

JOAQUIN CELIS, PETITIONER AND APPELLANT, VS. THE WARDEN OF BILIBID, RESPONDENT AND APPELLEE.*G.R. No. 6093. February 10, 1911*

Ponente: ARELLANO, C.J.

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The application for a writ of habeas corpus which Joaquin Celis, a prisoner who was serving sentence in Bilibid Prison, had presented before the Court of First Instance of the city of Manila, having been denied, he appealed from the ruling and, in his appeal, asks that "the ruling made by that court be revoked and that the warden of Bilibid Prison be ordered to release the appellant, with the costs de oficio."

The grounds of fact of this appeal are: (1) That in seven criminal causes, all prosecuted in that Court of First Instance for estafa, Nos. 2482, 2485, 2486, 2661, 2662, 2663, and 2664, the applicant and prisoner was, in each of them, sentenced to various terms of wresto, the longest of which was that imposed in cause No. 2662, and was for six months; (2) that in all of said causes he was also sentenced to the penalty of subsidiary imprisonment, equivalent to the pecuniary penalty imposed upon him as civil liability; (3) that all the penalties of arresto aggregate exactly thirty-three months, and the subsidiary imprisonments three hundred and thirty days; (4) that on the 8th of August, 1908, he entered Bilibid Prison and was, up to the time of his appeal, still incarcerated therein (5) that on April 29 of the said year, 1908, he applied for a writ of habeas corpus; and (6) that on May 4 he was notified of the denial of his application, and appealed on the same date.

The legal grounds upon which this appeal is based are:

(1) That rule 2 of article 88 of the Penal Code prescribes that "the maximum duration of the sentence of the culprit shall not exceed three times the period of the most severe of the penalties imposed on him; and there shall not be imposed on him other penalties when those already imposed have covered the maximum of the aforementioned term;" (2) that, in conformity with this rule, the severest of the penalties imposed being" that of six months' arresto and sixty days' subsidiary imprisonment, the maximum duration of the sentence which the appellant should suffer, that is, three times the period imposed by the severest of the penalties, should be that of eighteen months' arresto and one hundred and eighty days' subsidiary imprisonment, or exactly twenty-four months; (3) that, pursuant to Acts Nos. 1533 and 1559 of the Philippine Commission, the applicant and prisoner should be allowed a reduction, up to date, of five days for each month of the sentence already served; (4) that, as he was incarcerated on August 8, 1908, he had, up to May 9, 1910, the date of his appeal, already undergone twenty months and two days' imprisonment, while, deducting the days allowed for good conduct from the period of his sentence, he should have been imprisoned but twenty-one months in all.

With respect to the facts in the case, the warden of Bilibid Prison reported to the Court of First Instance that the appellant was incarcerated in the said prison by virtue of judgments rendered in seven causes for estafa prosecuted against him, wherein he was sentenced to a total of two years ten months and three days' imprisonment, to pay an indemnity of P2,774.84, or to suffer subsidiary imprisonment of four months, and, in case of insolvency, two

hundred and twenty days. "The said judgments," continues the informant, "are final, and the prisoner's sentence will expire on. October 3, 1911, after reduction of the time allowed him for good conduct."

With regard to the law, the Attorney-General classifies his reasons under two heads, one dealing with the legality of the remedy, and the other with its justice.

Under the first head he cites a number of reported cases for the purpose of demonstrating that the culprit who is sentenced to an excessive penalty, that is, to one greater than that specified by law, may argue that the judgment is erroneous and appeal therefrom, but he may not exercise the remedy of habeas corpus or the special remedy of mandamus "which would only be proper on the ground of lack of jurisdiction of the sentencing judge" (Graham, 74 Wis., 450.; 17 Am. St. Rep., 174/and Ex parte Van Hagan, 25 Ohio St., 426) - an opinion not acceptable by this court.

His second reasons, respecting the justice of the remedy, is based on the Spanish jurisprudence which covers the present case and according to which, by the most recent decisions of the supreme court of Spain, rule 2 of article 88 of the Penal Code only applies to the several penalties which in one and the same cause are imposed here, and are still imposed in Spain, for the various acts or crimes included in the same action.

Rule 2 of article 88 reads:

"Notwithstanding the provisions contained in the preceding rule, the maximum duration of the sentence of the culprit shall not exceed three times the time which the most severe of the penalties that he may have incurred should have imposed on him; and there shall not be imposed on him other proper penalties, when those already imposed shall have covered the maximum of the aforementioned term."

For the true and safest construction of this provision, due account must be taken of the form of procedure in force at the time of the publication of the Penal Code, which was that of prosecuting two or more crimes in a single cause in the cases specified by the law of procedure. The judge who had before him two or more crimes, jointly prosecuted in a lawful manner in one cause, and whose duty it was to apply two or more penalties corresponding to the two or more crimes comprehended in the prosecution, had to ascertain which was the severest of the several penalties, and when he had fixed the time which, of this severest penalty, should be imposed, in accordance with the said provision of the Penal Code, for the several crimes, he could impose upon the culprit but one sentence, the duration of which could not exceed three times the time which the most severe of the penalties that he may have incurred should have imposed on him, etc. The legal text of the provision cited apparently indicates the propriety of a judge's trying and sentencing an accused for two or more crimes in one prosecution.

With the exception of a few of the first decisions rendered by the supreme court of Spain in relation to this subject matter, the jurisprudence established by it, in the sense aforesaid, has been constantly and repeatedly followed.

"The limitation established in rule 2 of article 89 of the Penal Code [88 of that of the Philippines], for the imposition of penalties, is applicable only to the crimes which are prosecuted in a single cause wherein, by reason of their number or of the entity of the penalties that must be applied, it may become necessary to impose more than three penalties or more than forty years' imprisonment, in which case not more than three times the period of the penalty which corresponds to the most serious crime may be applied, and in no case may a penalty exceed forty years. This does not mean that a penalty which the accused has incurred should not be applied because in other causes and for other crimes he was sentenced to more than forty years." (Decision of April 8, 1903.)

The judgment appealed from is affirmed with the costs of this instance against the appellant.

Torres, Moreland, and Trent, JJ., concur.

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