

CHARLES NIMENIBO, Appellant, v. REPUBLIC  
OF LIBERIA, Appellee.

APPEAL FROM DENIAL OF WRIT OF HABEAS CORPUS IN THE CIRCUIT  
COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 12, 1970. Decided June 11, 1970.

1. When a convicted defendant is ordered at the time of sentencing to also make restitution of a sum of money, such order is not part of the sentence imposed for which the defendant can be kept imprisoned upon his failure to make restitution.

The appellant had served the sentence imposed upon him for grand larceny, and he sought his release from prison on a writ of habeas corpus, which the lower court denied, ruling that an order for restitution of the money involved had formed a part of the sentence given him, and his failure to make restitution continued the prison term. He appealed from the ruling. *Judgment reversed*, appellant discharged from custody.

*J. Dossen Richards* for appellant. *Department of Justice* for appellee.

MR. JUSTICE WILSON delivered the opinion for the Court.

Appellant, an employee of the Bank of Monrovia, was entrusted with \$70,000.00 by his employer to convey it to its branch at Buchanan, Grand Bassa County. Appellant, instead of fulfilling the assignment, decided to abscond and convert the money to his own use and benefit, but was arrested before his plans were completely perpetrated, converting just to the amount of \$11,155.00, for which he was indicted, convicted of grand larceny, sentenced to three years' imprisonment and ordered to make

restitution in the amount stolen, after trial by jury in the First Judicial Circuit Court, Montserrado County.

The appellant, having served his prison sentence, applied for issuance of a writ of habeas corpus for his release from prison in view of the fact that the sentence had been served. Judge Robert G. W. Azango heard the application and denied the petition, holding that appellant should remain in custody until restitution was made or an order obtained from this Court authorizing his release. It is from this ruling that the appellant has appealed.

Appellant in his argument contended that his continuing imprisonment was illegal in view of the fact that restitution does not form part of a sentence, since its subject is recoverable in a separate action in civil proceedings. The appellee contended that restitution was part of the sentence because the property involved was the property of the Republic of Liberia, having been stolen from the government's depository.

We must, therefore, ascertain whether or not the \$70,000.00 involved herein was the property of the Republic or exclusively that of the Bank of Monrovia.

The indictment among other things stated that "Charles Nimenibo, defendant aforesaid, then and there being with no color of right, did steal, take and carry away the amount of \$70,000.00, property of the Bank of Monrovia." The evidence showed that \$58,845.00 of the \$70,000.00 was delivered to the Bank of Monrovia, not as a deposit to the credit of the Liberian Government, but as the property of the bank. The contention, therefore, that the property involved was that of the Liberian Government is without foundation.

We must now direct our attention to whether or not the restitution ordered forms part of the sentence.

In *Thurston, on Restitution*, at page 811, it is said that restitution may be had by a separate action at law, either assumpsit for the value of what was received, or by way of specific relief against the judgment creditor.

From the foregoing, it is conclusive that restitution does not form a part of the sentence, and the judge was, therefore, in error in so holding.

In view of the foregoing, the ruling of the trial judge is hereby reversed, the petition granted, and the appellant ordered released from further custody, without prejudice to the Bank of Monrovia seeking recovery in the sum of \$11,155.00 through civil proceedings. And it is hereby so ordered.

*Reversed, appellant released from custody.*