guilty is of no moment. Such plea constitutes a mere admission of the material allegations of the information but not that the facts thus alleged constitute an offense.

Judgment is reversed and the defendant is hereby acquitted with costs de oficio.

Abad Santos, Diaz, Horrilleno, and Ozaeta, JJ., concur.

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