

THE UNITED STATES, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF MANILA, A. S. CROSSFIELD, JUDGE, ET AL., RESPONDENTS.

G.R. No. 8195. February 14, 1913

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PER CURIAM:

This was an original action for the writ of certiorari.

It appears from the record that on or about the 24th of June, 1912, a complaint was presented against the respondents, Joseph M. Heery and Joseph J. Capurro, in the Court of First Instance of the city of Manila, charging them with a violation of the Opium Law, Upon the complaint the respondents were duly arrested and brought to trial.

After hearing the evidence, the respondent judge, the Honorable A. S. Crossfield, on the 30th of July, 1912, found the respondents Heery and Capurro guilty of the crime charged and sentenced each of them to be imprisoned for a period of six months and each to pay a fine of P800 and one-half the costs.

Said sentence was read to the respondents Heery and Capurro on the 2d of August, 1912.

On the 5th of August, 1912, the respondents Heery and Capurro presented a petition for a modification of said sentence. Said petition was set for hearing before the respondent judge on the 10th of August, 1912. On the 10th of August the hearing on said motion was suspended until the 16th of August, 1912. Later the respondent judge, after considering said motion, dictated an order modifying the original sentence and sentenced each of the defendants to pay a fine only of P2,000 and each to pay one-half the costs.

There seems to be some confusion between the parties with reference to the date of the order of the court, modifying the sentence of the 2d of August, 1912. From an examination of the record brought to this court, it seems to be clear that the modified sentence was not made of record or announced to the respondents Heery and Capurro until the 19th of August, 1912, The modified sentence did not become a sentence in law until the same had been read or announced to the defendants or had become a part of the record of the court.

The basis of the present petition is the alleged fact that the respondent judge, having permitted more than fifteen days to elapse before modifying the original sentence, lost jurisdiction to modify it; that in modifying the same after the expiration of fifteen days he did so without authority of law; that such modification having been made without authority of law and after the respondent judge had lost jurisdiction over said sentence, the modification was null and void. The petitioner relies upon section 47 of General Orders, No. 58, in support of his contention. Said section 47 provides that:

"An appeal must be taken within fifteen days from the rendition of the judgment or order appealed from."

It will be noted that the original sentence was read to the defendants on the 2d of August, 1912; that the modified sentence was read to the defendants on the 19th of August, 1912; that seventeen days had elapsed from the

announcement of the original sentence before the announcement of the modified sentence.

The respondents contend that the motion for a rehearing or for a modification of the first sentence had the effect of extending the fifteen days within which sentences become final. That specific question has been heretofore discussed and decided by this court.

In the case of *United States vs. Flemister* (1 Phil. Rep. 317), Mr. Justice Willard, speaking for the court, said (p. 321):

"Our conclusions are (1) that within the fifteen days allowed for an appeal the trial court may reopen the case on either of two grounds; (2) that if the defendant does not appeal he can make no motion in this court on either ground; (3) that if he does appeal he can move in this court on either ground. If the defendant makes a motion in the lower court and that is denied, he can still appeal if the fifteen days allowed therefor have not expired. If the defendant fails to appeal and limits himself to a motion in the trial court to reopen the case, this motion fails if it is not decided within the nonextendable period of fifteen days."

In the case of *United States vs. Perez* (1 Phil. Rep., 322), this court again, speaking through Mr. Justice Willard, said:

"The pendency of a motion for a new trial does not extend the time for an appeal beyond the fifteen days after judgment."

In the case of *United States vs. Trincio* (4 Phil. Rep., 90) the court again adhered to the doctrine announced in the case of *United States vs. Flemister* and that of *United States vs. Perez*, supra, and said:

"(1) Appeals in criminal cases will not be allowed after the lapse of fifteen days from rendition of the judgment or order appealed from.

"(2) Pendency of a motion for new trial does not extend the time for perfecting appeal.

"(3) Motion for new trial fails, ipso facto, if the judge neglects or fails to decide the same within the said fifteen days."

