EN BANC

G.R. No. 260374 – ***Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano**, petitioners, **v. Commission on Elections, Ferdinand Romualdez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives**, respondents.*

G.R. No. 260426 – ***Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr. Arabella Cammagay Balingao, Sr. Cherry M. Ibardolaza, CSSJB, Sr. Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla**, petitioners, **v. Commission on Elections, Ferdinand Romualdez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives**, respondents.*

Promulgated:

June 28, 2022

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SEPARATE OPINION

CAGUIOA, *J.*:

Before the Court are two (2) consolidated *Petitions for Certiorari* (Consolidated Petitions) filed pursuant to Rule 64 in relation to Rule 65 of the Rules of Court.

G.R. No. 260374 stems from petitioners Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano's (Buenafe, *et al.*) *Petition to Cancel or Deny Due Course* (Section 78 Petition) respondent Ferdinand R. Marcos, Jr.'s (Marcos, Jr.) Certificate of Candidacy (CoC) based on Section 78 of the Omnibus Election Code[1] (OEC) filed before the Commission on Elections (COMELEC). Buenafe, *et al.* assert that Marcos, Jr. committed two (2) material misrepresentations in his CoC: (1) that he is eligible to run as President of the Philippines; and (2) answering "No" to the question of whether he has been found liable for any offense which carries the penalty of perpetual disqualification to hold public office.

[1] Batas Pambansa Blg. 881, OMNIBUS ELECTION CODE OF THE PHILIPPINES, December 3, 1985.

G.R. No. 260426, on the other hand, originates from the *Petition to Disqualify* Marcos, Jr. under Section 12 of the OEC filed by petitioners Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr. Arabella Cammagay Balingao, Sr. Cherry M. Ibardolaza, CSSJB, Sr. Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (Ilagan, *et al.*). Ilagan *et al.* aver, among others, that Marcos, Jr. was convicted of a crime involving moral turpitude and that the same conviction likewise imposed (or should have imposed) upon Marcos, Jr. a penalty of more than eighteen (18) months of imprisonment.

The Consolidated Petitions are anchored on the same set of criminal cases that had been filed against Marcos, Jr. for violation of Presidential Decree No. (PD) 1158[2] or the National Internal Revenue Code of 1977 (1977 NIRC). In a Decision dated October 31, 1997 of the Court of Appeals (CA Decision), Marcos, Jr. was ultimately found guilty of violating Section 45 of the 1977 NIRC for failure to file his income tax returns (ITRs) for the years 1982 to 1985.[3] He was sentenced by the Court of Appeals (CA) to pay a fine for these violations.[4]

The COMELEC, in separate resolutions, denied both petitions. Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC, petitioners bring before the Court the Consolidated Petitions.

The *ponencia* dismisses the Consolidated Petitions and affirms the resolutions of the COMELEC.

I concur in the disposition of the *ponencia*.

I write this *Separate Opinion* to clarify the following salient points:

(1) the Court retains jurisdiction to rule on the Consolidated Petitions, even after Marcos, Jr. assumes and takes his oath of office;

(2) the core issue as to the materiality of Marcos, Jr.'s representations relating to the penalty of perpetual disqualification is whether the same constitutes an ineligibility;

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2 A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, otherwise known as the "NATIONAL INTERNAL REVENUE CODE OF 1977," June 3, 1977.

3 *Ponencia*, p. 8.

4 Id.

> (3) it is not a statute's designation of a penalty being "principal" or "accessory" that determines whether a penalty should be expressly stated or already deemed imposed — penalties should be expressly stated except when a statute says otherwise;
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> (4) for failure of the CA Decision to expressly impose as a penalty the perpetual disqualification provided under the 1977 NIRC as amended by PD 1994[5] for the offense of failure to file an ITR, the representations relating to such penalty in Marcos, Jr.'s CoC cannot be said to be false and, if false, cannot be said to have been made with malicious intent;
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> (5) the CA Decision imposed a penalty within the range prescribed by the applicable law and, as such, cannot be declared void;
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> (6) whether a crime involves moral turpitude must be assessed based on the nature and the elements of the crime itself — mere failure to file annual ITRs is not a crime involving moral turpitude; and
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> (7) Marcos, Jr.'s alleged non-service of sentence does not constitute a ground for disqualification.

