5 Phil. 60

[G.R. No. 2805. September 27, 1905]

MARIANO ANDRES, PETITIONER, VS. GEORGE N. WOLFE, WARDEN OF BILIBID PRISON, RESPONDENT.

D E C I S I O N

WILLARD, J.:

In this case a writ of *habeas corpus* having been issued, it appeared that the petitioner was tried before a justice of the peace of the Province of Rizal for the crime of theft, and was sentenced to two months imprisonment, and to pay an indemnity of 10 pesos to the injured party. He appealed from this judgment to the Court of First Instance of the Province of Rizal, in which court the appeal was duly entered. Thereafter the provincial fiscal filed a complaint against the defendant charging him with the same offense with which he was charged in the court of the justice of the peace. The complaint in that court was filed by a private person—the party injured. The petitioner claiming that this complaint filed by the fiscal was the institution of a new proceeding, presented an objection to it in the court below, claiming that he had been once tried for the same offense. That court held that this complaint was not the commencement of a new proceeding, but was a continuation of the appeal taken from the justice of the peace, and was filed in and was a part of that proceeding. It convicted the defendant and sentenced him to one month and one day imprisonment (*arresto mayor*) and the return of the 10 pesos, and the defendant is in confinement under that judgment. He claims in his petition for the writ of *habeas corpus* that the judgment against him is void.

That there was only one proceeding pending against the petitioner in the court below we think is free from doubt. The complaint filed by the

fiscal was a substitution of the complaint presented before the justice of the peace, and was intended to and did take its place. There is nothing in the petition to show that there is any other proceeding now pending in the court below.

It is claimed by the petitioner that the provincial fiscal had no power under the law to amend the complaint presented before the justice of the peace, and that consequently the judgment against him is void. To this claim there are several sufficient answers.

Relief under the writ of *habeas corpus* can be granted in this class of cases only when the judgment against the defendant is absolutely void. It can not be used to correct errors which may have been committed by a court that had jurisdiction of the subject-matter and the person of defendant, unless those errors made the judgment absolutely void.

In the case of Ex parte Bigelow (113 U. S., 328) the court said:

> "It is said, however, that the court below exceeded its jurisdiction, and that this court has the power, in such case and for that reason, to discharge the prisoner from confinement under a void sentence. The proposition itself is sound if the facts justify the conclusion that the court of the district was without authority in the matter.
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> "But that court had jurisdiction of the offense described in the indictment on which the prisoner was tried. It had jurisdiction of the prisoner, who was properly brought before the court. It had jurisdiction to hear the charge and the evidence against the prisoner. It had jurisdiction to hear and to decide upon the defenses offered by him. The matter now presented was one of those defenses. Whether is was a sufficient defense was a matter of law on which that court must pass so far as it was purely a question of law, and on which the jury under the instructions of the court must pass if we can suppose any of the facts were such as required submission to the jury.

> "If the question had been one of former acquittal—a much stronger case than this—the court would have had jurisdiction to decide upon the record whether there had been a former acquittal for the same offense, and if the identity of the offense were in dispute, it might be necessary on such a plea to submit that question to the jury on the issue raised by the plea.
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> "The same principle would apply to a plea of a former conviction. Clearly in these cases the court not only has jurisdiction to try and decide the question raised, but it is its imperative duty to do so. If the court makes a mistake on such trial it is error which may be corrected by the usual modes of correcting such errors, but that the court had jurisdiction to decide upon the matter raised by the plea both as matter of law and of fact can not be doubted.
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> "This Article V of the Amendments, and Articles VI and VII, contain other provisions concerning trials in the courts of the United States designed as safeguards to the rights of parties. Do all of these go to the jurisdiction of the courts? And are all judgments void where they have been disregarded in the progress of the trial? Is a judgment of conviction void when a deposition has been read against a person on trial for crime because he was not confronted with the witness, or because the indictment did not inform him with sufficient clearness of the nature and cause of the accusation?
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> "It may be confessed that it is not always very easy to determine what matters go to the jurisdiction of a court so as to make its action when erroneous a nullity. But the general rule is that when the court has jurisdiction by law of the offense charged, and of the party who is so charged, its judgments are not nullities."

In the case at bar the Court of First Instance acquired jurisdiction of the subject-matter and of the person of the defendant by his appeal from the judgment of the court of the justice of the peace. The

question of the right of the fiscal to present an additional or amended complaint was presented to that court for decision. It had jurisdiction to decide it, and the fact that in that decision he may have committed error does not make the judgment absolutely void. In all the cases cited by the petitioner which we have had an opportunity to examine, it appears that the case reached the Supreme Court by appeal. In no one of them was the question raised by means of a writ of *habeas corpus*. It is alleged in the petition, apparently as a ground for relief, that the defendant has no right to appeal from that erroneous judgment. The fact that there is an appeal from a judgment is sometimes a reason for denying a writ of *habeas corpus*. (Collins *vs*. Wolfe,[1] 3 Off. Gaz., 401.) But the fact that there is no appeal is never a ground for granting relief under the writ.

We think, also, that the fiscal was authorized, under the law, to present the new complaint, and that the court committed no error in allowing it to be filed, inasmuch as it related to the same criminal act for which the petitioner was tried by the justice of the peace.

General Orders, No. 58, section 54, is as follows:

> "All cases appealed from a justice's court shall be tried in all respects anew in the court to which the same are appealed; but on the hearing of such appeals it shall not be necessary, unless the appeal shall involve the constitutionality or legality of a statute, that written record of the proceedings be kept, but shall be sufficient if the appellate court keeps a docket of the proceedings in the form prescribed in the next preceding section."

It has been held in the United States that an indictment can not be amended by the court. It has also been held, as appears from some cases cited by the petitioner, that in some States where the law requires a particular person to present a complaint before the justice of the peace, such complaint can not afterwards be amended in the superior court, but those authorities have no application to this case. Here, under the law, anyone can file a complaint before a justice of the peace. The complaint in this case before the justice of the peace could

have been presented by the provincial fiscal.

The relief asked for by the petitioner is denied, and he is remanded to the warden of Bilibid Prison, with costs. So ordered.

Arellano, C. J., Torres, Mapa, and *Carson, JJ.,* concur.

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[1] 4 Phil. Rep., 534

DISSENTING

JOHNSON, J.,:

I can not agree with the doctrine that the fiscal can file a new complaint in the Court of First Instance in an appeal by the defendant in a criminal cause from the sentence of a justice of the peace. This court has decided in the case of the United States *vs*. Sarabia[1] that no objection can be raised by the defendant to the sufficiency of a complaint with he did not raise in the first instance. If the defendant can not present objections to the sufficiency of the complaint on appeal, I am at a loss to understand why this privilege should be accorded to the fiscal. In this case a new complaint was filed. It did not pretend to be an amended complaint. To allow the fiscal to file a new complaint in a criminal cause appealed from the court of a justice of the peace is a dangerous practice and should not be allowed. To permit this would be to create the possibility of placing the defendant upon trial for a different offense than that for which he was tried in the court below. When the defendant appeals he thereby asserts that the sentence of the inferior court is wrong with reference to the issue presented in the lower court. The fiscal should not be permitted to present a new or a different issue in the appellate court. The provisions of General Orders, No. 58, with reference to a trial *de novo* in a criminal cause on appeal, simply mean that the parties have the right to present their proofs *de novo* upon the

issue presented in the court below.

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[1] 4 Phil. Rep., 566.

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