

2 Phil. 146

[G.R. No. 1265. April 18, 1903]

**EVARISTO PAYNAGA, PETITIONER AND APPELLEE, VS. GEORGE N. WOLFE,
WARDEN OF BILIBID PRISON, RESPONDENT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

The petitioner, Evaristo Paynaga, applied to the Hon. B. S Ambler, judge of the Court of First Instance, for a writ of habeas corpus, and states in his application that he is unlawfully detained and imprisoned by George N. Wolfe, Warden of Bilibid Prison, in the city of Manila.

On the 5th day of January, 1898, the petitioner was convicted and sentenced by the Spanish authorities to two years' imprisonment for the crime of desertion from the Spanish army, He made his escape on the 18th day of October, 1898, and was rearrested on the 20th day of January, 1903.

The answer to the petition and the commitment show that the prisoner had been sentenced by ordinary court-martial to two years' *prision correccional militar* and that lie should commence to serve his sentence on January 5, 1898.

The petitioner claims that he comes within the provisions of the proclamation of amnesty and pardon issued by the President of the United States on the 4th day of July, 1902, and prays for his discharge under the same.

The judge of the Court of First Instance, after hearing the case, decided that the petitioner came within the amnesty proclamation, and directed that, upon taking the oath of allegiance required by the proclamation, he be discharged from custody.

An appeal has been taken by the Government from this decision.

It is contended by counsel for the petitioner that Act No. 654, providing for appeals in

habeas corpus proceedings, is in the nature of an *ex post facto* law, and that having been enacted subsequent to petitioner's right to petition for habeas corpus, this appeal should not be entertained.

In the decision of this court in the case of Frank Mekin vs. George N. Wolfe, rendered on the 27th day of March, 1903,¹ this question was passed upon by this court, and it was there held that habeas corpus is a civil proceeding brought to enforce a civil right, and is entirely distinct from the criminal proceedings under which the prisoner has been tried and convicted, and that the doctrine of *ex post facto* law can not be applied to the case.

The Amnesty Proclamation grants a full and complete pardon and amnesty to all persons in the Philippine Archipelago Avho have participated in the insurrection against the authority and sovereignty of the Kingdom of Spain at divers times from August, 1890, until the cession of the Archipelago by that Kingdom to the United States, and those engaged in the insurrection against the authority and sovereignty of the United States, or who have given aid and comfort to persons participating in said insurrection, "for the offenses of treason or sedition, and for all offenses political in their character committed in the course of such insurrection pursuant to orders issued by the civil, military, or insurrectionary authorities or which grew out of internal political feuds or dissensions between Filipinos and Spaniards or the Spanish authorities or which resulted from internal political feuds or dissensions among the Filipinos themselves during either of said insurrections."

There is no claim whatever that the defendant participated in either of these insurrections, nor that the character of the offense for which he was convicted was of the nature embraced in the proclamation. He was convicted of desertion, a violation of the laws pertaining to the military establishment of Spain.

The defendant clearly is not entitled to the benefits of the Amnesty Proclamation.

It is not a case of this Government trying and convicting a person charged with desertion from the Spanish army. The defendant was convicted during the Spanish sovereignty of the offense of desertion, and is simply serving out his sentence for that offense.

Article XII of the Treaty of Peace between the United States and Spain provides that judgments rendered in criminal matters before the date of the treaty "shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out."

Under this clause of the treaty, it is incumbent upon this Government to execute the judgment in this case.

The judgment of the Court of First Instance directing the discharge of the prisoner from custody is reversed and the petitioner is remanded to the custody of the respondent, to be kept in his charge until the expiration of the term for which the petitioner has been sentenced.

The costs of proceedings is adjudged against the petitioner.

Arellano, C. J., Torres, Willard, Mapa, and Ladd, JJ., concur.

McDonough, J., did not sit in this case.
