

RECENT CASES:

Criminal Law—Violation of Conditional Pardon Under Section 64(i) of the Revised Administrative Code and Article 159 of the Revised Penal Code.—Fidel Ariston after having been convicted for frustrated murder and serving 2 years, 3 months, and 1 day of his sentence of 1 year and 8 months of *prision correccional* to 7 years of *prision mayor*, was granted a conditional pardon on condition he did not again violate the penal laws of the Philippines. Subsequently he was convicted of estafa and recommitted to prison to serve the unexpired portion of his sentence by order of the President of the Philippines under section 64 (i) of the Revised Administrative Code for violation of conditional pardon. This is a petition for issuance of a writ of habeas corpus on the ground that violation of a conditional pardon having been made a crime and penalized by article 159 of the Revised Penal Code, the person in whose behalf the petition is filed cannot be recommitted to serve the unexpired portion of his sentence except upon conviction thereunder.

The Supreme Court in denying the petition held that article 159 of the Revised Penal Code which penalizes violation of conditional pardon and the power vested in the President by section 64 (i) of the Revised Administrative Code to authorize the recommitment of a violator of a conditional pardon to serve the unexpired portion of his sentence can stand together and proceedings under one provision do not necessarily preclude action under the other. *Sales v. Director of Prisons*, G.R. No. L-3972, October 13, 1950.

The first law providing for the enforcement of the condition of a conditional pardon was Act No. 1524, which provided that when the provincial fiscal or the prosecuting attorney of the City of Manila as the case may be, ascertained that any of the conditions of a conditional pardon had been violated, he shall apply to the Court of First Instance for an order for the arrest of such person and if upon investigation, the Court of First Instance finds that one or more of the conditions of the pardon have been violated, it shall order the recommitment of the person pardoned to serve the unexpired portion of his sentence.¹

Subsequently the Revised Administrative Code provided that the President shall have authority to grant to convicted persons reprieves, or pardons either plenary or partial, conditional or unconditional * * * and to order the arrest and reincarceration of any such persons who in his judgment shall fail to comply with the condition or conditions of his pardon, parole or suspension of sentence.²

A pardon is an act of grace proceeding from the power entrusted with the execution of the law, which exempts the individual on whom

¹ Sections 3 and 4. The Act was approved on August 9, 1906.

² Section 64(i) of the Revised Administrative Code.

it is bestowed from punishment which the law inflicts for a crime which he has committed,³ with the object of reform as well as of punishment.⁴ The power to grant pardon allows the imposition of conditions of any kind provided they are not illegal, immoral or impossible.⁵ Blackstone comments that in a conditional pardon, the King may extend his bounty upon whatever terms he pleases and may annex to the same a condition either subsequent or precedent on the performance of which the validity of the pardon depends.⁶ It is an act of grace subject to withdrawal if the clemency is abused.⁷ If the condition precedent is violated, such breach annuls the pardon.⁸ Such revocation by the grantor is a necessary consequence and the legal status of the convict reverts to that which he had before the pardon was granted so it follows that he may be remanded to suffer his original sentence⁹ and start serving it from the portion where he left off on the grant of conditional pardon.¹⁰ These principles are submitted to be the basis of section 64(i) of the Revised Administrative Code. The remedy of the State in case of violation of conditional pardon under such law is administrative in character and is exercised by the Chief Executive. It is speedier than the judicial proceedings under the Revised Penal Code as it entails no prolonged hearings. If the Chief Executive is satisfied after his investigation that the condition of the pardon has been violated he has authority under section 64(i) to order the arrest and reincarceration of the culprit to serve the unexpired portion of his original penalty.¹¹

The Revised Penal Code approved on December 8, 1930, while recognizing in article 159 the pardoning power of the President, made the violation of the condition of such pardon an offense and attached a different penalty therefor. It provides that the penalty of *prision correccional* minimum shall be imposed upon the convict who violates the conditions of a conditional pardon granted by the Chief Executive but if the penalty remitted by the granting of such pardon be heavier than 6 years, the convict shall then suffer the unexpired portion of his original sentence.¹² Under this article, the State's remedy in case of a violation of a conditional pardon is judicial in character and is exercised by the prosecution of the convict under such article¹³ in the proper court. Thereunder, the violation of a conditional pardon is a substantive and independent offense. It is independent in the sense that it is separate and distinct from the

³ U. S. v. Wilson, 32 U. S. 7 Peters 150, 87 L. ed. 640.

⁴ State v. Peters, 43 Ohio St. 629.

⁵ Fuller v. State, 45 L.R.A. 502; O'Connor v. Wolfer, 19 L.R.A. 783, III Pac. 527; Arthur v. Craig, 30 Am. Rep. 395; People v. Tapel, 64 Phil. 112.

