

IN THE MATTER OF THE APPLICATION OF H. G. SMITH FOR A WRIT OF HABEAS CORPUS.

G.R. No. 5618. September 14, 1909

Ponente: ELLIOTT, J.

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ELLIOTT, J.:

On September 7, 1909, there was presented to this court a petition on behalf of H. G. Smith, praying that a writ of habeas corpus issue, directed to the commanding officer of the Cuartel de España, requiring him to bring the body of the said H. G. Smith into court. The petition stated that the said H. G. Smith is imprisoned, detained, confined, and restrained of his personal liberty in the guardhouse in the Cuartel de España, in the city of Manila, by Colonel Ducat, the commanding officer of the Cuartel de España, without warrant or any authority of law; and that the cause of the said imprisonment, detention, confinement, and restraint is that the said H. G. Smith is held pending investigation of the military offense of desertion from the United States Army. The petition also alleged that the said H. G. Smith is not and never has been a soldier in the United States Army, and that his imprisonment and detention are without legal authority.

An order thereupon issued, requiring the commanding officer of the Cuartel de España to show cause, if any existed, why the writ should not issue. On the return day thereof, said commanding officer appeared in court and made return thereto as follows:

"The respondent, Lieut. Col. Arthur C. Ducat, Twentieth Infantry, United States Army, commanding officer, Cuartel de España, Manila, P. I., upon whom has been served an order to appear before the said court and show cause why a writ of habeas corpus in favor of the said H. G. Smith should not issue, respectfully makes return and states that he holds the said H. G. Smith by authority of the United States as a soldier in the United States Army.

"That the said H. G. Smith was duly enlisted as a soldier in the service of the United States at Columbus Barracks, Ohio, December 18, 1906, under the name of Joseph C. McCartney, for a term of three years.

"That the said H. G. Smith (alias Joseph C. McCartney) deserted said service at Pasay Camp near Manila, P. I., January 10, 1908, and remained absent in desertion until he was apprehended at Manila, P. I., on or about September 1, 1909, by the civil authorities, and was thereupon committed to the custody of the respondent as commanding officer of the post of Cuartel de España.

"That the said H. G. Smith (alias Joseph C. McCartney) is held in confinement charged with the said offense of desertion and will be brought to trial as soon as practicable before a court-martial to be convened by the commanding general, Department of Luzon.

"The respondent further makes return that the commanding general, Department of Luzon, under whose command he is acting, having certified that the said H. G. Smith (alias Joseph C. McCartney) is being held by him as a member of the Army, and this certificate being hereto attached and made part hereof, that, under the provisions of section 529, of Act No. 190, Philippine Commission, as amended by section 1, Act No. 272, and section 4, Act No. 421, of said Philippine Commission, this honorable court is without jurisdiction in the

premises, and he therefore prays that the writ do not issue."

Accompanying, and as a part of the return of the commanding officer, was the certificate of Brig. Gen. William H. Carter, commanding the Department of Luzon, to the effect that "Joseph C. McCartney (alias H. G. Smith) is held in the custody of the United States by Lieut. Col. Arthur C. Ducat, Twentieth Infantry, commanding officer, Cuartel de España, Manila, P. I., as a member of the Army of the United States; to wit, as a private in Battery D, Fourth Field Artillery."

Upon this return the order to show cause must be discharged and the writ of habeas corpus denied.

Courts-martial are established by Congress by virtue of authority conferred by the Constitution to raise armies and make rules for the government and discipline thereof, and under this authority Congress may provide and has provided for the trial and punishment of persons in the military service of the United States. Such courts have plenary jurisdiction over offenses against military law. Persons not connected with the military service are not subject to military jurisdiction, but those who enter the military service surrender their rights to be tried by the civil courts. (Johnson vs. Sayre, 158 U. S., 109.) It follows that the civil courts can not through the use of the writ of habeas corpus deprive the proper military authorities of the right to hear and determine charges against persons who are in the military service and subject to military jurisdiction. Conflicts of authority between the civil and military powers have frequently resulted in delicate and embarrassing situations, and in order to avoid the possibility of such friction the legislature has specifically determined that certain evidence when produced in a specified manner shall be conclusive of the exclusive jurisdiction of the military authorities in certain cases.

The writ of habeas corpus is extended to all cases of illegal confinement or detention by which any person is deprived of his liberty, and by which the rightful custody of any person is withheld from the person entitled thereto, except in cases expressly provided. Persons properly in charge of the military authorities are excepted from the privileges of the writ, and the manner in which the fact that the petitioner is subject to military jurisdiction, and properly held in custody, shall be established is determined by the statute. Act No. 272, enacted October 21, 1901, provides that-

"It shall be a conclusive answer to a writ of habeas corpus against a military officer or soldier, and a sufficient excuse for not producing the prisoner * * * if the commanding general, or any general officer in command of the department or district, shall certify that the prisoner is held by him either-

"1. As a prisoner of war; or

"2. As a member of the Army, a civilian employee thereof, or a camp follower and subject to its discipline; * * *."

The conclusiveness of the return when properly made was recognized by this court in *Mekin vs. Wolfe* (2 Phil. Rep., 74), where it was certified as provided for by the law in such cases that the prisoner had been committed by a military court or commission prior to the year 1901. "The certificate of the commanding officer," said the court, "is in strict compliance with the provisions of the law, and was a conclusive return to the writ of habeas corpus. The power of the court to either issue the writ or discharge the prisoner is ended when such return has been made, and the proceedings must there end."

But counsel for the prisoner contends that a literal construction of this statute would render it invalid. We find no force in this contention, because the legislative authority had the power to determine what evidence should be required to establish a particular jurisdictional fact, and to determine that the fact when thus established should deprive the civil courts of the power to issue the writ. The certificate is not made conclusive upon the prisoner at his trial, and he will in the proper tribunal have ample opportunity to present his own evidence in contravention

thereof.

Whether the petitioner is in fact the person referred to in the return, who enlisted in the United States Army, can not be determined by this court upon evidence taken at this time, as that is one of the material issues which must be determined by the court-martial when the prisoner is brought to trial.

The order to show cause is therefore discharged, and the petition for the writ of habeas corpus denied.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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