The Court has jurisdiction to rule on the petitions

Marcos, Jr. and the COMELEC argue that the Court has no jurisdiction over the instant petitions as exclusive jurisdiction now lies with the Presidential Electoral Tribunal (PET).[6]

The Consolidated Petitions are petitions for *certiorari* filed before the Court in accordance with Rule 64 in relation to Rule 65 of the Rules of Court, alleging that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions. The Court has subject matter jurisdiction over these petitions pursuant to Sections 1 and 5, Article VIII of the 1987 Constitution, thus:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
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> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse

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[5] FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, November 5, 1985.

[6] *Ponencia*, p. 29.

of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

x x x x

Section 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

x x x x

The petitions here have complied with the requirements of Rule 64 in relation to Rule 65 in assailing the COMELEC resolutions as allegedly having been issued with grave abuse of discretion. Thus, the conditions for the Court to exercise its jurisdiction are present. It has the authority to decide these petitions.

On the other hand, the jurisdiction over contests relating to the qualifications of the President can be found in the last paragraph of Section 4, Article VII of the 1987 Constitution, thus:

The **Supreme Court, sitting *en banc***, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and **may promulgate its rules for the purpose**. (Emphasis supplied)

Pursuant to the last part of the above-quoted paragraph, the Court promulgated the 2010 Rules of the Presidential Electoral Tribunal[7] (2010 PET Rules), Rule 13 of which reflects the Court's jurisdiction granted under the Constitution, thus:

RULE 13. Jurisdiction. – The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

The question for the Court is: what is the relationship between the Court's *certiorari* jurisdiction over cases elevated to it from the COMELEC (involving Presidential and Vice-Presidential candidates) and the PET's jurisdiction over election contests involving the President and the Vice-President?

To answer this, the *ponencia* relies on *Reyes v. Commission on Elections*[8] (*Reyes*). According to the *ponencia, Reyes* outlined the conditions for the exercise of jurisdiction of the House of Representatives Electoral Tribunal (HRET)[9] and proceeded to apply these by analogy to the PET, as follows:

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7 A.M. No. 10-4-29-SC, May 4, 2010.
8 712 Phil. 192 (2013).
9 *Ponencia*, p. 30.

> Our ruling in *Reyes v. Commission on Elections* (*Reyes*) painstakingly described the conditions for the exercise of the jurisdiction of the HRET:
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> > *First*, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.
> >
> > *Second*, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:
> >
> > x x x x
> >
> > From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office. x x x
>
> Applying the ruling in *Reyes* to the present petitions, this Court, sitting *En Banc*, can only take cognizance of an election contest if the following requisites concur: (a) a petition is filed before it; and (b) the petition is filed against a Presidential or Vice-Presidential candidate who has been validly proclaimed, properly taken his or her oath, and assumed office.
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> These conditions are not present here. The Buenafe and Ilagan Petitions are filed under Rule 65 assailing the Resolutions of the COMELEC *En Banc*. While respondent Marcos, Jr. has been proclaimed as the Presidential candidate with the highest number of obtained votes, he has yet to take his oath and assume office. x x x[10]

Ultimately, applying *Reyes*, the *ponencia* rules that the Court retains jurisdiction over the petitions because Marcos, Jr., although already proclaimed, has not yet taken his oath and has not yet assumed office.[11]

Following *Reyes*, the *ponencia* goes further and rules that once Marcos, Jr., takes his oath and assumes office, this would result in the removal from this Court of jurisdiction over any pre-proclamation remedy elevated to it from the COMELEC, thus:

> In any case, the proclamation, oath-taking, and assumption of the President result in removing from the jurisdiction of this Court any pre-proclamation remedy elevated to the Court from the COMELEC.[12]

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[10] Id. at 30-32.
[11] See id. at 32.
[12] Id.

