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[G.R. No. 1251. March 27, 1903]

FRANK MEKIN, PETITIONER AND APPELLEE, VS. GEORGE N. WOLFE, WARDEN OF BILIBID PRISON, RESPONDENT AND APPELLANT.

D E C I S I O N

COOPER, J.:

On the 11th day of February, 1903, application was made by Frank Mekin to the Hon. B. S. Ambler, judge of the Court of First Instance, for a writ of *habeas corpus* against George N. Wolfe, Warden of Bilibid Prison, for the illegal imprisonment, detention, and confinement of petitioner by the respondent as warden of said prison, and setting forth in substance the following facts:

That petitioner was a member of the Thirty-seventh Infantry, United States Volunteers, up to the date of his discharge, which occurred on the—day of February, 1901; that after his discharge, to wit, the 13th day of July, 1901, the petitioner was tried by a military commission composed of officers of the United States Regular Army on the charge of entering the service of the enemy in violation of the laws of war and was found guilty and sentenced by said military commission to twenty years of hard labor in the Presidio of Manila, where he is at present confined. That the military commission acted without jurisdiction in so trying and sentencing the petitioner for the reason that it had neither jurisdiction of the person of the petitioner nor jurisdiction of the crime for which he was tried and sentenced; that at the time of the trial the petitioner was a civilian, and is therefore entitled to the benefit of the amnesty proclamation issued by the President of the United States on the 4th day of July, 1902.

The writ of *habeas corpus* was issued and was served upon the respondent, George N. Wolfe, who made return: That he, as Warden of Bilibid, held said Frank Mekin imprisoned under authority of the United States of America through the lawful orders of the commanding general, Division of the Philippines, issued by virtue of a lawful sentence of a

duly convened military commission, for an offense in violation of the laws of war and against the United States of America, which conviction and sentence was duly approved by the convening authority on September 23, 1901, and which sentence was lawfully commuted to imprisonment at hard labor for the term of twenty years by the said commanding general of the Division of the Philippines, the record of which conviction and sentence and the approval thereof and of the said commuted sentence and order of confinement—in the Presidio of Manila—was set forth in General Orders, No. 362, dated headquarters Division of the Philippines, Manila, P. I., November 30, 1901, copies of which said record and said order were attached to the return, and the respondent also attached to his return the certificate of George W. Davis, major-general, United States Army, commanding the Division of the Philippines, and made it a part of his return.

The respondent prayed for the dismissal of the writ of *habeas corpus*, assigning as a cause that the court was without jurisdiction to issue the writ of *habeas corpus* for the reason that the said Frank Mekin was held as a prisoner by virtue of the sentence of the said military commission, awarded prior to October 1, 1901, and that the issuance of said writ was in contravention of the statute of the Philippine Commission, Act No. 272, entitled “An act amending chapter 20, relating to proceedings in *habeas corpus*.”

The certificate of George W. Davis, major-general, United States Army, commanding in the Philippines, referred to in the return, is as follows:

“Headquarters Division of the Philippines, Manila, P. I., February 18, 1903. To the Hon. B. S. Ambler, judge of the Court of First Instance, Manila, P. I. Sir: I hereby certify that Frank Mekin is held by me as commanding general, Division of the Philippines, in the Presidio of Manila, and at the expense of the United States, by virtue of a sentence of a military commission, published in General Orders, No. 362, dated headquarters Division of the Philippines, Manila, P. I., November 20, 1901 (a copy of which order is herewith submitted), as a prisoner duly sentenced prior to October 1, 1901, by said commission and duly approved by the reviewing authority prior to said date, and which said sentence was duly commuted by the commanding general, Division of the Philippines, which commutation was duly published in said order, and that the said Frank Mekin is a prisoner who was arrested and held for trial before October 15, 1901, for a violation of the laws of war committed before that date, and is now held by George N. Wolfe, as Warden of Bilibid Prison, as my agent. Very respectfully, (signed) Geo. W. Davis, General, United States Army, commanding.”

On February 18, 1903, a hearing of the habeas corpus proceedings was held, the Government being represented by the Prosecuting Attorney and by the Judge-Advocate-General, Division of the Philippines, and on the 9th day of March, 1903, the judge of the Court of First Instance rendered his decision, in which it was determined that the approval and commutation of the sentence under which the prisoner is now serving was promulgated on the 20th day of November, 1901; that the trial before the military commission not being disclosed by the evidence, the sentence of the military commission had no other effect than to hold the prisoner awaiting the approval of the commanding general; that the commanding general having seen fit to commute the sentence to twenty years' imprisonment the conviction or sentence under which the petitioner is serving must be regarded as of date November 20, 1901, and that the case does not come under the provisions of Act No. 272 of the Philippine Commission.

