

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE VAYSON, DEFENDANT AND APPELLANT.

G.R. No. 9397. March 30, 1914

Ponente: TRENT, J.

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TRENT, J.:

An appeal by Jose Vayson from a judgment of the Court of First Instance of Misamis, sentencing him to six months' imprisonment and to the payment of the costs of the cause for a violation of the Election Law. The original information is as follows:

"Jose Baison is accused by the undersigned of a violation of paragraph 4, section 30, of the Election Law, committed as follows:

"That the said Jose Baison, on or about the 4th day of June, 1912, at the municipality of Misamis, Province of Misamis, knowing that he was not entitled so to do, did then and there maliciously and unlawfully vote at the general elections for delegates to the Philippine Assembly, and provincial and municipal officials, the said Jose Baison being then and there delinquent in the payment of land taxes in the amount of P56.88 for the years 1908, 1909, 1910, and 1911, contrary to the statute in such cases made and provided.—Misamis, Misamis, September 29, 1913,"

The defendant was arraigned on September 29, 1913, at which time the court asked him the following question:

JUDGE. You are accused of having violated paragraph 4 of section 30, of the Election Law, in that you did maliciously and intentionally vote in the general election held on June 4, 1912, you being delinquent in the sum of P56.88 in the payment of your land taxes for the years 1908, 1909, 1910, and 1911. What do you say to this charge? Do you plead guilty or not guilty?

DEFENDANT. Guilty.

Upon recommendation of the fiscal the defendant was then, on September 29th, sentenced to imprisonment for the period of one month and to the payment of the costs. On the 3d of October, 1913, the defendant was called into court and the following proceedings were had in his presence:

FISCAL (addressing the court.) I ask permission of the court to amend the information presented in this case by changing the word "Baison" to "Vayson" and the number "4" just after the word "paragraph," substituting therefor number 1, so that the same will read "Paragraph number 1."

COURT. The motion is admitted.

COURT (addressing the defendant). Are you the vice-president of the town of Misamis, Province of Misamis?

DEFENDANT. Formerly, yes; but now, no. I presented my resignation in the month of May.

COURT. Were you elected vice-president in 1912?

DEFENDANT, Yes, sir;

The court then revoked the sentence dated September 29, and imposed in lieu thereof a sentence of six months' imprisonment.

The first sentence was imposed upon the recommendation for leniency made by the fiscal on the ground that the defendant was one "of a class of poor ignorant persons whose violations of the Election Law should not be punished too severely, owing to their want of education," The proceedings had on the 3d of October developed that the defendant had been vice-president of his municipality, was a candidate for that office when he committed the offense for which he was charged, and had been delinquent in his taxes for four years. The court considered these facts sufficient to call for the imposition of a heavier penalty. Both sentences were within the discretion reposed in the trial court under the first paragraph of section 30 of the Election Law, defining and penalizing the offense of which the defendant was guilty. In our opinion the imposition of six months' imprisonment is not excessive. This punishment is now questioned on that ground.

The information was amended, as above indicated, after the defendant had entered his plea, but the changes made were mere corrections of clerical errors and did not change the allegations concerning the commission of the crime. The defendant was charged originally with a violation of paragraph 4 of section 30 of the Election Law, but the allegations which follow in the second paragraph of the original information and the explanation given the defendant by the court show that it was the first paragraph of section 30 which was violated and not the fourth. The fourth paragraph penalizes the act of taking or subscribing to any false oath concerning any material fact in any registration or election proceedings, while the first paragraph penalizes any person who votes or attempts to vote, knowing that he is not entitled so to do. The result is that the correction of the clerical errors in the complaint could not and did not prejudice the rights of the defendant.

We will now inquire whether the court had the power under the facts and circumstances above set forth to set aside its original judgment and impose the penalty of six months. In determining this question it must be borne in mind that the defendant had served no part of the original sentence when the second sentence was pronounced.

In the case of *Arnedo vs. Llorente* (18 Phil. Rep., 257), this Court said: "When not otherwise provided by statute, all courts in the Islands have plenary control over the proceedings had before them, as also of judgments therein, until such judgments become final in the sense that the party in whose favor they are rendered is entitled as of right, to have execution thereon, and, in the exercise of a sound discretion, the courts may take such action touching the vacation and amendment of these judgments as truth and justice may require."

