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Deputy Division Clerk of Court
Third Division



APR 26 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

IN THE MATTER OF THE G.R. No. 223272
PETITION FOR HABEAS
CORPUS,

Present:

SSGT. EDGARDO L. OSORIO,
Petitioner,

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

-versus-

ASSISTANT STATE PROSECUTOR
JUAN PEDRO C. NAVERA;
ASSISTANT STATE PROSECUTOR
IRWIN A. MARAYA; ASSOCIATE
PROSECUTION ATTORNEY
ETHEL RHEA G. SURIL OF THE
DEPARTMENT OF JUSTICE,
MANILA; COLONEL ROBERT M.
AREVALO, COMMANDER,
HEADQUARTERS AND
HEADQUARTERS SUPPORT
GROUP PHILIPPINE ARMY;
COLONEL ROSALIO G. POMPA,
INF (GSC), PA, COMMANDING
OFFICER, MP BATTALION,
HHSG, PA; and CAPTAIN
TELESFORO C. BALASABAS, INF
PA, and/or any and all persons who
may have actual custody over the
person of SSgt. Edgardo L. Osorio,

Respondents.

Promulgated:
February 26, 2018

Mis-DC Batt

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RESOLUTION**LEONEN, J.:**

Kidnapping should never be part of the functions of a soldier. It cannot be done in a soldier's official capacity. If a soldier nonetheless proceeds allegedly on the orders of a superior officer, the soldier shall be tried before the civil courts. The remedy of habeas corpus, on the argument that only courts-martial have jurisdiction over members of the Armed Forces, will not lie.

This resolves the Petition¹ for Review on Certiorari assailing the Resolutions of the Court of Appeals in CA-G.R. SP No. 141332 dated July 27, 2015² and February 22, 2016.³ The Court of Appeals found that custody over Staff Sergeant Edgardo L. Osorio (SSgt. Osorio) was by virtue of a valid judicial process; thus, it denied SSgt. Osorio's Petition for Issuance of a Writ of Habeas Corpus.⁴

Together with his superior officer, Major General Jovito Palparan (Major General Palparan),⁵ SSgt. Osorio was charged in two (2) Informations before Branch 14, Regional Trial Court, Malolos City for allegedly kidnapping University of the Philippines students Karen E. Empeño (Empeño) and Sherlyn T. Cadapan (Cadapan). The accusatory portion of these Informations read:

CRIM. CASE NO. 3905-M-2011

That on or about the 26th of June 2006, in the house of one Raquel Halili at Barangay San Miguel, Hagonoy, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, acting as private individuals, conspiring, confederating and mutually aiding one another, did then and there, by taking advantage of nighttime and with the use of a motor vehicle, forcibly abduct **KAREN E. EMPEÑO**, a female person, and deprive her of liberty by detaining her against her will first at Camp Tecson, in San Miguel, Bulacan, then subsequently in other places to include the barangay hall of Sapang, San Miguel, Bulacan; the camp of the 24th Infantry Battalion of the Philippine Army in Limay, Bataan; and, a resort/safehouse in Iba, Zambales, from June 2006 to July 2007, a period

¹ *Rollo*, pp. 10–37.

² *Id.* at 38–43. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda of the Eleventh Division, Court of Appeals, Manila.

³ *Id.* at 44–46. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda of the Eleventh Division, Court of Appeals, Manila.

⁴ *Id.* at 43 and 45.

⁵ *Id.* at 97 and 101. SSgt. Osorio's other co-accused were Lieutenant Colonel Felipe Anotado, Jr. and Master Sergeant Rizal C. Hilario.

of more than three (3) days, resulting in the said female victim's continuing disappearance, to the damage and prejudice of **KAREN E. EMPEÑO** and her heirs.