After reviewing the questions as to the jurisdiction of the military commission, and apparently reaching the conclusion that the military commission had no jurisdiction to try the petitioner, the judge found that the petitioner came within the general amnesty proclamation and was entitled to its benefits, and directed that he be discharged from custody upon his taking and subscribing the oath of allegiance provided for in the amnesty proclamation.

An appeal was taken by the Government from this decision.

Subsequent to the date of the filing of the application for *habeas corpus* but prior to the date of the trial and of the judgment in the case, the Philippine Commission promulgated Act No. 654, dated March 4, 1903, by the provisions of which an appeal in *habeas corpus* proceedings may be taken from the judgment of the Court of First Instance to this court, the decision of this court having previously been that no appeal would lie in such a case in the absence of a statute authorizing it.

It is contended by counsel for this petitioner that Act No. 654 is in the nature of an *ex post facto* law, and having been enacted subsequent to petitioner's right to the writ of habeas corpus this appeal should not be entertained. This contention is unsupported by either precedent or principle. It is difficult to conceive any reason for such a conclusion.

An *ex post facto* law has been defined as one—

(a) Which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or

- (b) Which aggravates a crime or makes it greater than it was when committed; or
- (c) Which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or
- (d) Which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant. (Black, Constitutional Law, 595.)

The case clearly does not come within this definition, nor can it. be seen in what way the act in question alters the situation of petitioner to his disadvantage. It gives him, as well as the Government, the benefit of the appeal, and is intended as furnishing the means for the correction of errors. The possibility that the judge of the Court of First Instance may commit error in his favor and wrongfully discharge him appears to be the only foundation for the claim.

A person can have no vested right in such a possibility.

It would be a sufficient answer to the contention of the petitioner that Act No. 654, allowing an appeal, relates to a *habeas corpus* proceeding. This character of proceeding is entirely distinct from the criminal proceedings under which the prisoner has been tried and convicted. It is a new suit brought by petitioner to enforce a civil right which he claims as against those who are holding him in custody under tin; criminal process. The proceeding is one instituted by himself for his liberty and not by the Government to punish him for his crime. (*Ex parte Tom Tong*, 108 U.S.556.)

It is distinctly a civil proceeding, and as such is provided for and regulated in the Code of Civil Procedure.

The doctrine of *ex post facto* laws refers only to the criminal law.

This case must be determined under the provisions of Act No. 272, "An act amending chapter 26, relating to proceedings of *habeas corpus*, enacted by the Philippine Commission on the 21st day of October, 1901. The history of the legislation embodied in this act is too recent to require a review of the circumstances and conditions under which it was enacted. Its purpose was to prevent a conflict of jurisdiction between the civil and military branches of the Government. By the provisions of this act, when *habeas corpus* directed against a military officer or soldier that the prisoner is held by him either—

- (1) As a prisoner of war; or
- (2) As a member of the Army, a civil employee thereof, or a camp follower subject to its, discipline; or
- (3) As a prisoner committed by a military court or commission prior to October 1, 1901; or
- (4) As a prisoner arrested and held for trial before a military court or commission, before October 15, 1901, for a violation of the laws of war committed before the same date; or
- (5) As a person guilty of the violation of the laws of war committed in certain unpacified provinces and territories named—

such certificate shall be a conclusive answer to a writ of *habeas corpus* against a military officer or soldier, and a sufficient excuse for not producing the prisoner.

It is not disputed that the respondent holds the petitioner by and through the orders of the commanding general, Division of the Philippines, and that he is in the custody of the United States Government through the respondent, the Warden of Bilibid, as the agent and representative of the military, such agency appears in the certificate of the commanding general and also in the return of the respondent.

It is equally clear that the certificate of General Davis of date the 18th day of February, 1903, is in compliance with Act No. 272, from which it appears distinctly that the petitioner is a prisoner committed by a military commission prior to October 1, 1901; and further that he is a prisoner arrested and held for trial before October 15, 1901, for a violation of the laws of war committed before the same date.

We think the certificate of the commanding general is in strict compliance with the provisions of the law, and was a conclusive return to the writ of *habeas corpus*.

The power of the court to either, issue the writ or discharge the prisoner is ended when such return has been made and the proceedings must there end.

While the power conceded to the commanding general is of vital importance and an abuse of it would be attended with great evil, still, the high position of those to whom it has been confided was doubtless believed to be a sufficient guaranty that it would not be exercised except after careful investigation and with a due appreciation of the delicate nature of the power reposed in the commanding general by the legislative authority.

In view of the disposition which the law requires us to make of the case it is unnecessary to discuss other interesting questions raised by counsel for the petitioner.

The order and decision of the judge of the Court of First Instance of Manila ordering that the prisoner be discharged from custody of the respondent must be reversed, the proceedings dismissed, and the prisoner remanded to the custody of the respondent. It is so ordered and directed. Costs of proceedings will be adjudged against the petitioner.

Torres, Willard, Mapa, and Ladd, JJ., concur.

Arellano, C. J., did not sit in this case.