In the case of *United States vs. Torrero* (8 Phil. Rep., 88) the court again adhered to the doctrine announced in the foregoing cases and said:

"A motion for a new trial in a criminal cause does not extend the time within which an appeal must be taken."
(See also *U. S. vs. Rota et al.*, 9 Phil. Rep., 426.)

If the motion does not have the effect of extending the time, then certainly the sentence becomes final by the mere lapse of the fifteen days. It will be noted also that by section 47 of General Orders, No. 58, above quoted, as heretofore interpreted by this court, that the sentence becomes final and nonappealable after the expiration of fifteen days.

By reference to section 42 of General Orders, No. 58, it will be noted that under certain conditions steps may be taken for the reopening of the trial, but it will also be noted that such steps must be taken before the final entry of a judgment for conviction.

The respondents cite numerous cases showing that a judge pronouncing a sentence in a criminal case may change, alter, or modify his sentence at any time during the term of court in which the sentence was announced. The cases cited by the respondents contain the general rule upon that question and sustain their contention. These cases are all cited from jurisdictions which give the defendant in criminal cases a right to appeal from the sentence imposed at any time during the term in which such sentence was rendered. Upon the other hand the decisions of the courts

are just as uniform that the courts may not alter, change, or modify a sentence rendered, after the expiration of the term in which said sentence was rendered. The doctrine seems to be well settled, that if the sentence is not modified during the term of court in which it was rendered, it becomes final and cannot thereafter be changed or modified by the court or judge rendering the same, unless by some intervention or other the sentence has not become final by reason of the termination of the term of court.

By virtue of the provisions of said section 47 of General Orders, No. 58, the sentence in a criminal case in the Philippine Islands becomes final after the mere lapse of fifteen days from the date of its rendition. The lapse of fifteen days, therefore, from the rendition of the judgment has the same effect in the Philippine Islands upon the finality of the sentence as the expiration of the term of court in other jurisdictions.

The question of the finality of a judgment and the right to modify it has been discussed many times by the Supreme Court of the United States. In the case of *Bronson vs. Schulten* (104 U. S., 410), Mr. Justice Miller, in discussing the question before us, said (p. 415) :

"It is a general rule of law that all judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them, during the term at which they were rendered or entered of record, and they may then be set aside, vacate modified, or annulled by that court.

"But it is a rule equally well settled that after the term is ended, all final judgments and decrees of the court pass beyond its control, unless steps be taken during that term, by motion or otherwise, to set aside, modify, or correct them; and if errors exist, they can only be corrected by such proceeding, by writ of error or appeal as may be allowed in a court which, by law, can review the decision., So strongly has this principle, been upheld by this court, that while realizing that there is no court which can review its decisions, it has invariably refused all applications for rehearing made after the adjournment of the court for the term at which the judgment was rendered. And this is placed upon the ground that the case has passed beyond the control of the court. (*Brooks vs. Railroad Co.*, 102 U. S., 107; *Public Schools vs. Walker*, 9 Wall., 603; *Brown vs. Aspden*, 14 How., 25; *Cameron vs. McRoberts*, 3 Wheat, 591; *Sibbald vs. U. S.*, 12 Pet., 488; *U. S. vs. The Brig Glamorgan*, 2 Curt. C. C, 236; *Bradford vs. Peterson*, 1 A. K. Marsh (Ky), 464; *Ballard vs. Davis*, 3 J. J. Marsh (Ky), 656.)"

In the case of *Sibbald vs. United States* (37 U. S vs. 487), the Supreme Court of the United States, speaking through Mr. Justice Baldwin, said:

"No principle is better settled, or of more universal application, that no court can reverse or annul its own final decrees or judgments for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes."

In the case of *Baldwin vs. Kramer* (2 Cal., 582) the supreme court of California said (p. 583):

"We hold, that after the expiration of a term of the district court, no power remains in it to set aside a judgment, or grant a new trial. A different doctrine would lead to great uncertainty and possibly to gross abuse. There must be a time when the rights of the parties are to be considered as determined, and for litigation to cease; and for this purpose the law has wisely fixed the rule here indicated."