CONTRARY TO LAW.⁶ (Emphasis in the original)

CRIM. CASE NO. 3906-M-2011

That on or about the 26th of June 2006, in the house of one Raquel Halili at Barangay San Miguel, Hagonoy, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, acting as private individuals, conspiring, confederating and mutually aiding one another, did then and there, by taking advantage of nighttime and with the use of a motor vehicle, forcibly abduct **SHERLYN T. CADAPAN**, a female person, and deprive her of liberty by detaining her against her will first at Camp Tecson, in San Miguel, Bulacan, then subsequently in other places to include the barangay hall of Sapang, San Miguel, Bulacan; the camp of the 24th Infantry Battalion of the Philippine Army in Limay, Bataan; and, a resort/safehouse in Iba, Zambales, from June 2006 to July 2007, a period of more than three (3) days, resulting in the said female victim's continuing disappearance, to the damage and prejudice of **SHERLYN T. CADAPAN** and her heirs.

CONTRARY TO LAW.⁷ (Emphasis in the original)

Warrants of arrest were issued against SSgt. Osorio on December 19, 2011.⁸

The next day, at about 3:00 p.m., SSgt. Osorio was arrested by Colonel Herbert Yambing, the Provost Marshall General of the Armed Forces of the Philippines. SSgt. Osorio was turned over to the Criminal Investigation and Detection Unit Group in Camp Crame, Quezon City and was detained in Bulacan Provincial Jail. He was later transferred to the Philippine Army Custodial Center in Fort Bonifacio, Taguig City where he is currently detained.⁹

Contending that he was being illegally deprived of his liberty, SSgt. Osorio filed a Petition¹⁰ for Habeas Corpus before the Court of Appeals on July 21, 2015. Impleaded as respondents were Presiding Judge Teodora Gonzales of Branch 14, Regional Trial Court, Malolos City, Bulacan, the judge who issued the warrants of arrest; Assistant State Prosecutors Juan Pedro Navera and Irwin A. Maraya, and Associate Prosecution Attorney Ethel Rhea G. Suril, who filed the Informations for kidnapping and illegal

⁶ Id. at 98.

⁷ Id. at 102.

⁸ Id. at 47-48.

⁹ Id. at 12, as admitted in the Petition for Review on Certiorari.

¹⁰ Id. at 49-74.

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detention; and Colonel Robert M. Arevalo, Colonel Rosalio G. Pompa, and Captain Telesforo C. Balasabas, SSgt. Osorio's superiors.¹¹

SSgt. Osorio mainly argued that courts-martial, not a civil court such as the Regional Trial Court, had jurisdiction to try the criminal case considering that he was a soldier on active duty and that the offense charged was allegedly "service-connected." In the alternative, SSgt. Osorio argued that the Ombudsman had jurisdiction to conduct preliminary investigation and the Sandiganbayan had jurisdiction to try the case because among his co-accused was Major General Palparan, a public officer with salary grade higher than 28.¹²

SSgt. Osorio added that he could not be charged with the felony of kidnapping and serious illegal detention because under Article 267 of the Revised Penal Code,¹³ the felony may only be committed by a private individual, not a ranking officer of the Armed Forces of the Philippines.¹⁴ Lastly, he claimed deprivation of due process because he was allegedly charged without undergoing proper preliminary investigation.¹⁵

The Court of Appeals held that SSgt. Osorio's confinement was "by virtue of a valid judgment or a judicial process[.]"¹⁶ Under Republic Act No. 7055, Section 1, a crime penalized under the Revised Penal Code, even if committed by a member of the Armed Forces of the Philippines, is to be tried "by the proper civil court." The only exception to this rule is when the crime is "service-connected," i.e., those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War,¹⁷ in which case, the courts-martial have jurisdiction. Since the crime of kidnapping and serious illegal detention is punished under the Revised Penal Code and is not "service-connected," the Regional Trial Court of Malolos City properly took

¹¹ Id. at 49.

¹² Id. at 55-60.