However, in another part, the *ponencia* likewise rules that the PET is a function of the Court *en banc*. Citing *Macalintal v. Presidential Electoral Tribunal*[13] (*Macalintal*), which extensively laid down the nature and history of the PET, the *ponencia* concluded that the PET's jurisdiction should not be considered as a limitation on the jurisdiction of the Court to rule on the pending petitions. The *ponencia* considered the peculiar nature of this case where what is involved is the jurisdiction of the PET and the Court, which are one and the same body, and ruled as follows:

> When the Court acts as the PET, it is not a separate and distinct body from the Court itself. The constitutional provision refers to the same "Supreme Court sitting *en banc*." However, it should be recognized that the proceedings before the PET require a distinct set of rules of procedure owing to the very specific nature of its functions. Thus, the exercise of jurisdiction of the Court *En Banc* as the PET is likened to the characterization of specialized courts in relation to the then Courts of First Instance. They are the same courts having the same jurisdiction, only that specialized courts are intended for practicality. Section 4, Article VII of the 1987 Constitution therefore should not be considered as a limitation on the jurisdiction of the Court over the pending petitions.[14]

It appears that the two (2) positions taken by the *ponencia* are inconsistent. I submit that the latter position of the *ponencia* is the correct view in terms of the relationship of the Court's *certiorari* jurisdiction over cases elevated from the COMELEC and the PET's jurisdiction over election contests involving the President and the Vice-President. The Court does not *lose* jurisdiction, and the PET does not *gain* jurisdiction, upon the happening of the conditions set forth in *Reyes*. The Court and the PET are one and the same, the latter merely being a function of the former.

As discussed by the *ponencia*, citing *Macalintal*, the Court's *certiorari* jurisdiction and the PET's jurisdiction are, indeed, akin to Regional Trial Courts (RTC) and the relationship between their general jurisdiction and their limited jurisdiction as special courts. The Court had an opportunity to explain this relationship in *Gonzales v. GJH Land, Inc.*[15] (*Gonzales*).

In *Gonzales*, a case involving an intra-corporate dispute was raffled to an RTC Branch in Muntinlupa City that was not the designated Special Commercial Court. The respondents filed a Motion to Dismiss, which the RTC granted, ruling that since it was not the designated Special Commercial Court, it had no jurisdiction to rule on the case.

The issue was elevated to the Court, which ruled that the RTC committed an error in dismissing the case. Since Republic Act No. (RA) 8799[16] conferred jurisdiction to the RTCs over intra-corporate disputes,

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[13] 650 Phil. 326 (2010).
[14] *Ponencia*, p. 38.
[15] 772 Phil. 483 (2015).
[16] THE SECURITIES REGULATION CODE, July 19, 2000.

among others, the RTC should not have dismissed the case for lack of jurisdiction. Because there was a designated Special Commercial Court in Muntinlupa City, the RTC should have simply referred the case to the Executive Judge for re-docketing, who then should have assigned the case to the Special Commercial Court in Muntinlupa City. The Court then ruled that the question of whether an RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure, not of jurisdiction, thus:

> As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction. Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction**, unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court. In *Lozada v. Bracewell*, it was recently held that **the matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction**.[17] (Emphasis and underscoring in the original)

The *ponencia* is therefore correct in saying that the PET's jurisdiction should not be seen as a limitation on the Court's jurisdiction to rule on these petitions as the PET and the Court should not be seen as separate and distinct entities.

I, however, emphasize that, similar to the RTC as a court of general jurisdiction and acting as a special court, whether the Court is ruling under its *certiorari* jurisdiction or as the PET is only a matter of procedure and has nothing to do with jurisdiction. Following *Gonzales*, when it becomes apparent that the case pending before the Court should properly be decided by the Court sitting as the PET, the Court should not dismiss the case. It should instead re-docket the same as a case before the PET and direct the payment of the proper docket fees, if necessary, and thereafter apply the 2010 PET Rules. It may be well to point out that, compared to the RTCs wherein the specialized case is transferred to another *sala*, the re-docketing of the subject case from the Court to the PET may be done with greater ease as the Court *en banc* and the PET are comprised of the same members.

The next question is when does it become apparent that a pending case elevated from the COMELEC should be re-docketed as a case before the PET? I submit that this is where the conditions in *Reyes* are applicable but not in the manner the *ponencia* has applied it.

