

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF:
ANDREW HARVEY, JOHN SHERMAN AND ADRIAAN VAN DEN
ELSHOUT, PETITIONERS, VS. HONORABLE COMMISSIONER MIRIAM
DEFENSOR SANTIAGO, CO...**

G.R. No. 82544. June 28, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A petition for Habeas Corpus

Petitioners Andrew Harvey and John Sherman, 52 and 72 years, respectively, are both American nationals residing at Pagsanjan, Laguna, while Adriaan Van Den Elshout, 58 years old, is a Dutch citizen also residing at Pagsanjan, Laguna.

The case stems from the apprehension of petitioners on 27 February 1988 from their respective residences by agents of the Commission on Immigration and deportation (CID) by virtue of Mission Orders issued by respondent Commissioner Miriam Defensor Santiago of the CID. Petitioners are represently detained at the CID Detention Center.

Petitioners were among the twenty-two (22) suspected alien pedophiles who are apprehended after three months of close surveillance by CID agents in Pagsanjan, Laguna. Two (2) days after apprehension, or on 29 February 1988, seventeen (17) of the twenty-two (22) arrested aliens opted for self-deportation and have left the country. One was released for lack of evidence; another was charged not for being a pedophile but for working without a valid working visa. Thus, of the original twenty two (22), only the three petitioners have chosen to face deportation.

Seized during petitioners apprehension were rolls of photo negatives and photos of the suspected child prostitutes shown in salacious poses as well as boys and girls engaged in the sex act. There were also posters and other literature advertising the child prostitutes.

The "Operation Report" on Andrew Harvey and Richard Sherman dated 29 February 1988 stated:

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"ANDREW MARK HARVEY was found together with two young boys.

"RICHARD SHERMAN was found with two naked boys inside his room."

In respect of Van Den Elshout, the "After Mission Report," dated 27 February 1988 read in part:

"Noted:

There were two (2) children ages 14 & 16 which subject readily accepted having been in his care and live-in for quite sometime."

On 4 March 1988, deportation proceedings were instituted against petitioners for being undesirable aliens under Section 69 of the Revised Administrative Code (Deportation Case No. 88-13). The "Charge Sheet" read inter alia:

"Wherefore, this Office charges the respondents for deportation, as undesirable aliens, in that: they, being pedophiles, are inimical to public morals, public health and public safety as provided in Section 69 of the Revised Administrative Code."

On 7 March 1988, Warrants of Arrest were issued by respondent against petitioners for violation of Sections 37, 45 and 46 of the Immigration Act and Section 69 of the Revised Administrative Code. On the same date, the Board of Special Inquiry III commenced trial against petitioners.

On 14 March 1988, petitioners filed an Urgent Petition for Release Under Bond alleging that their health was being seriously affected by their continuous detention. Upon recommendation of the Board of Commissioners for their provisional release, respondent ordered the CID doctor to examine petitioners, who certified that petitioners were healthy.

On 22 March 1988, petitioners filed a Petition for Bail which, however, respondent denied considering the certification by the CID physician that petitioners were healthy. To avoid congestion, respondent ordered petitioners' transfer to the CID detention cell at Fort Bonifacio, but the transfer was deferred pending trial due to the difficulty of transporting them to and from the CID where trial was on-going.

On 4 April 1988 petitioner Andrew Harvey filed a Manifestation/Motion stating that he had "finally agreed to a self-deportation" and praying that he be "provisionally released for at least 15 days and placed under the custody of Atty. Asinas before he voluntarily departs the country." On 7 April 1988, the Board of Special Inquiry - III allowed provisional release of five (5) days only under certain conditions. However, it appears that on the same date that the aforesaid Manifestation/Motion was filed, Harvey and his co-petitioners had already filed the present petition.

On 4 April 1988, as heretofore stated, petitioners availed of this Petition for a Writ of Habeas Corpus. A Return of the Writ was filed by the Solicitor General and the Court heard the case on oral argument on 20 April 1988. A Traverse to the Writ was presented by petitioners to which a Reply was filed by the Solicitor General.