¹³ REV. PEN. CODE, art. 267 provides:

Art. 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

¹⁴ *Rollo*, pp. 53-54.

¹⁵ Id. at 65-66.

¹⁶ Id. at 41.

¹⁷ Comm. Act No. 408.

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cognizance of the case and, consequently, the warrants of arrest against SSgt. Osorio were issued under a valid judicial process.

As to SSgt. Osorio's other arguments, the Court of Appeals said that they "should be resolved through other appropriate remedies such as a motion to quash." According to the Court of Appeals, habeas corpus is not a "writ of error," and questions relating to procedure or merits of the case cannot be addressed in habeas corpus proceedings.¹⁸

In its July 27, 2015 Resolution,¹⁹ the Court of Appeals denied SSgt. Osorio's Petition for Habeas Corpus. SSgt. Osorio's Motion for Reconsideration was likewise denied in the Court of Appeals February 22, 2016 Resolution.²⁰

On April 20, 2016, SSgt. Osorio filed his Petition for Review on Certiorari.²¹ Upon the directive of this Court, respondents, through the Office of the Solicitor General, filed their Comment²² on the Petition.

SSgt. Osorio maintains that he is being illegally deprived of his liberty because he was charged with an "inexistent offense." He argues that kidnapping and serious illegal detention can only be committed by a private person, not by a member of the Armed Forces of the Philippines.²³

Given that he is a soldier on active duty, SSgt. Osorio adds that only courts-martial have jurisdiction to hear, try, and decide a criminal case against him. In the alternative, SSgt. Osorio argues that the Ombudsman and Sandiganbayan, not the Department of Justice or the Regional Trial Court, have jurisdiction to conduct preliminary investigation and to hear, try, and decide the criminal case because one of his co-accused, Major General Palparan, was an officer in the Philippine Army with a rank higher than colonel and with a salary grade of 28.²⁴

Lastly, SSgt. Osorio claims that he was deprived of his right to due process of law because no preliminary investigation was allegedly conducted in this case.²⁵

¹⁸ *Rollo*, p. 43.

¹⁹ *Id.* at 38-43.

²⁰ *Id.* at 44-46.

²¹ *Id.* at 10-37.

²² *Id.* at 145-173.

²³ *Id.* at 14-17.

²⁴ *Id.* at 17-25.

²⁵ *Id.* at 27-28.

Respondents counter that a public officer such as SSgt. Osorio may be charged under Article 267 of the Revised Penal Code on kidnapping and serious illegal detention. A public officer detaining a person without authority is acting in a private, not official, capacity. Since kidnapping is not part of the duties of an officer of the Armed Forces of the Philippines, respondents argue that SSgt. Osorio acted in a private capacity when he took part in illegally detaining Empeño and Cadapan.²⁶

On the issue of jurisdiction, respondents argue that the Regional Trial Court properly took cognizance of the case. Under Republic Act No. 7055, Section 1, members of the Armed Forces of the Philippines charged with crimes or offenses punished under the Revised Penal Code “shall be tried by the proper civil court.” The only exception is when the crime is “service-connected,” in which case, courts-martial assume jurisdiction. Considering that kidnapping is not a “service-connected” offense, SSgt. Osorio was properly charged before a civil court.²⁷

Lastly, respondents argue that no writ of habeas corpus should be issued in this case. Respondents contend that habeas corpus “does not extend beyond an inquiry into the jurisdiction of the court by which it was issued and the validity of the process upon its face.”²⁸ Habeas corpus, being an extraordinary remedy, “will not issue where the person alleged to be restrained of his [or her] liberty is in custody of an officer under a process issued by the court which has jurisdiction to do so.”²⁹

The principal issue for this Court’s resolution is whether or not a writ of habeas corpus is petitioner SSgt. Edgardo L. Osorio’s proper remedy. Subsumed in the resolution of this issue are the following: first, whether or not a civil court may take cognizance of a criminal case against a soldier on active duty; and, second, whether or not a public officer may be charged with kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, considering that the provision speaks of “any private individual.”