⁶ Blackstone's Commentaries, page 401.

⁷ In re Conlon, 138 N.W. 1044; Arthur v. Craig, 30 Am. Rep. 395.

⁸ Flavell's Case, 8 Wall & S. 197; People v. Peter Pack Cr. Rep. 47.

⁹ State v. Smith Bailey 283; State v. Addington, 2 Bailey, L 516.

¹⁰ Kapunan, *Revised Penal Code Annotated*, Vol. I (1949), page 460.

¹¹ People v. Aglahi, G.R. No. L-43818, March 25, 1935.

¹² Article 159, Revised Penal Code.

¹³ People v. Aglahi, *supra*.

offense for which the pardon was granted; it consists of the commission of the acts subsequent to the pardon granted, which are prohibited by the latter. Prosecution thereunder is not a continuation of the former case.¹⁴ The strong dissenting opinion of Justice Ozaeta in *People v. Jose*,¹⁵ stated that after the enactment of article 159 of the Revised Penal Code, violation of a conditional pardon became a new offense, punishable with the penalty of *prision correccional* minimum if the unserved portion of the sentence does not exceed 6 years. It is thus a substantive offense separate from that for which the pardon was granted.

The present case of *Sales v. Director of Prisons* is one of first impression in holding that not only can the State choose between the two remedies under section 64(i) and article 159 but that proceedings taken under one is not a bar to proceedings under the other because the two provisions can stand together and are not incompatible.

The majority, thru Justice Ozaeta, opines that the only question to determine is whether section 64(i) of the Revised Administrative Code has been repealed by article 159 of the Revised Penal Code. He answered the question in the negative for the reason that the repealing clause of the Revised Penal Code repealed among others, sections 102, 2670, and 2671 of the Revised Administrative Code without mentioning section 64(i). On the contrary, Act No. 4103, the Indeterminate Sentence Law, passed subsequent to the Revised Penal Code, expressly preserves the authority conferred on the President by section 64(i) of the Revised Administrative Code.¹⁶

The court disposed of the contention of the petitioner that the power vested in the President by section 64(i) to authorize the arrest and reincarceration of a violator of a conditional pardon is repugnant to the due process clause of the Constitution¹⁷ by citing the case of *Fuller v. Alabama*¹⁸ and other cases¹⁹ where a similar contention advanced was rejected by the Supreme Court of the state in the following words:

“The position of the petitioner takes no account of the fact that the person being dealt with is a convict, that he has been seized in a constitutional way, been confronted with his accusers, the witnesses against him been tried and

¹⁴ *People v. Martin*, 40 O.G. I Supp. No. 3, page 191.

¹⁵ 42 O.G. No. 4, page 697.

¹⁶ Act 4103, section 9: “Nothing in this Act shall be construed to impair or interfere with the powers of the Governor General as set forth in section 64(i) of the Revised Administrative Code.”

¹⁷ Article III, section 1 of the Constitution: “No person shall be deprived of life, liberty or property without due process of law * * *”

¹⁸ 45 L.R.A. 502.

¹⁹ *Kennedy's Case*, 135 Mass. 48; *Conlon's Case* 148 Mass. 168; *Arthur v. Craig*, 48 Iowa 264; 30 Am. Rep. 395; *O'Connor v. Wolfer*, 53 Minn. 135; *People v. Dudley*, 173 Mich. 389.

convicted as provided by the Constitution and sentenced to punishment therefor. He is a felon at large by the mere grace of the executive and not entitled to be at large after he has breached the condition upon which that grace was extended to him * * * The executive clemency under the statute is extended upon the conditions named in it and he accepted under those conditions. One of them is that the governor may withdraw his grace in a certain contingency and another is that the governor shall himself determine when that contingency has arisen and so an executive order for his arrest and recommitment issuing after such a determination is conclusive upon him. Only if a wrong man be taken, should he be entitled to enlargement by habeas corpus * * *"

Justices Paras and Feria dissented on the following grounds: Justice Paras enumerates as an objectionable feature, the circumstance that a hearing under the Revised Administrative Code is not necessary while the Revised Penal Code requires one. Justice Feria on the same ground observes the incompatibility of the respective sections of the Revised Penal Code and the Revised Administrative Code and adds that such hearing or investigation of facts as required by the Revised Penal Code is necessary as part of due process of law. If the condition of a conditional pardon violated is that the defendant shall not violate any of the penal laws of the Philippines as in the present case, a certified copy of the final judgment of the defendant's conviction would be generally sufficient without any further investigation to show that the defendant has violated his conditional pardon, but if the condition is that the prisoner shall not be guilty of any misconduct as in *U. S. v. Ignacio*,²⁰ or any infraction of the laws punishable with a certain penalty as in *U. S. v. Villalon*,²¹ or in other proper cases, it would be necessary to make an investigation of the facts before the conditional pardon may be revoked. Besides, under section 64(i), the President's determination that the prisoner has violated his conditional pardon, is conclusive upon the latter and the courts have no jurisdiction or power to interfere with the action of the President in the exercise of his authority, while under article 159 of the Revised Penal Code, the defendant may appeal from a judgment of conviction and be acquitted by a court of last resort.

