

WILFREDO TORRES Y SUMULONG, PETITIONER, VS. HON. NEPTALI A. GONZALES, THE CHAIRMAN, BOARD OF PARDONS AND PAROLE, AND THE DIRECTOR, BUREAU OF PRISONS, RESPONDENTS.*G.R. No. 76872. July 23, 1987*

Ponente: FELICIANO, J.

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This is an original petition for habeas corpus filed on behalf of petitioner Wilfredo S. Torres, presently confined at the National Penitentiary in Muntinlupa. We issued the writ and during the hearing and from the return filed by the respondents through the Solicitor General, and other pleadings in this case, the following facts emerged:

1. Sometime before 1979 (no more specific date appears in the records before this Court), petitioner was convicted by the Court of First Instance of Manila of the crime of estafa (two counts) and was sentenced to an aggregate prison term of from eleven (11) years, ten (10) months and twenty-two (22) days to thirty-eight (38) years, nine (9) months and one (1) day, and to pay an indemnity of P127,728.75 (Criminal Cases Nos. 68810, 91041 and F-138107). These convictions were affirmed by the Court of Appeals (CA-G.R. Nos. 14773-CR and 17694-CR). The maximum sentence would expire on 2 November 2000.[1]
2. On 18 April 1979, a conditional pardon was granted to the petitioner by the President of the Philippines on condition that petitioner would "not again violate any of the penal laws of the Philippines. Should this condition be violated, he will be proceeded against in the manner prescribed by law." [2] Petitioner accepted the conditional pardon and was consequently released from confinement.
3. On 21 May 1986, the Board of Pardons and Parole (the "Board") resolved to recommend to the President the cancellation of the conditional pardon granted to the petitioner. In making its recommendation to the President, the Board relied upon the decisions of this Court in *Tesoro vs. Director of Prisons* (68 Phil. 154 [1939]) and *Espuelas vs. Provincial Warden of Bohol* (108 Phil. 356 [1960]). The evidence before the Board showed that on 22 March 1982 and 24 June 1982, petitioner had been charged with twenty counts of estafa in Criminal Cases Nos. Q-19672 and Q-20756, which cases were then (on 21 May 1986) pending trial before the Regional Trial Court of Rizal (Quezon City). The record before the Board also showed that on 26 June 1985, petitioner had been convicted by the Regional Trial Court of Rizal (Quezon City) of the crime of sedition in Criminal Case No. Q-22926; this conviction was then pending appeal before the Intermediate Appellate Court. The Board also had before it a letter report dated 14 January 1986 from the National Bureau of Investigation ("NBI"), addressed to the Board, on the petitioner. Per this letter, the records of the NBI showed that a long list of charges had been brought against the petitioner during the last twenty years for a wide assortment of crimes including estafa, other forms of swindling, grave threats, grave coercion, illegal possession of firearms, ammunition and explosives, malicious mischief, violation of Batas Pambansa Blg. 22, and violation of Presidential Decree No. 772 (interfering with police functions). Some of these charges were identified in the NBI report as having been dismissed. The NBI report did not purport to be a status report on each of the charges there listed and identified.

4. On 4 June 1986, the respondent Minister of Justice wrote to the President of the Philippines informing her of the Resolution of the Board recommending cancellation of the conditional pardon previously granted to petitioner.
5. On 8 September 1986, the President cancelled the conditional pardon of the petitioner.
6. On 10 October 1986, the respondent Minister of Justice issued "by authority of the President" an Order of Arrest and Recommitment against petitioner. The petitioner was accordingly arrested and confined in Muntinlupa to serve the unexpired portion of his sentence.

Petitioner now impugns the validity of the Order of Arrest and Recommitment. He claims that he did not violate his conditional pardon since he has not been convicted by final judgment of the twenty (20) counts of estafa charged in Criminal Cases Nos. Q-19672 and Q-20756 nor of the crime of sedition in Criminal Case No. Q-22926.[3] Petitioner also contends that he was not given an opportunity to be heard before he was arrested and recommitted to prison, and accordingly claims he has been deprived of his rights under the due process clause of the Constitution.

The issue that confronts us therefore is whether or not conviction of a crime by final judgment of a court is necessary before the petitioner can be validly rearrested and recommitted for violation of the terms of his conditional pardon and accordingly to serve the balance of his original sentence.

This issue is not novel. It has been raised before this Court three times in the past.