This Petition must be denied.

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Rule 102, Section 1 of the Rules of Court provides:

²⁶ Id. at 148–153.

²⁷ Id. at 153–166.

²⁸ Id. at 167.

²⁹ Id.

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Section 1. *To what habeas corpus extends.* — Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

The “great writ of liberty”³⁰ of habeas corpus “was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.”³¹ Habeas corpus is an extraordinary,³² summary,³³ and equitable writ, consistent with the law’s “zealous regard for personal liberty.”³⁴ Its primary purpose “is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.”³⁵

The restraint of liberty need not be confined to any offense so as to entitle a person to the writ. Habeas corpus may be availed of as a post-conviction remedy³⁶ or when there is an alleged violation of the liberty of abode.³⁷

In *In re: Salibo v. Warden*,³⁸ this Court allowed the issuance of the writ due to mistaken identity. Instead of Butukan S. Malang, authorities arrested and detained one Datukan Malang Salibo (Salibo) for his alleged participation in the Maguindanao Massacre. Salibo, having proved that he was not the accused Butukan S. Malang named in the arrest warrant, and that he was in Mecca for the Hajj pilgrimage at the time of the incident, was ordered released. To detain a person, when he has proven that he is not the person accused of the crime, is a deprivation of liberty without due process of law.

Habeas corpus, therefore, effectively substantiates the implied autonomy of citizens constitutionally protected in the right to liberty in Article III, Section 1 of the Constitution.³⁹ With liberty being a

³⁰ *Morales, Jr. v. Enrile*, 206 Phil. 466, 495 (1983) [Per J. Concepcion, Jr., En Banc].

³¹ *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919) [Per J. Malcolm, En Banc].

³² *De Villa v. Director, New Bililbid Prisons*, 485 Phil. 368, 381 (2004) [Per J. Ynares-Santiago, En Banc]; *Calvan v. Court of Appeals*, 396 Phil. 133, 144 (2000) [Per J. Vitug, Third Division].

³³ *Mangila v. Pangilinan*, 714 Phil. 204, 209 (2013) [Per J. Bersamin, First Division], citing *Caballes v. Court of Appeals*, 492 Phil. 410, 422 (2005) [Per J. Callejo, Sr., Second Division]; *Saulo v. Brig. Gen. Cruz, etc.*, 105 Phil. 315, 320–321 (1959) [Per J. Concepcion, En Banc], citing 25 Am. Jur., p. 245.

³⁴ *Villavicencio v. Lukban*, 39 Phil. 778, 789 (1919) [Per J. Malcolm, En Banc].

³⁵ *Id.* at 790.

³⁶ See *Gumabon, et al. v. Director of the Bureau of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc], *Conde v. Rivera and Unson*, 45 Phil. 650 (1924) [Per J. Malcolm, En Banc], and *Ganaway v. Quillen*, 42 Phil. 805 (1922) [Per J. Malcolm, En Banc].

³⁷ *Villavicencio v. Lukban*, 39 Phil. 778 (1919) [Per J. Malcolm, En Banc]; *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

³⁸ 757 Phil. 630, 644–645 (2015) [Per J. Leonen, Second Division].

³⁹ CONST., art. III, sec. 1 provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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constitutional right, courts must apply a conscientious and deliberate level of scrutiny so that the substantive right to liberty will not be further curtailed in the labyrinth of other processes.⁴⁰

However, a writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court.⁴¹ The restraint then has become legal.⁴² Therefore, the remedy of habeas corpus is rendered moot and academic.⁴³ Rule 102, Section 4 of the Rules of Court provides:

Section 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

If an accused is confined under a lawful process or order of the court, the proper remedy is to pursue the orderly course of trial and exhaust the usual remedies.⁴⁴ This ordinary remedy is to file a motion to quash the information or the warrant of arrest⁴⁵ based on one or more of the grounds enumerated in Rule 117, Section 3 of the Rules of Court:

Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;

⁴⁰ See *Gumabon, et al. v. Director of the Bureau of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

⁴¹ See *In Re: Petition for Habeas Corpus of Villar v. Director Bugarin*, 224 Phil. 161, 170 (1985) [Per C.J. Makasiar, En Banc], *Celeste v. People*, 142 Phil. 308, 312 (1970) [Per J. Fernando, En Banc], *Santiago v. Director of Prisons*, 77 Phil. 927, 930–931 (1947) [Per J. Tuason, En Banc], *Quintos v. Director of Prisons*, 55 Phil. 304, 306 (1930) [Per J. Malcolm, En Banc], and *Carrington v. Peterson*, 4 Phil. 134, 138 (1905) [Per J. Johnson, En Banc].

⁴² *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per J. Melencio-Herrera, Second Division], citing *Cruz v. Gen. Montoya*, 159 Phil. 601, 604–605 (1975) [Per J. Fernando, Second Division].

⁴³ *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561, 580 (1985) [Per J. Melencio-Herrera, En Banc]; *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per J. Melencio-Herrera, Second Division], citing *Beltran v. P.C. Capt. Garcia*, 178 Phil. 590, 594 (1979) [Per Acting C.J. Fernando, En Banc].

⁴⁴ *Caballes v. Court of Appeals*, 492 Phil. 410, 422 (2005) [Per J. Callejo, Sr., Second Division].

⁴⁵ *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561, 577 (1985) [Per J. Melencio-Herrera, En Banc]; *Bernarte v. Court of Appeals*, 331 Phil. 643, 657 (1996) [Per J. Romero, Second Division].

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- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

With a motion to quash, the accused “assails the validity of a criminal complaint or information . . . for insufficiency on its face in [a] point of law, or for defects which are apparent in the face of the information.”⁴⁶ An accused filing a motion to quash “hypothetically admits the facts alleged in the information” and cannot present evidence aliunde or those extrinsic from the information.⁴⁷

The effect of the grant of the motion to quash depends on the grounds availed of. When the defect in the complaint or information can be cured by amendment, the grant of the motion to quash will result in an order directing the amendment.⁴⁸ If the ground is that the facts charged do not constitute an offense, the trial court shall give the prosecution “an opportunity to correct the defect by amendment.”⁴⁹ If, despite amendment, the complaint or information still suffers from the same defect, the complaint or information shall be quashed.⁵⁰

As an exception, the Court said in *In re: Salibo* that a motion to quash would be ineffectual because none of the grounds would have applied under the circumstances of that case. The information and warrant of arrest were issued on the premise that the accused named Butukan S. Malang and the person named Datukan Malang Salibo were the same person, a premise proven as false. An amendment from “Butukan S. Malang” to “Datukan Malang Salibo” in the information will not cure this defect.

⁴⁶ *In re Salibo v. Warden*, 757 Phil. 630, 653 (2015) [Per J. Leonen, Second Division], citing *People v. Oduhan*, G.R. No. 191566, July 17, 2013, 701 SCRA 506, 512 [Per J. Peralta, Third Division].

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ RULES OF COURT, Rule 117, sec. 4.

⁵⁰ RULES OF COURT, Rule 117, sec. 4.

II

In availing himself of habeas corpus, SSgt. Osorio mainly contends that the Regional Trial Court that issued the warrants for his arrest had no jurisdiction to take cognizance of the kidnapping case against him. SSgt. Osorio argues that courts-martial, not civil courts, have jurisdiction to try and decide a case against a soldier on active duty. In the alternative, SSgt. Osorio argues that the Ombudsman and Sandiganbayan should have conducted the preliminary investigation and decided the kidnapping case against him since his co-accused, Major General Palparan, had a rank higher than colonel and had salary grade 28 at the time of the commission of the offense.

