

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALERIANO MOLINA, DEFENDANT AND APPELLANT.

G.R. No. 7529. November 19, 1912

Ponente: CARSON, J.

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CARSON, J.:

The appellant in this case was convicted of the crime of vagrancy as defined and penalized in Act No. 519 of the Philippine Commission, and was sentenced to imprisonment for two months and the payment of the costs of the trial.

The evidence of record discloses that the defendant was discharged from Bilibid Prison some time during the month of March, 1910, after service short sentence for a violation of the Opium Law; that from that time until the date of his prosecution on this charge of vagrancy, he has been engaged in no legal occupation, and was without any apparent means of support other than that supplied him by his mother; that he an able-bodied man of 33 years of age; that he habitually neglected to apply himself to any lawful calling, and that he spent time in loitering about the streets and frequenting cockpits and place where games of various kinds were conducted and where gambling was carried on; that he had been once convicted of a violation of the provisions of the Opium Law, and that he had been twice convicted on a charge of playing monte (a prohibited gambling game) toward the latter part of the year 1910.

The accused, on his own behalf, testified that he was supported by his mother, with whom he lived, and that he worked on her property. The evidence in this connection is not very satisfactory, but it seems clear his mother is a woman of very small means, and that if she has any property at all, it is so small as to be wholly inadequate to furnish even a pretense of work for an able-bodied man. The accused, in explaining where he got the money to bet at the cockpits, claimed the on various occasions his mother gave him small sums for that purpose, and that when he won he brought her the proceeds. These statements of the accused merely serve to confirm us in our opinion that the defendant was an idle, shiftless and worthless man who made no attempt to follow any legal calling, and whose habits of life were of an immoral and dissolute good for nothing.

In the case of *Gavin vs. The State* (96 Miss., 377), the court that:

"In vagrancy, the offense consists in general worthlessness ; that i in being idle, and, though able to work, refusing to do so, and living without labor, or on the charity of others."

This definition of the offense substantially corresponds with the d of that class of vagrancy set forth in the first part of section 1 the Philippine Vagrancy Act (Act No. 519), which provides that:

"Every person having no apparent means of subsistence, who has the physical ability to work, and who neglects to apply himself or herself some lawful calling * * * is a vagrant."

We do not think that the claim by this able-bodied man, 33 years of age, that he was living on the charity of his mother, can be said to rebut the other evidence in the record which tended to disclose that he had no apparent

means of support. He had no legal or moral claim upon his mother for support, and indeed, from the indications in the record as to the scanty means possessed by the mother, it would appeal that it was his filial duty to aid her rather than to call upon her aid.

In the case of *People vs. Herrick* (59 Mich., 563), the court construing the words "visible means of support" held that the use of word indicates that appearances must to some extent be relied upon; and that the words "visible" and "apparent" were words of similar purport and meaning. Anderson's Law Dictionary defines the word "apparent" as follows: "Readily seen; evident; self-evident; manifest

We are of opinion that one who makes no pretense to follow any lawful calling or occupation, who makes no effort to support himself whose time is spent in loitering and wandering about the streets frequenting cockpits and other places where gambling is carried on, can be said to have any apparent, visible, self-evident or manifest means of support, despite his claim that he is living upon the charity of mother, when it appears that he has no claim either legal or moral upon her for support, and that his mother's limited means would justify the expectation that she would receive assistance from her son rather than render assistance to him.

The judgment of conviction and the sentence imposed by the trial court should be and are hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ. concur.

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