

PERFECTO DEL ROSARIO, JR., PETITIONER, VS. THE HON. ALFREDO A. ROSERO, PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH XXVI, NAGA CITY, RESPONDENT.

G.R. No. 65004. November 29, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The Court resolved to give due course to the petition, to consider the comment of the Solicitor General as a responsive pleading, and to decide the case.

As recounted by the Solicitor General in his comment, it is undisputed that on February 16, 1983, petitioner was charged with theft of some articles valued at Three Hundred Seventy-Five (P375.00) Pesos. Petitioner was detained for failure to post bail. Assisted by CLAO counsel, upon arraign-ment, petitioner pleaded guilty. In a decision dated May 5, 1983 but promulgated on May 11, 1983 at 2 o'clock in the afternoon, respondent Judge Alfredo A. Rosero sentenced him to an indeterminate imprisonment of from six months as minimum to one year and one month as maximum and to pay the offended party the sum of P375.00, crediting him however with the entire period of his preventive imprisonment.

Immediately after the sentence was read to petitioner, respondent Judge issued a "Commit-ment on Final Sentence" that very same day, May 11, 1983, addressed to the Provincial Jail Warden to whom the petitioner was committed. Also, that very same day, May 11, 1983, petitioner prepared his application for probation which was received by the Court on May 18, 1983.

On May 20, 1983, respondent Judge denied the application for probation on the ground that "the sentence of conviction became final and executory on May 11, 1983, when the accused actually commenced to serve his sentence."

On June 7, 1983, petitioner filed a motion for reconsideration of the order dated May 20, 1983 denying his application for probation, on the ground that his having been whisked to jail on May 11, 1983 did not constitute the commence-ment of the service of sentence as the judgment promulgated on May 11, 1983 had not yet become final on May 18, 1983 when he filed his application for probation. Said motion for reconsideration was denied by the respondent Judge in a resolution dated June 21, 1983.

Hence, this petition, which We find very meritorious.

The respondent Judge committed a grave error. The judgment of conviction did not become final by the mere fact that petitioner was sent back to jail. The petitioner had no choice but to go back to jail since he could not post bail for his provisional liberty before arraignment and after the reading of the sentence to him. He had fifteen days from the promulgation of the judgment within which to appeal or to file an application for probation. As a matter of fact, he prepared his application for probation that very same day, May 11, 1983 when the judgment of conviction was promulgated and his application was filed on May 18, 1983. A judge cannot make his decision

final by simply issuing a commitment order immediately after the reading of the sentence that very same afternoon of May 11, 1983. Respondent Judge practically amended Sections 6 & 7 of Rule 120 of the Revised Rules of Court without any legal authority therefor.

It should be stressed that petitioner's returning to jail after the reading of the sentence, as aptly stated by the Solicitor General, was simply a continuation of his detention due to his inability to post bail from the time he was arrested, and petitioner thereby did not actually commence any service of the sentence.

The respondent Judge acted very precipitately in issuing the commitment order as well as in denying the application for probation filed by petitioner. He should have hearkened to the teachings in the cases cited by the Solicitor General (*Flores vs. Dalisay*, 84 SCRA 46 [1978]; *Mabuhay Ins. & Guaranty Inc. vs. CA*, L-28700, March 30, 1970, 32 SCRA 245; *People vs. Valle & Alto Surety & Ins. Co., Inc.*, 117 Phil. 1034; *People vs. Rodillas, et al.*, 89 Phil. 99; *People vs. Prieto*, 2 CA-Rep. 180). He failed to obey the principle that criminal laws should be liberally interpreted in favor of the accused. In the application of the probation law, a judge like the respondent herein, should, as much as possible, adopt a liberal attitude in favor of the accused, since the evident purpose of the probation law is to afford the accused a chance to reform and rehabilitate himself without the stigma of a prison record, to save government funds that may otherwise be spent for his food and maintenance while incarcerated, and to decongest the jails of the country.

It should be emphasized that Batas Pambansa Blg. 76 enacted on June 13, 1980, amending the Probation Law of 1976, otherwise known as P.D. No. 968, as amended, disqualifies from availing of the benefits of the probation law, those: (a) sentenced to serve a maximum imprisonment of more than six [6] years and one [1] day; (b) those convicted of any offense against the security of the State; (c) those previously convicted by final judgment of an offense punished by imprisonment of not less than one [1] month and one [1] day and/or a fine of not more than P200.00; and (d) those who have been once on probation under said decree.

Batas Pambansa Blg. 75 however allows even those sentenced to 6 years and 1 day imprisonment on January 3, 1978 to apply for probation (Sec. 2, B.P. Blg. 75). The petitioner is entitled to greater liberality in the application of the said probation law because his maximum sentence was only one year and one day.

Because petitioner was detained for over six months, as he was denied probation since May 20, 1983, aside from the fact that he had been detained since his arrest in or about February, 1983, the Solicitor General recommends the immediate release of petitioner, which recommendation is meritorious.

WHEREFORE, THE ORDERS OF RESPONDENT DATED MAY 20, 1983 AND JUNE 21, 1983 ARE HEREBY SET ASIDE AS NULL AND VOID AND THE IMMEDIATE RELEASE OF HEREIN PETITIONER, PERFECTO DEL ROSARIO, JR., IS HEREBY ORDERED UNLESS HE IS HELD ON OTHER VALID CHARGES. NO COSTS.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

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