In *Reyes*, the question posed before the Court was whether the COMELEC was **ousted of its jurisdiction** when petitioner therein was proclaimed as a Member of the House of Representatives. The Court ruled

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[17] *Gonzales v. GJH Land, Inc.*, supra note 15, at 505. Citations omitted.

that for the HRET to **acquire jurisdiction**, or stated otherwise, for the COMELEC to be **ousted of its jurisdiction**, a petition must be filed before the HRET, and the petition should involve a Member of the House of Representatives.[18] *Reyes* ruled that one is considered a Member of the House of Representatives only when the following requisites concur: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office,[19] thus:

> This pronouncement was reiterated in the case of *Limkaichong v. COMELEC,* wherein the Court, referring to the jurisdiction of the COMELEC *vis-a-vis* the HRET, held that:
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> > The Court has invariably held that once a winning candidate has **been proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.
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> This was again affirmed in *Gonzalez v. COMELEC,* to wit:
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> > After **proclamation, taking of oath** and **assumption of office** by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns — were transferred to the HRET as the constitutional body created to pass upon the same. x x x[20] (Emphasis in the original)

Applying the foregoing to petitioner therein, the Court ruled that since petitioner had not yet assumed office, she could not be considered as a Member of the House of Representatives, and until such time, the COMELEC retained jurisdiction. Thus:

> Here, the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*" Thus, until such time, the COMELEC retains jurisdiction.[21] (Italics in the original)

To my mind, the doctrine on when the jurisdiction of the COMELEC ends and when the jurisdiction of the HRET begins is ***not*** applicable when what is involved is the Court's jurisdiction *vis-à-vis* the PET because, as discussed above, the PET and the Court are one and the same body. To stress, exclusive jurisdiction over contests involving the election, returns, and qualifications of the President is vested by the Constitution on the "Supreme Court, sitting *en banc*." Similar to the specialized courts as discussed in *Macalintal* and *Gonzales*, the PET is also the Supreme Court sitting *en banc,* only that the former is limited in functions. The independence bestowed upon

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[18] *Reyes v. Commission on Elections*, supra note 8, at 210-211.
[19] Id. at 212.
[20] Id. Citations omitted.
[21] Id. at 213. Citation omitted.

the Supreme Court sitting as the PET, with its own budget allocation, rules and seal, is intended merely to better facilitate the gargantuan task of resolving election contests involving the President and the Vice-President, pursuant to Section 4, Article VII of the 1987 Constitution.[22]

For me, what can be applied to the PET are the conditions in *Reyes* when one is considered the "President" or "Vice-President" under Section 4, Article VII of the 1987 Constitution. One is considered the President or Vice-President when: (a) he/she has been proclaimed, (b) he/she has taken his/her oath, and (c) he/she has assumed office. It is when these conditions already exist that the cases before the Court may be deemed an election contest involving the President or Vice-President, and it is only then that the Court may re-docket a pending case before it (that was elevated from the COMELEC) as an election contest and thereafter apply the 2010 PET Rules to the case.

In the interest of the orderly administration of justice and to finally settle the issues raised in these cases, the Court should rule that it has jurisdiction to rule on whether Marcos, Jr. complied with the substantive and procedural requirements for running for the position of the President of the Republic of the Philippines. Following the discussion above, subsequent events after June 30, 2022 will not wrest from the Court its jurisdiction to rule on these cases but will only affect the procedure to be followed in resolving these cases.

A Section 78 Petition is distinct from a petition for disqualification

As mentioned, the present case is a consolidation of two (2) petitions for *certiorari* assailing two (2) sets of COMELEC resolutions which denied two (2) different petitions filed before the COMELEC — 1) a Section 78 Petition and 2) a petition for disqualification based on Section 12 of the OEC, although both petitions referred to the same set of criminal convictions against Marcos, Jr. for violating the 1977 NIRC.[23]

Section 78 of the OEC provides:

> SECTION 78. *Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

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[22] *See Macalintal v. Presidential Electoral Tribunal*, supra note 13, at 352-353.
[23] *Ponencia*, p. 5.

Section 12 of the same law provides:

> SECTION 12. *Disqualifications*. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
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> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

As can be gathered from the letter of the law itself, a Section 78 Petition and a petition for disqualification are two (2) distinct remedies against electoral candidates. They are based on different grounds and have different prescriptive periods and legal consequences.[24]

A petition to deny due course to or cancel a CoC under Section 78 is grounded on a false representation made by a candidate in the CoC. This false representation pertains to a material fact that affects the candidate's right to run for the elective office for which he or she filed the CoC, *e.g.*, citizenship, residence, status as a registered voter.[25] On the other hand, a petition for disqualification "can only be premised on a ground specified in Section 12 or 68 of the Omnibus Election Code or Section 40 of the Local Government Code [(LGC)]."[26]

For a Section 78 Petition to prosper, it must be proven that there is a deliberate attempt to mislead, misinform, or hide the material fact subject of the petition.[27] Meanwhile, a petition for disqualification must prove that the candidate possesses a disqualification under the law or statute.[28]