Petitioners question the validity of their detention on the following grounds:

- 1) There is no provision in the Philippine Immigration Act of 1940 nor under Section 69 of the Revised Administrative Code, which legally clothes the Commissioner with any authority to arrest and detain petitioners pending determination of the existence of a probable cause leading to an administrative investigation.
- 2) Respondent violated Section 2, Article III of the 1987 Constitution prohibiting unreasonable searches and seizures since the CID agents were not clothed with valid Warrants of arrest, search and seizure as required by the said provision.
- 3) Mere confidential information made to the CID agents and their suspicion of the activities of petitioners that they are pedophiles, coupled with their association with other suspected pedophiles, are not valid legal grounds for their arrest and detention unless they are caught in the act. They further allege that being a pedophile is not punishable by any Philippine Law nor is it a crime to be a pedophile.

We reject petitioners' contentions and uphold respondent's official acts ably defended by the Solicitor General.

There can be no question that the right against unreasonable searches and seizures guaranteed by Article III, Section 2 of the 1987 Constitution, is available to all persons, including aliens, whether accused of crime or not

(Moncado vs. People's Court, 80 Phil. 1 [1948]). One of the constitutional requirements of a valid search warrant or warrant of arrest is that it must be based upon probable cause. Probable cause has been defined as referring to "such facts and circumstances antecedent to the issuance of the warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof (People vs. Syjuco, 64 Phil. 667 [1937]; Alvarez vs. CFI, 64 Phil. 33 [1937]).

The 1985 Rules on Criminal Procedure also provide that an arrest without a warrant may be effected by a peace officer or even a private person (1) when such person has committed, actually committing, or is attempting to commit an offense in his presence; and (2) when an offense has, in fact, been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it (Rule 113, Section 5).

In this case, the arrest of petitioners was based on probable cause determined after close surveillance for three (3) months during which period their activities were monitored. The existence of probable cause justified the arrest and the seizure of the photo negatives, photographs and posters without warrant (See Papa vs. Mago, L-27360, February 28, 1968, 22 SCRA 857; People vs. Court of First Instance of Rizal, L-41686, November 17, 1980, 101 SCRA 86, cited in CRUZ, Constitutional Law, 1987 ed., p. 143). Those articles were seized as an incident to a lawful arrest and, are therefore, admissible in evidence (Section 12, Rule 126, 1985 Rules on Criminal Procedure).

But even assuming arguendo that the arrest of petitioners was not valid at its inception, the records show that formal deportation charges have been filed against them, as undesirable aliens, on 4 March 1988. Warrants of arrest were issued against them on 7 March 1988 "for violation of Section 37, 45 and 46 of the Immigration Act and Section 69 of the Administrative Code." A hearing is presently being conducted by a Board of Special Inquiry. The restraint against their persons, therefore, has become legal. The Writ has served its purpose. The process of the law is being followed (Cruz vs. Montoya, L-39823, February 25, 1975, 62 SCRA 543). "Where a person's detention was later made by virtue of a judicial order in relation to criminal cases subsequently filed against the detainee, his petition for habeas corpus becomes moot and academic" (Beltran vs. Garcia, L-49014, April 30, 1979, 89 SCRA 717). "It is a fundamental rule that a writ of habeas corpus will not be granted when the confinement is or has become legal, although such confinement was illegal at the beginning" (Mat sura vs. Director of Prisons, 77 Phil. 1050 [1947]).

That petitioners were not "caught in the act" does not make their arrest illegal. Petitioners were found with young boys in their respective rooms, the ones with John Sherman being naked. Under those circumstances the CID agents had reasonable grounds to believe that petitioners had committed "pedophilia" defined as "psycho-sexual perversion involving children" (Kraft-Ebbing Psychopatia Sexualis, p. 555; "Paraphilia (or unusual sexual activity) in which children are the preferred sexual object" (Webster's Third New International Dictionary, 1971 ed., p. 1665) [Solicitor General's Return of the Writ, on p. 10]. While not a crime under the Revised Penal Code, it is behavior offensive to public morals and violative of the declared policy of the State to promote and protect the physical, moral, spiritual, and social well-being of our youth (Article II, Section 13, 1987 Constitution).