SSgt. Osorio's claim lacks merit. The Regional Trial Court properly took cognizance of the kidnapping case against him.

Republic Act No. 7055,⁵¹ Section 1 provides that if the accused is a member of the Armed Forces of the Philippines and the crime involved is one punished under the Revised Penal Code, civil courts shall have the authority to hear, try, and decide the case, thus:

Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: *Provided*, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.

Under this Section, the only time courts-martial may assume jurisdiction is if, before arraignment, the civil court determines that the

⁵¹ Entitled "An Act Strengthening Civilian Supremacy Over the Military Returning to the Civil Courts the Jurisdiction Over Certain Offenses Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees."

offense is “service-connected.” These service-connected offenses are found in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War, to wit:

ARTICLE 54. Fraudulent Enlistment . . .

ARTICLE 55. Officer Making Unlawful Enlistment . . .

ARTICLE 56. False Muster . . .

ARTICLE 57. False Returns-Omission to Render Returns . . .

ARTICLE 58. Certain Acts to Constitute Desertion . . .

ARTICLE 59. Desertion . . .

ARTICLE 60. Advising or Aiding Another to Desert . . .

ARTICLE 61. Entertaining a Deserter . . .

ARTICLE 62. Absence Without Leave . . .

ARTICLE 63. Disrespect toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense . . .

ARTICLE 64. Disrespect Toward Superior Officer . . .

ARTICLE 65. Assaulting or Willfully Disobeying Superior Officer . . .

ARTICLE 66. Insubordinate Conduct Toward Non-Commissioned Officer . . .

ARTICLE 67. Mutiny or Sedition . . .

ARTICLE 68. Failure to Suppress Mutiny or Sedition . . .

ARTICLE 69. Quarrels; Frays; Disorders . . .

ARTICLE 70. Arrest or Confinement . . .

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ARTICLE 72. Refusal to Receive and Keep Prisoners . . .

ARTICLE 73. Report of Prisoners Received . . .

ARTICLE 74. Releasing Prisoner Without Proper Authority . . .

ARTICLE 75. Delivery of Offenders to Civil Authorities . . .

ARTICLE 76. Misbehaviour Before the Enemy . . .

ARTICLE 77. Subordinates Compelling Commander to Surrender . . .

ARTICLE 78. Improper Use of Countersign . . .



ARTICLE 79. Forcing a Safeguard . . .

ARTICLE 80. Captured Property to Be Secured for Public Service . . .

ARTICLE 81. Dealing in Captured or Abandoned Property . . .

ARTICLE 82. Relieving, Corresponding with, or Aiding the Enemy . . .

ARTICLE 83. Spies . . .

ARTICLE 84. Military Property — Willful or Negligent Loss, Damage or Wrongful Disposition . . .

ARTICLE 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers . . .

ARTICLE 86. Drunk on Duty . . .

ARTICLE 87. Misbehaviour of Sentinel . . .

ARTICLE 88. Personal Interest in Sale of Provisions . . .

ARTICLE 89. Intimidation of Persons Bringing Provisions . . .

ARTICLE 90. Good Order to be Maintained and Wrongs Redressed . . .

ARTICLE 91. Provoking Speeches or Gestures . . .

ARTICLE 92. Dueling . . .

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ARTICLE 95. Frauds Against the Government Affecting Matters and Equipments . . .

ARTICLE 96. Conduct Unbecoming an Officer and Gentleman . . .

ARTICLE 97. General Article . . .

SSgt. Osorio was charged with kidnapping, a crime punishable under Article 267 of the Revised Penal Code.⁵² Applying Republic Act No. 7055,

⁵² REV. PEN. CODE, art. 267 provides:

Article 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Section 1, the case shall be tried by a civil court, specifically by the Regional Trial Court, which has jurisdiction over the crime of kidnapping.⁵³ The processes which the trial court issued, therefore, were valid.