This Court was first faced with this issue in *Tesoro vs. Director of Prisons*.^[4] Tesoro, who had been convicted of the crime of falsification of public documents, was granted a parole by the then Governor-General. One of the conditions of the parole required the parolee "not [to] commit any other crime and [to] conduct himself in an orderly manner."^[5] Two years after the grant of parole, Tesoro was charged before the Justice of the Peace Court of San Juan, Rizal, with the crime of adultery said to have been committed with the wife of Tesoro's brother-in-law. The fiscal filed with the Court of First Instance the corresponding information which, however, was dismissed for non-appearance of the complainant. The complainant then went before the Board of Indeterminate Sentence and charged Tesoro with violation of the conditions of his parole. After investigation by the parole officer, and on the basis of his report, the Board recommended to the President of the Philippines the arrest and recommitment of the petitioner. Tesoro contended, among other things, that a "judicial pronouncement to the effect that he has committed a crime" is necessary before he could properly be adjudged as having violated his conditional parole.

Addressing this point, this Court, speaking through then Mr. Justice Moran, held that the determination of whether the conditions of Tesoro's parole had been breached rested exclusively in the sound judgment of the Governor-General and that such determination would not be reviewed by the courts. As Tesoro had consented to place his liberty on parole upon the judgment of the power that had granted it, we held that "he [could not] invoke the aid of the courts, however erroneous the findings may be upon which his recommitment was ordered."^[6] Thus, this Court held that by accepting the terms under which the parole had been granted, Tesoro had in effect agreed that the Governor-General's determination (rather than that of the regular courts of law) that he had breached one of the conditions of his parole by committing adultery while he was conditionally at liberty, was binding and conclusive upon him. In reaching this conclusion, this Court relied upon Section 64 (i) of the Revised Administrative Code which empowered the Governor-General.

"to grant to convicted prisoners reprieves or pardons, either plenary or partial, conditional or unconditional; to suspend sentences without parole, remit fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and recommitment of any such person who, in his judgment shall fail to comply with the condition or conditions, of his pardon, parole or suspension

of sentence." (Italics supplied)

In *Sales vs. Director of Prisons*,^[7] the petitioner had been convicted of the crime of frustrated murder. After serving a little more than two years of his sentence, he was given a conditional pardon by the President of the Philippines, "the condition being that he shall not again violate any of the penal laws of the Philippines and that, should this condition be violated, he shall be proceeded against in the manner prescribed by law."^[8] Eight years after the grant of his conditional pardon, Sales was convicted of estafa and sentenced to three months and eleven days of *arresto mayor*. He was thereupon recommitted to prison to serve the unexpired portion of his original sentence. Sales raised before this Court two principal contentions. Firstly, he argued that Section 64 (i) of the Revised Administrative Code had been repealed by Article 159 of the Revised Penal Code. He contended, secondly, that Section 64 (i) was in any case repugnant to the due process clause of the Constitution (Article III [1], 1935 Constitution). This Court, through Mr. Justice Ozaeta speaking for the majority, rejected both contentions of Sales.

Sales held, firstly, that Article 159 of the Revised Penal Code did not repeal Section 64 (i), Revised Administrative Code. It was pointed out that Act No. 4103, the Indeterminate Sentence Law, which was enacted subsequent to the Revised Penal Code, expressly preserved the authority conferred upon the President by Section 64. The Court also held that Article 159 and Section 64 (i) could stand together and that the proceeding under one provision did not necessarily preclude action under the other.

Sales held, secondly, that Section 64 (i) was not repugnant to the constitutional guarantee of due process. This Court in effect held that since the petitioner was a convict "who had already been seized in a constitutional way, been confronted by his accusers and the witnesses against him—, been convicted of crime and been sentenced to punishment therefor," he was not constitutionally entitled to another judicial determination of whether he had breached the condition of his parole by committing a subsequent offense. Thus:

"[a] statute [like Section 64 (i)] supervenes to avoid the necessity for any action by the courts in the premises. The executive clemency under it is extended upon the conditions named in it, and he accepts it upon those conditions. One of these is that the governor may withdraw his grace in a certain contingency, and another is that the governor shall himself determine when that contingency has arisen. It is as if the convict, with full competency to bind himself in the premises, had expressly contracted and agreed, that, whenever the governor should conclude that he had violated the conditions of his parole, an executive order for his arrest and remandment to prison should at once issue, and be conclusive upon him."^[9]

In *Espuelas vs. Provincial Warden of Bohol*,^[10] the petitioner had been convicted of the crime of inciting to sedition. While serving his sentence, he was granted by the President a conditional pardon "on condition that he shall not again violate any of the penal laws of the Philippines."^[11] Espuelas accepted the conditional pardon and was released from confinement. Sometime thereafter, he was convicted by the Justice of the Peace Court in Tagbilaran, Bohol, of the crime of usurpation of authority. He appealed to the Court of First Instance. Upon motion of the provincial fiscal, the Court of First Instance dismissed the case provisionally, an important prosecution witness not having been available on the day set for trial. A few months later, upon recommendation of the Board of Pardons and Parole, the President ordered his recommitment to prison to serve the unexpired period of his original sentence.