The second ground of incompatibility between the two codes in question according to Justice Paras, is that to hold otherwise would lead to cases where the Chief Executive may exercise his power under section 64(i) of the Revised Administrative Code either to prejudice or favor the prisoner. If the unexpired portion of the sentence is only two months for instance, the violator may be recommitted under section 64(i) to favor him because under article 159, his penalty would be *prision correccional* minimum or 6 months and 1 day to 2 years and 4 months. For the same reason, if the unexpired term is 5 years for instance, he may be recommitted under section

²⁰ 33 Phil. 203.

²¹ 37 Phil. 327.

64(i) to prejudice him. Common sense would show also, according to Justice Feria, that the prosecution would not choose to prosecute a defendant under section 159 if he can be summarily recommitted under section 64(i) by order of the President. It is submitted that it would be but natural for them to follow the path of least resistance.

Justice Paras also relies on the failure of the Constitutional Convention to adopt the recommendations of the Committee on Executive Power to include a provision empowering the President "to authorize the arrest and reincarceration of such person who in his judgment failed to comply with the condition of his pardon, parole or suspension of sentence," providing only that the "President shall have power to grant reprieves, commutations and pardons and remit fines and forfeitures after conviction for all offenses except impeachment * * *"²²

Justice Paras stated that the question whether the President can still, under section 64(i), order the recommitment of a convict violating any condition of his pardon, should be answered in the negative. Granting that even after the Revised Administrative Code had taken effect, the procedure in Act 1524 might concurrently be followed with that under section 64(i), the same is not true, however, after the passage of the Revised Penal Code which makes the violation of a conditional pardon a crime punishable by a specific penalty, *prision correccional* minimum or imprisonment for the unexpired portion of his original sentence if the unexpired penalty be higher than 6 years. This, together with article 367 of the Revised Penal Code²³ shows that section 64(i) of the Revised Administrative Code has been repealed by article 159. Justice Feria relies on the same article 367 of the Revised Penal Code for the view that granting the Revised Administrative Code had repealed Act No. 1524, by incorporating its provisions in section 64(i) as contended by the majority opinion, the latter law in so far as it related to the enforcement of the conditions made by the Chief Executive in the exercise of his discretion in granting the conditional pardon is repealed by article 159 as contrary to the latter law.

Attention is called to the ludicrous situation which will result in the event that both these two incompatible remedies, one judicial and the other administrative, are availed of by the State.

Under the majority opinion penned by Justice Ozaeta, where a convict granted a conditional pardon violates the condition or conditions thereof, he may be prosecuted and convicted under article 159 for violation of conditional pardon and if the unexpired portion of his sentence exceeds 6 years, be recommitted to serve the unexpired portion of his sentence. Subsequently, the President under section 64(i) may order his arrest and recommitment summarily also to serve the unexpired portion of his sentence. This will be absurd as he cannot be made to serve the same sentence of imprisonment twice.

²² Article VII, section 10, par. 6 of the Constitution; Aruego, *Framing of the Constitution*, Vol. II, page 435.

²³ Art. 367, par. 3, Revised Penal Code: "All laws and parts of laws which are contrary to the provisions of this Code are hereby repealed."

If the unexpired portion of his sentence exceeds 6 years, he may be recommitted to serve *prision correccional* minimum under the judicial proceeding and also the unexpired portion of his sentence under the administrative proceeding, which will also be absurd. The penalty imposed under the Revised Penal Code will be for violation of conditional pardon as a separate and independent offense. The penalty imposed under the Revised Administrative Code will be for violation of pardon as a continuation of the old offense for which the pardon had been granted. The effect will be to penalize the defendant twice.

It is submitted that the majority opinion is untenable and productive of unjust consequences which could not have been the intention of the legislators.

It is therefore submitted that section 64(i) of the Revised Administrative Code has been repealed by article 159 of the Revised Penal Code.

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The PHILIPPINE LAW JOURNAL will be published quarterly starting with this issue of March, 1951, Vol. 26.

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