This doctrine, as to civil cases, has recently been affirmed in *De Fiesta vs. Llorente* (25 Phil. Rep., 554); and *Broce vs. Apurado* (26 Phil. Rep., 581). Does it apply to criminal cases? In *United States vs. Crossfield* (24 Phil. Rep., 321), this court held that the Court of First Instance had no power to modify its judgment in a criminal case after the expiration of the period for appeal. This case negatively admits the proposition that a Court of First Instance would have the power to modify its judgment in a criminal case before it became final, that is, before the expiration of the time allowed for an appeal, is it true that the accused may not object to such action on the part of the court when the proposed change is not desired by him? Upon this precise question, we are not aware of any precedents in this jurisdiction. The case of *Ex parte Lange* (85 U. S., 163, 21 L. ed., 872), states the general rule as follows: "The general power of the court over its own judgments, orders and decrees, in both civil and criminal cases, during the existence of the term to which they are first made, is undeniable."

That case, however, must be considered as an exception to the general rule thus announced. Whereas, the statute provided for imprisonment or a fine, the court had imposed imprisonment and a fine. The prisoner had paid the latter and had served five days of the prison sentence, when the court, during the same term, called him to the bar

and amended its judgment so that it called for imprisonment only. The Supreme Court held that the payment of the fine was an authorized punishment for the crime and that the revision of the sentence was in effect subjecting the prisoner to a second punishment, which was contrary to the jeopardy clause of the Constitution. This exception to the general rule has been recognized in a number of cases, the majority of which are referred to in the Notes of United States Reports, vol, 8, p. 159. But it is apparent that, as the present defendant had served no part of the original sentence, he cannot bring himself within the exception.

In *Bradford vs. People* (22 Colo., 157), judgment calling for imprisonment for one year was pronounced on January 28. On January 31, the court, on its own motion, set aside this judgment and entered another, sentencing the defendant to imprisonment for one year on each of three counts. As it was specifically provided, however, that all of these sentences should run concurrently, the aggregate of the sentences in the revised judgment was the same as the first.

The court said: "In cases where the defendant has entered upon the execution of a valid sentence, it is well established that such sentence cannot be set aside and a new sentence entered. The sentence in this case was for the full term of one year in the state penitentiary, and his incarceration in the county jail of Arapahoe county, temporarily or otherwise could not be credited upon his term; it was simply a means to an end, in order that the defendant might not escape until he could be safely conveyed to and lodged in the state penitentiary. It was no part of his sentence under the statute, and the time so spent could not be deducted from his term, as it is provided that the term shall be computed from and including the day on which he is received into the penitentiary."

In *Tillman vs. State* (58 Pla., 113), it was said that "during the same term of court at which the sentence is imposed, before the defendant had begun serving such sentence, the trial judge has the power to modify such sentence."

In *State vs. Dougherty* (70 Iowa, 489), judgment was entered against the defendant on his plea of guilty for a fine and costs. At the same term and before any part of the judgment had been complied with, the court set the judgment aside and entered another judgment, which imposed a greater fine.

The appellate court said: "The question in the case is whether the court, after it had entered a judgment in regular form against the defendant, had the power, at the same term and before any part of the judgment had been performed, to set that judgment aside, and enter another judgment against him imposing a heavier penalty. The power of the courts to revise, correct and change their sentences, at the term at which they are pronounced, and before anything has been done under them, has long been recognized both in this country and in England; and the cases are numerous in which the power has been exercised. (See *Com. vs. Weymouth*, 2 Allen, 144; *U. S. vs. Harmison*, 3 Sawy., 556; *Memphis vs. Brown*, 94 U. S., 715; *Ex parte Sawyer*, 21 Wall., 235; *Burnside vs. Ennis*, 43 Ind., 411; *Regina vs. Fitz gerald*, 1 Salk., 401; *Rex vs. Price*, 6 East, 323; *Rex vs. Leicestershire Justices*, 1 Maule & S., 442.)"

In *State vs. Hughes* (35 Kan., 626), the defendant was sentenced to imprisonment at hard labor in the penitentiary for six months. Within an hour after sentence was pronounced, the attention of the court was called to the fact that no person could be sentenced to imprisonment at hard labor in the state prison for less than one year. The court thereupon proceeded to sentence the prisoner to imprisonment for a term of one year.