The Court in *Espuelas* reaffirmed the continuing force and effect of Section 64 (i) of the Revised Administrative Code. This Court, quoting *Tesoro and Sales*, ruled that:

"Due process is not necessarily judicial. The appellee had had his day in court and been afforded the opportunity to defend himself during his trial for the crime of inciting to sedition, with which he was charged, that brought about or resulted in his conviction, sentence and confinement in the penitentiary. When he was

conditionally pardoned it was a generous exercise by the Chief Executive of his constitutional prerogative. The acceptance thereof by the convict or prisoner carried with it the authority or power of the Executive to determine whether a condition or conditions of the pardon has or have been violated. To no other department of the Government [has] such power been intrusted."^[12]

The status of our case law on the matter under consideration may be summed up in the following propositions:

1. The grant of pardon and the determination of the terms and conditions of a conditional pardon are purely executive acts which are not subject to judicial scrutiny.
2. The determination of the occurrence of a breach of a condition of a pardon, and the proper consequences of such breach, may be either a purely executive act, not subject to judicial scrutiny under Section 64 (i) of the Revised Administrative Code; or it may be a judicial act consisting of trial for and conviction of violation of a conditional pardon under Article 159 of the Revised Penal Code. Where the President opts to proceed under Section 64 (i) of the Revised Administrative Code, no judicial pronouncement of guilt of a subsequent crime is necessary, much less conviction therefor by final judgment of a court, in order that a convict may be recommitted for the violation of his conditional pardon.
3. Because due process is not semper et ubique judicial process, and because the conditionally pardoned convict had already been accorded judicial due process in his trial and conviction for the offense for which he was conditionally pardoned, Section 64 (i) of the Revised Administrative Code is not afflicted with a constitutional vice.

We do not believe we should depart from the clear and well understood rules and doctrine on this matter.

It may be emphasized that what is involved in the instant case is not the prosecution of the parolee for a subsequent offense in the regular course of administration of the criminal law. What is involved is rather the ascertainment of whether the convict has breached his undertaking that he would "not again violate any of the penal laws of the Philippines" for purposes of reimposition upon him of the remitted portion of his original sentence. The consequences that we here deal with are the consequences of an ascertained breach of the conditions of a pardon. A convict granted conditional pardon, like the petitioner herein, who is recommitted must of course be convicted by final judgment of a court of the subsequent crime or crimes with which he was charged before the criminal penalty for such subsequent offense(s) can be imposed upon him. Again, since Article 159 of the Revised Penal Code defines a distinct, substantive, felony, the parolee or convict who is regarded as having violated the provisions thereof must be charged, prosecuted and convicted by final judgment before he can be made to suffer the penalty prescribed in Article 159.

Succinctly put, in proceeding against a convict who has been conditionally pardoned and who is alleged to have breached the conditions of his pardon, the Executive Department has two options: (i) to proceed against him under Section 64 (i) of the Revised Administrative Code; or (ii) to proceed against him under Article 159 of the Revised Penal Code which imposes the penalty of prision correccional, minimum period, upon a convict who "having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon." Here, the President has chosen to proceed against the petitioner under Section 64 (i) of the Revised Administrative Code. That choice is an exercise of the President's executive prerogative and is not subject to judicial scrutiny.

WHEREFORE, this Petition is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Teehankee C.J., Fernan, Melencio-Herrera, Gutierrez, Jr., Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Cruz, J., see dissent.

Paras, J., agrees with the dissent of Justice Cruz.

Narvasa J., took no part, on account of personal relationship.

Yap, J., on leave.

[1] Resolution, dated 21 May 1986, of the Board of Pardons and Parole; Rollo, p. 17.

[2] Conditional Pardon; Rollo, p. 39.

[3] By an instrument dated 28 January 1987, petitioner was granted by the President an absolute pardon for his conviction for sedition. This instrument was apparently released much later — i.e., sometime in March 1987.

[4] 68 Phil., 154 (1939).

[5] 68 Phil., at 157.

[6] 68 Phil., at 161.

[7] 87 Phil., 495 (1950).

[8] 87 Phil., at 493.

