

IN THE MATTER OF JOSEPH J. CAPURRO, PETITIONER FOR A WRIT OF HABEAS CORPUS.

G.R. No. 4919. September 07, 1908

Ponente: CARSON, J.

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CARSON, J.:

This is a petition for a writ of habeas corpus. The petitioner alleges that he is unlawfully imprisoned and restrained of his liberty in Bilibid Prison, by George N. Wolfe, Director of Prisons.

It appears from the record accompanying the petition that on the 24th day of November, 1906, this court rendered a decision in the case of the United States, plaintiff and appellee, vs. Joseph J. Capurro et al., defendants and appellants,[1] appealed from the Court of First Instance of Manila, wherein the charge was a criminal attempt against an agent of the authorities; and that by virtue thereof, judgment was entered therein, on the 7th day of December, 1906, as follows: Decision: "Judgment modified." Penalty: "Three years and six months prison correccional, and to pay a fine of 2,500 pesetas and the costs. If the defendant has been imprisoned during the pendency of this action, he is entitled to have one-half of the time of such imprisonment deducted from the said period of three years and six months, imposed by this court, in accordance with article 93 of the provisional laws applicable to the Penal Code." That a mittimus was duly issued from the Court of First Instance of Manila by the judge thereof, commanding the warden of Bilibid Prison to hold the petitioner Joseph J. Capurro, in accordance with the terms of the said judgment.

Petitioner alleges that the actual time during which he was in detention prior to the 7th day of December, 1906, was one year, seven months, and twenty-six days; that during the entire period of his detention, he voluntarily performed such labor as was assigned to him, and is entitled to an allowance of one hundred days good conduct time therefor, in accordance with the provisions of Act No. 1533; that he is also entitled to an allowance of eight months and twenty-four days for good conduct, on the term of his sentence of three years and six months; and further that he is entitled by the express terms of the judgment of the court, to an allowance (abono) of nine months and twenty-eight days, being one-half the time during which he was held in detention pending trial; that if the Director of Bilibid Prison had given him credit for the sum total of these allowances, amounting to twenty-two months and two days, upon the term of his imprisonment of three years and six months, he should have been discharged on the 9th day of August, 1908; but that the Director of Prisons continues to detain him by virtue of the aforesaid judgment of this court and the mittimus issued by the judge of the Court of First Instance of Manila in accordance therewith, and refuses to set him at liberty.

Upon his own showing the petitioner is lawfully detained and is not entitled to be set at liberty at this time. His claim that under the provisions of Act No. 1533, providing for the diminution of sentences in consideration of good conduct and diligence, he is entitled to an allowance of eight months and twenty-four days for good conduct, is manifestly untenable; under that Act, the convict is entitled to diminish the period of his sentence "five days for each full month, commencing with the first day of his arrival at the provincial or Insular jail or prison, during which he has not been guilty of a violation of discipline or any of the rules of the prison, and has labored with

diligence and fidelity upon all such tasks as have been assigned to him." Upon his own showing, the petitioner began serving his sentence of three years and six months on December 7, 1906, so that on August 9, 1908, he had served but one year, seven months, and twenty-eight days, and was entitled only to ninety-five days good-conduct time. Upon the date of his petition, August 25, as also upon this date, he had served but twenty full months, and is entitled, therefore, to a deduction of no more than one hundred days, granting that he has not been guilty of any violation of discipline or of the rules of the prison, and has labored with diligence and fidelity upon all tasks assigned to him. Without examining his claims for allowances on account of voluntary labor performed during his detention pending trial, or on account of the allowance provided for in his sentence, his claim of eight months and twenty-four days is one hundred and sixty days in excess of that to which he could possibly be entitled. The period to which he was sentenced, granting that he is, as he alleges, entitled to all the allowances provided for by law, has not yet expired ; and the petition for a writ of habeas corpus should be and is, therefore, denied. Bo ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ. concur.

[1] 7 Phil. Rep., 24.

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