Suydam vs. Pitcher (4 Cal., 280); *Carpenter vs. Hart* (5 Cal., 406); *Robb vs. Robb* (6 Cal., 21); *Shaw vs. McGregor* (8 Cal., 521); *Bell vs. Thompson* (19 Cal., 706); *Lattimer vs. Ryan* (20 Cal., 628).

In the case of *Casement vs. Ringgold* (28 Cal., 335), Mr. Justice Sawyer, speaking for the court, said, quoting from the decision of *Lattimer vs. Ryan*, *supra* (p. 338):

"According to the repeated decisions of this court, jurisdiction to set aside the first judgment had been lost to the district court upon the adjournment of the term at which it was rendered."

In the case of *United States vs. Samio* (3 Phil. Rep., 691), this court, speaking through Mr. Justice Torres, said (p. 692) :

"Under the provisions of General Orders, No. 58, as modified by Act No. 194, judgments rendered in criminal cases in trial courts become final by operation of law if no appeal is taken within the time prescribed, with the exception of cases where the death penalty is imposed, which go to the Supreme Court for review whether the accused appeals or not."

Courts have gone to great length in prohibiting the alteration, vacation or modification of a sentence or judgment, after the same has become final. Generally sentences do not become final, by virtue of statutory provision, until after the expiration of the term in which they are rendered. So strongly have courts adhered to the doctrine that a decision can not be changed, altered or modified after the same has become final, that even an order entered by the judge that "all cases, motions, or other proceedings, now pending and not otherwise disposed of, be continued," will not authorize the setting aside of a judgment at a subsequent term. (*Gunnell vs. State Bank*, 13 Ala., 676.) In the case of *Siloam Springs vs. McPhitridge* (53 Ark., 21) it was held that a judgment became final at the end of the term at which it was rendered and that the court could not set it aside at a subsequent term, even though the court had taken under advisement a motion for a new trial, and in an arrested judgment had entered an order suspending judgment until his decision was rendered upon said motion. This rule has been modified in some of the States of the Union to the effect that a motion for a new trial, not decided during the term, would have the effect of preventing a judgment or sentence from becoming final. (*Hibbard vs. Mueller*, 86 111., 256; *Gans vs. Harmison*, 44 Wis., 323; *Baker vs. Baker*, 51 Wis., 538.)

Long experience has induced the courts to establish the rule that when a sentence once becomes final it can not be changed, altered, or modified by them. It is believed to be the wiser policy after a sentence has once become final, in case it is then discovered for the first time that clemency should have been exercised, to refer the matter to the executive department of the Government to be dealt with under its general pardoning power.

The moment a sentence in a criminal case becomes final, the judicial department of the Government has lost its jurisdiction over the person of the defendant, as well as its right to change, alter or amend said sentence. The defendant is then in the custody of the executive department of the Government for the execution of the sentence. If an injustice has inadvertently been done, the executive department has authority, under its general pardoning power, to correct it.

Any attempt by the judicial department to alter, amend or modify the sentence, except to correct clerical errors, after the same has become final, is unwarranted in law and can in no way affect the final sentence.

From all of the foregoing, the following conclusions necessarily follow:

- That after the lapse of fifteen days from the date of the sentence of August 2, 1912, the respondent judge was without authority to alter, amend, modify or annul said sentence, except for the purpose of correcting clerical errors.
- That the modification complained of was null and without the force of law.
- That the sentence of August 2, 1912, is the sentence of the lower court and is in full force and effect. Said alleged modification in no way affected the sentence read to the defendants on August 2.

Therefore, after the lapse of ten days from the promulgation hereof, let a judgment be entered decreeing the annulment of the modified sentence of the respondent judge, read or announced to the defendants on the 19th of August, 1912; and without any finding as to costs it is so ordered.

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

TRENT, J., concurring:

I concur. But if the question whether the motion for a new trial in a criminal case extends the time within which an appeal can be taken were an open one I would take a different view from that established by this court.

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