The supreme court said: "The sentence first pronounced against the defendant was not executed or put into operation and 'so long as it remained unexecuted, it was, in contemplation of law, in the breast of the court, and subject to revision and alteration.' (*Com. vs. Weymouth*, 2 Allen, 147.) We think it was clearly within the discretion and power of the court until the end of the term, to amend and revise or increase the sentence which had

not gone into effect. (1 Bish. on Gr. Proc., sec. 1298, and cases cited.) As nothing had been done under the sentence first pronounced, and as the final sentence did not impose a penalty in excess of that provided by law, the rights of the defendant were not infringed upon, nor has he any ground for complaint"

In *Commonwealth vs. Weymouth* (2 Allen, Mass., 144; 79 Am. Dec, 776), the defendant was first sentenced to two years' imprisonment in a house of correction. On the next day, the prosecuting attorney moved for a revision of the sentence and, over the prisoner's protest, additional testimony was heard, after which the original judgment was revised and the defendant sentenced to imprisonment in the state prison for three and one-half years, the first two days of which were to be solitary. After citing authorities, the court held the rule to be that if no action has been taken, there is no good reason for refusing to vacate the judgment for sufficient cause and substituting a new one in its place.

The court said: "The petitioner in the present case is not subjected by the amended sentence of the court to any punishment for his offense other or greater than that allowed by law. He was never taken or charged on the warrant which was issued on the sentence as originally pronounced. That sentence never went into operation, and in effect, was the same as if it had never been passed. So long as it remained unexecuted, it was, in contemplation of law, in the breast of the court, and subject to revision and alteration. He was not injured or put in jeopardy by it any further than he would have been by a conclusion or judgment of the court as to the extent of his punishment, which had not been announced. Until something was done to carry the sentence into execution, by subjecting the prisoner to the warrant in the hands of the officer, no right or privilege to which he was entitled was taken away or invaded by revoking the sentence first pronounced and substituting in its stead the one under which he now stands charged. If it had appeared that the petitioner had actually been taken and committed under the first sentence, or if he had been thereby condemned to imprisonment in the state prison, so that the term of his sentence would be computed from the time he was first ordered to remain in the custody of the sheriff, according to the statutes of 1859, chapter 248, we might have arrived at a different result; but on the record as it stands, we are all of opinion that the order must be, Prisoner remanded."

In *Lee vs. State* (32 Ohio, 113), the defendant pleaded guilty to a charge of illegally selling intoxicating liquor and was sentenced to pay a fine and costs of the cause. These proceedings were had on May 12, 1874, but no steps were taken to carry the sentence into execution. On the 15th of the same month, the defendant was again before the court, this time on a charge of selling liquor to a minor, and the court then finding that in passing the said sentence it had acted under a misapprehension of the facts of the case, and that no portion of said fine and costs had been paid or secured, and that the defendant had not, been taken into custody under said judgment, set aside the same, and proceeded, over the defendant's objection, to sentence him to a heavier fine.

The court said: "The single question is, had the court the power to revise and increase its judgment, at the same term before any part of the fine and costs had been paid, and before any steps had been taken to execute it?

"That this power exists, is settled by a long line of decisions of the highest authority. * * *

"It appears from the record, that in passing the first sentence, the court acted under a misapprehension of the facts.

"In the absence of a showing to the contrary, we must presume that there were sufficient reasons addressing themselves to the sound judicial discretion of the court for such action, and that it was deemed to be necessary in furtherance of justice and the due administration of the law. It is said this is a dangerous power. The same may be said of the exercise of all judicial discretion. This is equally as true of the discretion exercised in the first instance, in fixing the sentence, as in that exercised in revising it.

"If the court in revising its own sentence confines itself to such information as it has the right to have in the

first instance, no greater danger of abuse exists than in the exercise of judicial discretion in rendering its first judgment.

"The power to revise judgments of the same term, and, before execution has commenced, to correct errors and mistakes is necessary for the protection of the defendant, as well as the public, and may be exercised as well in his favor as against him, when the court has been misled by mistake or fraud."