At any rate, the filing by petitioners of a petition to be released on bail should be considered as a waiver of any irregularity attending their arrest and estops them from questioning its validity (Callanta v. Villanueva, L-24646 & L-24674, June 20, 1977, 77 SCRA 377; Bagcal vs. Villaraza, 61770, January 31, 1983, 120 SCRA 525).

The deportation charges instituted by respondent Commissioner are in accordance with Section 37(a) of the Philippine Immigration Act of 1940, in relation to Section 69 of the Revised Administrative Code. Section 37(a) provides in part:

"(a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration and

Deportation or any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration and Deportation after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien;

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The foregoing provision should be construed in its entirety in view of the summary and indivisible nature of a deportation proceeding, otherwise, the very purpose of deportation proceedings would be defeated.

Section 37(a) is not constitutionally proscribed (*Morano vs. Vivo*, L-22196, June 30, 1967, 20 SCRA 562). The specific constraints in both the 1935[1] and 1987[2] Constitutions, which are substantially identical, contemplate prosecutions essentially criminal in nature. Deportation proceedings, on the other hand, are administrative in character. An order of deportation is never construed as a punishment. It is preventive, not a penal process. It need not be conducted strictly in accordance with ordinary Court proceedings.

"It is of course well-settled that deportation proceedings do not constitute a criminal action. The order of deportation is not a punishment, (*Mahler vs. Eby*, 264 U.S., 32), it being merely the return to his country of an alien who has broken the conditions upon which he could continue to reside within our borders (*U.S. vs. De los Santos*, 33 Phil. 397). The deportation proceedings are administrative in character, (*Kessler vs. Stracker*, 307 U.S., 22) summary in nature, and need not be conducted strictly in accordance with the ordinary court proceedings (*Murdoch vs. Clark*, 53 F. [2d], 155). It is essential, however, that the warrant of arrest shall give the alien sufficient information about the charges against him, relating the facts relied upon. (*U.S. vs. Uhe*, 211 F., 628.) It is also essential that he be given a fair hearing with the assistance of counsel, if he so desires, before unprejudiced investigators (*Strench vs. Pedaris*, 55 F. [2d], 597; *Ex parte Jew You On*, 16 F. [2d], 153). However, all the strict rules of evidence governing judicial controversies do not need to be observed; only such as are fundamental and essential, like the right of cross-examination. (*U.S. vs. Hughes*, 104 F. [2d], 14; *Murdoch vs. Clark*, 53 F. [2d], 155.) Hearsay evidence may even be admitted, provided the alien is given the opportunity to explain or rebut it (*Morrell vs. Baker*, 270 F., 577; *Sercerchi vs. Ward*, 27 F. Supp., 437).'" (*Lao Tang Bun vs. Fabre*, 81 Phil. 682 [1948]).

The ruling in *Vivo vs. Montesa* (G. R. No. 24576, July 29, 1968, 24 SCRA 155) that "the issuance of warrants of arrest by the Commissioner of Immigration, solely for purposes of investigation and before a final order of deportation is issued, conflicts with paragraph 3, Section 1 of Article III of the Constitution" (referring to the 1935 Constitution)[3] is not invocable herein. Respondent Commissioner's Warrant of Arrest issued on 7 March 1988 did not order petitioners to appear and show cause why they should not be deported. They were issued specifically "for violation of Sections 37, 45 and 46 of the Immigration Act and Section 69 of the Revised Administrative Code." Before that, deportation proceedings had been commenced against them as undesirable aliens on 4 March 1988 and the arrest was a step preliminary to their possible deportation.

"Section 37 of the Immigration Law, which empowers the Commissioner of Immigration to issue warrants for the arrest of overstaying aliens is constitutional. The arrest is a step preliminary to the deportation of the aliens who had violated the condition of their stay in this country." (*Morano vs. Vivo*, L-22196, June 30, 1967, 20 SCRA 562).

To rule otherwise would be to render the authority given the Commissioner nugatory to the detriment of the State.