[9] Italics supplied. The Court was here (87 Phil., at 496) quoting from *Fuller v. State of Alabama*, 45 LRA 502.

[10] 108 Phil., 353 (1960).

[11] 108 Phil., at 355.

[12] 108 Phil., at 357-358; italics supplied.

DISSENTING**CRUZ, J.:**

The petitioner challenges his recommitment, claiming he has not violated the condition of his pardon "that he shall not again violate any of the penal laws of the Philippines." The government bases its stand on the case of *Espuelas v. Provincial Warden of Bohol*, 108 Phil. 353, where it was held, in connection with a similar condition, that mere commission of a crime, as determined by the President, was sufficient to justify recommitment. Conviction was considered not necessary.

I would grant the petition.

There is no question that the petitioner is facing a long list of criminal charges, but that certainly is not the issue. The point is that, as many as such charges may be, none of them so far has resulted in a final conviction, without which he cannot be recommitted under the condition of his pardon.

Mere accusation is not synonymous with guilt. (*People v. Dramayo*, 42 SCRA 59). A prima facie case only justifies the filing of the corresponding information, but proof beyond reasonable doubt is still necessary for

conviction. Manifestly, an allegation merely accuses the defendant of a crime: it is the conviction that makes him a criminal. In other words, a person is considered to have committed a crime only if he is convicted thereof, and this is done not by his accuser but by the judge.

That this conviction must be pronounced by the judge and no other is too obvious a proposition to be disputed. The executive can only allege the commission of crime and thereafter try to prove it through indubitable evidence. If the prosecution succeeds, the court will then affirm the allegation of commission in a judgment of conviction.

The current doctrine holds that, by virtue of Section 64 (i) of the Revised Administrative Code, the President may in his judgment determine whether the condition of the pardon has been violated.

I agree that the authority is validly conferred as long as the condition does not involve the commission of a crime but, say, merely requires good behavior from the pardonee. But insofar as it allows the President to determine in his judgment whether or not a crime has been committed, I regard the authority as an encroachment on judicial functions.

Dissenting from the majority opinion in the case of *Tesoro v. Director of Prisons*, 68 Phil. 154, Justice Pedro Concepcion declared:

"I am of the opinion that the 'commission of a crime may only be determined upon the 'conviction' of the accused. It is not sufficient that a person be charged with having committed a crime in order to consider that he is convicted thereof. His innocence is a legal presumption which is overcome only by his conviction after he is duly and legally prosecuted. And the courts of justice are the only branch of the government which has exclusive jurisdiction under the law to make a pronouncement on the conviction of an accused."

Black defines "commission" as "doing or preparation; the performance of an act." (*Groves v. State*, 116 Ga. 516). "Conviction," on the other hand, is "the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged." Continuing, he says, "in ordinary parlance, the meaning of the word conviction is the finding by the jury of a verdict that the accused is guilty. But, in legal parlance, it often denotes the final judgment of the court." (*Blaufus v. People*, 69 N.Y., 109, 28 A-Rep. 148; *Marino v. Hibbard*, 243 Mass. 90). To convict is "to condemn after a judicial investigation." (p. 403). A convict is "one who has been finally condemned by a court, one who has been adjudged guilty of a crime or misdemeanor." (*Molineur v. Collins*, 177 N.Y., 395). Italics is mine.

In the instant case, the government does not deny that the petitioner has not been finally convicted of any of the offenses imputed to him. There are several convictions by the lower court, to be sure, but all of them are on appeal. From the judicial viewpoint, therefore, the petitioner has, since accepting his conditional pardon not violated any of the penal laws of the Philippines as to be subject to recommitment.

In the landmark case of *United States v. Wilson*, 7 Pet. (U.S.) 100, it was remarked that "a conditional pardon is in force and substance a contract between the executive power of the State and the person for whom it is granted." Once accepted, therefore, the stipulated condition binds not only the pardonee, who must observe the same, but the State as well, which can recommit the pardonee only if the condition is violated. Stated otherwise, the condition is a limitation not only of the pardonee's conduct but also of the President's power of recommitment, which can be exercised only if the condition is not observed.

Even if considered "an act of grace," declared this Court in *Infante v. Provincial Warden of Negros Occidental*, 32 Phil. 311, "there is general agreement that limitations upon its operation should be strictly construed (46 C.J. 1202) so that, where a conditional pardon is susceptible of more than one interpretation, it is to be construed most favorably to the grantee (39 Am. Jur. 564)."

I am for the reversal of *Espuelas v. Provincial Warden of Bohol* and the immediate release of the petitioner on the ground that he has not violated the condition of his pardon.

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