In *Nichols vs. United States* (106 Fed., 672), the Circuit Court of Appeals for the Eighth District had under consideration the act of a district judge under the following circumstances: After verdict and before rendering sentence, the judge called the attorney for the defendant to the bar and asked if it was the intention to prosecute the matter any further, and, understanding that it was not, the court stated that he would enter a fine of \$100 against the defendant and imprisonment for six months. Thereupon counsel said that he intended to prosecute an appeal, and the court called up the defendant, who was still within the bar, and directed the clerk to enter a fine of \$100 and imprisonment for twelve months.

The Circuit Court said: "The extent of the punishment to be inflicted on the defendant, within the limit prescribed by the statute for the offense, rested in the sound judicial discretion of the court. The imposition of the first sentence did not put an end to the exercise of this discretion. The first sentence was not recorded. The defendant had not yet left the bar, and had not satisfied or suffered any part of the punishment thereunder, when it was set aside and the second sentence imposed. Under these conditions, it was competent for the court to reconsider its sentence and impose a different one. (Ex parte Lange, 18 Wall., 163; 21 L. ed., 872.) The bill of exceptions does not show that the first sentence was set aside, and the second imposed, doubling the period of imprisonment, because the defendant had declared his intention of appealing the case. A new sentence, with enhanced punishment, based upon such a reason, would be a flagrant violation of the rights of the defendant. It would be the infliction of a penalty for the exercise of a clear legal right, and would call for the severest censure. But no such motive can be imputed to the court below. This court is bound to presume that the lower court, in recalling its first and imposing a second and more severe sentence, did so from right and proper motives, and for the purpose of imposing a punishment which, upon reflection, it deemed better suited to the offense."

In England the authorities are the same way. In *King vs. Price* (6 East, 323; 102 Eng. Rep., 1310), the defendant was convicted of illegally voting at an election and was sentenced to one month's imprisonment in Newgate and to be then transported beyond the seas for seven years. At the same term and upon further consideration of the law governing the case, the court proceeded to impose a more severe sentence.

The recently compiled encyclopedia, entitled the *Laws of England* (vol. 9, p. 377), affirms the rule as follows: "The court may at any time during the same assizes or sessions, before the judgment has been entered on the record, vacate the judgment passed and substitute another."

American textwriters are also in full accord with the doctrine under discussion. Black on Judgments, section 153 (citing *State vs. Dougherty*, 70 Iowa, 439, *supra*), says:

"It is even held that the court, in a criminal action, may set aside a judgment made in regular course, imposing on the defendant a fine and the costs of the proceedings, during the same term at which the judgment was rendered, and before any part of it has been performed, and may impose a greater fine than was imposed by the first judgment."

In 12 Cyc, 783, it is said: "At any time during the term the court has the power to reconsider the judgment, and to revise and correct it by mitigating and even by increasing its severity, where the original sentence has not been executed or put into operation; but where the prisoner has paid his fine or his imprisonment has begun, the court has no power to recall him to revoke his former sentence and impose one which inflicts a greater punishment."

And in 1 Bishop's New Crim. Procedure, sec. 1298, it is said: "The power of the court to alter its docket entries and records during the term wherein they are made includes the right within such time to revise, correct and change its sentences, however formally pronounced, if nothing has been done under them. But steps taken under a sentence— for example, a substantial part execution thereof—will cut off the right to alter it, even during the term, and with the expiration of the term the power expires."

As was said in the Arnedo case, the term system in vogue in the United States and England has no place in this country. The power of the courts in this country over their judgments expires when they become final. Between the entry of the judgment and the date it becomes final is a period allowed by law for appeal or vacation of the judgment entered. It is during this period of time and to the same extent as the courts of England and America, that our courts have control over their judgments to modify and revise.

The authorities we have reviewed above demonstrate that until a criminal judgment has become final and unless the defendant has complied in whole or in part with the penalty imposed, the court may revise its judgment by either increasing or decreasing the penalty imposed, so long as it keeps within the limits of the penalty provided by law. Such a modification of the sentence is within the sound discretion of the court, and unless a review of the evidence shows that such discretion has been abused, affords no basis for complaint on the part of either the prosecution or the defendant.

In the present case the revised judgment of the court relates that the defendant "has not yet begun to serve the sentence imposed upon him." The facts developed upon the second hearing show clearly that the court did not abuse its discretion in revising his sentence. There is therefore no reversible error in the judgment appealed from and it is hereby affirmed, with costs against the appellant.

Arellano, C. J., Carson and Araullo, JJ., concur,

Moreland, J., concurs in the result.

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