

5 Phil. 463

[G.R. No. 2298. December 28, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. IGNACIO SIATONG,
DEFENDANT AND APPELLEE.**

D E C I S I O N

MAPA, J.:

The defendant was sentenced by a military commission, as guilty of the crime of murder, to the death penalty. The sentence was duly approved and affirmed by competent authority but was not executed on account of the defendant having escaped prior to the date set for its execution. Having been captured later, when the military commission that had tried him and sentenced him had ceased to act, the Court of First Instance, petitioned by the prosecution, for the execution of the said sentence, declared the defendant included in the amnesty of July 4, 1902, and released him upon his taking the required oath.

The provincial fiscal appealed from this judgment of the court, but the representative of the Government in this instance desisted from the said appeal which he considered improper. In its place he made use of the remedy of *certiorari* on the grounds that the court went outside its jurisdiction in rendering the said judgment and that there is no appeal from it, or any other easy, expeditious, and appropriate remedy.

Without its being our purpose to decide if the remedy of *certiorari* invoked by the provincial fiscal is proper in this case or not, we can not admit his petition on account of its not being made in due form. The remedy of *certiorari* should be petitioned for by formal complaint having all of the requirements prescribed by the Code of

Procedure in Civil Actions, and the petition formulated by the fiscal in the form of a brief in a criminal cause does not come up to these requirements, for which reason it is set aside in accordance with law.

The Government having desisted in its appeal, we declare that there is no cause to grant the remedy of *certiorari*

in the manner petitioned, without prejudice to the right of the prosecution to file a new petition in proper form if deemed convenient.

The costs in this instance are declared *de officio*. So ordered.

Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.