Contrary to SSgt. Osorio's claim, the offense he committed was not service-connected. The case filed against him is none of those enumerated under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War.

Further, kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual." The public officer becomes liable for kidnapping and serious illegal detention punishable by *reclusion perpetua*, not with arbitrary detention punished with significantly lower penalties.

The cases cited by respondents are on point. In *People v. Santiano*,⁵⁴ members of the Philippine National Police were convicted of kidnapping with murder. On appeal, they contended that they cannot be charged with kidnapping considering that they were public officers. This Court rejected the argument and said that "in abducting and taking away the victim, [the accused] did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity, that they [committed the crime]."⁵⁵ This Court, thus, affirmed the conviction of the accused in *Santiano*.

In *People v. PO1 Trestiza*,⁵⁶ members of the Philippine National Police were initially charged with kidnapping for ransom. The public prosecutor, however, filed a motion to withdraw information before the trial court and filed a new one for robbery. According to the public prosecutor, the accused cannot be charged with kidnapping because the crime may only be committed by private individuals. Moreover, the accused argued that the detention was allegedly part of a "legitimate police operation."

The trial court denied the motion to withdraw. It examined the Pre-Operation/Coordination Sheet presented by the defense and found that it was neither authenticated nor its signatories presented in court. The defense failed to show proof of a "legitimate police operation" and, based on *Santiano*, the accused were deemed to have acted in a private capacity in

⁵³ B.P. Blg. 129, sec. 20 in relation to sec. 32.

⁵⁴ 359 Phil. 928 (1998) [Per J. Vitug, First Division].

⁵⁵ Id. at 943.

⁵⁶ 676 Phil. 420 (2011) [Per J. Carpio, Second Division].

detaining the victims. This Court affirmed the conviction of the police officers for kidnapping.

It is not impossible for a public officer to be charged with and be convicted of kidnapping as *Santiano* and *Trestiza* illustrated. SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is, therefore, incorrect.

Further, since SSgt. Osorio is charged with a crime committed in a private capacity, the Sandiganbayan cannot take cognizance of the case. Under Presidential Decree No. 1606, the Sandiganbayan was created and was vested jurisdiction over crimes or offenses committed by public officers in relation to their offices.⁵⁷

All told, the arrest warrants against SSgt. Osorio were issued by the court that has jurisdiction over the offense charged. SSgt. Osorio's restraint has become legal; hence, the remedy of habeas corpus is already moot and academic.⁵⁸ SSgt. Osorio's proper remedy is to pursue the orderly course of trial and exhaust the usual remedies, the first of which would be a motion to quash, filed before arraignment, on the following grounds: the facts charged do not constitute an offense; the court trying the case has no jurisdiction over the offense charged; and the officer who filed the information had no authority to do so.⁵⁹

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Resolutions dated July 27, 2015 and February 22, 2016 of the Court of Appeals in CA-G.R. SP No. 141332 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
 Associate Justice

⁵⁷ PRESIDENTIAL DECREE NO. 1606, as amended, sec. 4(b).

⁵⁸ *See Salibo v. Warden*, 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

⁵⁹ RULES OF COURT, Rule 117, secs. 1 and 3 provide:

Section 1. *Time to move to quash*. — At any time before entering his plea, the accused may move to quash the complaint or information.

. . . .


Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;
 (b) That the court trying the case has no jurisdiction over the offense charged;

. . . .

(d) That the officer who filed the information had no authority to do so[.]

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



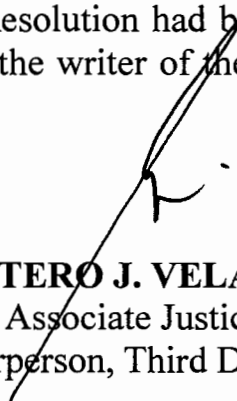
SAMUEL R. MARTIRES
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION


I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

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MISAEEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
APR 26 2018