"The pertinent provision of Commonwealth Act No. 613, as amended, which gives authority to the Commissioner of Immigration to order the arrest of an alien temporary visitor preparatory to his deportation for failure to put up new bonds required for the stay, is not unconstitutional.

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"x x x Such a step is necessary to enable the Commissioner to prepare the ground for his deportation under Section 37[a] of Commonwealth Act 613. A contrary interpretation would render such power nugatory to the

detriment of the State." (Ng Hua To vs. Galang, G.R. No. L-10145, February 29, 1964, 10 SCRA 411).

"The requirement of probable cause, to be determined by a Judge, does not extend to deportation proceedings." (Morano vs. Vivo, *supra*, citing Tiu Chun Hat vs. Commissioner, *infra*). There need be no "truncated" recourse to both judicial and administrative warrants in a single deportation proceedings.

The foregoing does not deviate from the ruling in Qua Chee Gan vs. Deportation Board (G. R. No. L-10280, September 30, 1963, 9 SCRA 27 [1963]) reiterated in Vivo vs. Montesa, *supra*, that "under the express terms of our Constitution (the 1935 Constitution), it is therefore even doubtful whether the arrest of an individual may be ordered by any authority other than a judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation." For, as heretofore stated, probable cause had already been shown to exist before the warrants of arrest were issued.

What is essential is that there should be a specific charge against the alien intended to be arrested and deported, that a fair hearing be conducted (Section 37[c]) with the assistance of counsel, if desired, and that the charge be substantiated by competent evidence. Thus, Section 69 of the Revised Administrative Code explicitly provides:

"Sec. 69. Deportation of subject of foreign power. A subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such a case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than 3 days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses."

The denial by respondent Commissioner of petitioners' release on bail, also challenged by them, was in order because in deportation proceedings, the right to bail is not a matter of right but a matter of discretion on the part of the Commissioner of Immigration and Deportation. Thus, Section 37(e) of the Philippine Immigration Act of 1940 provides that "any alien under arrest in a deportation proceeding may be released under bond or under such other conditions as may be imposed by the Commissioner of Immigration." The use of the word "may" in said provision indicates that the grant of bail is merely permissive and not mandatory on the part of the Commissioner. The exercise of the power is wholly discretionary (Ong Hee Sang vs. Commissioner of Immigration, L-9700, February 28, 1962, 4 SCRA 442). "Neither the Constitution nor Section 69 of the Revised Administrative Code guarantees the right of aliens facing deportation to provisional liberty on bail." (77m Chun Hai, et al vs. Deportation Board, 104 Phil. 949 [1958]). As deportation proceedings do not partake of the nature of a criminal action, the constitutional guarantee to bail may not be invoked by aliens in said proceedings (Ong Hee Sang vs. Commissioner of Immigration, *supra*).

Every sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for its self-preservation or public interest (Lao Tan Bun vs. Fabre, 81 Phil. 682 [1948]). The power to deport aliens is an act of State, an act done by or under the authority of the sovereign power (In re McCulloch Dick, 38 Phil. 41 [1918]). It is a police measure against undesirable aliens whose continued presence in the country is found to be injurious to the public good and the domestic tranquility of the people (Forbes vs. Chuoco Tiaco, et al, 16 Phil. 534 [1910]). Particularly so in this case where the State has expressly committed itself to defend the right of children to assistance and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development (Article XV, Section 3[2]). Respondent Commissioner of Immigration and Deportation, in instituting deportation proceedings against petitioners, acted in the interests of the State.

WHEREFORE, the Petition is dismissed and the Writ of Habeas Corpus is hereby denied.

SO ORDERED

Yap, C. J. (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] "The right of the people to be secure in [their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Sec. 1(3). Art. III).

[2] "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized " (Section 2, Art. III).

[3] Reiterated in *Neria vs. Vivo* (L-26611-12. September 30. 1969. 29 SCRA 701); *Tiu vs. Vivo*, L-21425, September 15, 1972. 47 SCRA 23; and *Ang Ngo Chiong vs. Galang*, L-21426, October 22. 1975. 67 SCRA 338).

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