As to their effects, a person whose CoC is cancelled or denied due course is not treated as a candidate at all.[29] Consequently, he or she cannot be substituted.[30] In contrast, a disqualified candidate is prohibited to run for the elective position but may be duly substituted.[31]

Re the Section 78 Petition: A Section 78 Petition may include grounds for disqualification if the false material

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[24] See *ponencia*, pp. 26-27.
[25] *Velasco v. Commission on Elections*, 595 Phil. 1172, 1185 (2008).
[26] *Aratea v. Commission on Elections*, 696 Phil. 700, 736 (2012).
[27] *Hayudini v. Commission on Elections*, 733 Phil. 822, 844-845 (2014).
[28] *Amora, Jr. v. Commission on Elections*, 655 Phil. 467, 478 (2011).
[29] *Fermin v. Commission on Elections*, 595 Phil. 449, 469 (2008).
[30] Id. at 469.
[31] OMNIBUS ELECTION CODE, Sec. 77.

representation in a CoC relates to such grounds. Such representation, in order to be material, must pertain exclusively to the grounds enumerated in Section 74 of the OEC. Eligibility to run for public office is a material disclosure under the OEC.

Despite the distinct actions filed by petitioners before the COMELEC, the *ponencia* nevertheless points out that while the grounds for a petition for disqualification are limited to Sections 12 and 68 of the OEC and Section 40 of the LGC, "the same grounds may be invoked in a petition to deny due course to or cancel CoC if these involve the representations required under Section 78 [in relation to Section 74[32] of the OEC]."[33]

In rationalizing this, the *ponencia* cites *Chua v. Commission on Elections*[34] (*Chua*) where the Court affirmed the COMELEC's treatment of a Section 78 Petition to be one for disqualification since the material misrepresentation cited — permanent residence in a foreign country — is also one of the grounds for disqualification under Section 40 of the LGC.[35]

At the outset, let it be clarified that the jurisprudential requirements for the cancellation of a CoC under Section 78 of the OEC are: (1) that a representation is made with respect to a material fact, (2) that the representation is false, and (3) that there is intent to deceive or mislead the electorate.[36] Hence, the representation must first be material, *i.e.*, it relates to the matters affecting the candidates' right to be elected to and hold the public position sought, as so listed under Section 74 of the OEC to be stated in the CoC.[37]

Hence, while I agree that a Section 78 Petition may include grounds for disqualification if the false material representation in a CoC relates to such grounds, the same is limited to the matters expressly mentioned in Section 74. Section 78 expressly states that the petition to deny due course to or cancel CoC must be filed **exclusively** on the ground of any material misrepresentation contained in the CoC as required under Section 74, thus:

> SECTION 78. *Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy **may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of

[32] Section 74 provides for the matters required to be stated in a CoC.
[33] *Ponencia,* p. 27. Emphasis omitted.
[34] 783 Phil. 876 (2016).
[35] *Ponencia,* p. 27.
[36] See *Caballero v. Commission on Elections*, 770 Phil. 94, 118-119 (2015).
[37] See OMNIBUS ELECTION CODE, Sec. 78.

> candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis and underscoring supplied)

Section 74, which enumerates the information required to be stated by a candidate in his or her CoC, does *not* include a declaration on the part of the person filing a CoC that he or she is not perpetually disqualified from holding public office. The relevant portion of Section 74 states:

> SECTION 74. *Contents of certificate of candidacy.* – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
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> x x x x

Accordingly, on the basis of the letter of Sections 74 and 78, I disagree with the *ponencia*'s reliance on *Chua*.

The Court, indeed, ruled in *Chua* that "[i]f the false material representation in the [CoC] relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course [to] or cancel a [CoC] or a petition for disqualification, so long as the petition filed complies with the requirements under the law."[38] However, *Chua* is not on all fours with the Consolidated Petitions.

The ground raised and discussed in *Chua*, *i.e.,* that the petitioner is a permanent resident in a foreign country, while a ground for disqualification under Section 40 of the LGC,[39] likewise pertains to a material representation explicitly required under Section 74. This is not the situation here where the ground raised in the Consolidated Petitions, particularly, Marcos, Jr.'s perpetual disqualification, is not mentioned in Section 74.

Thus, it is my submission that the ruling in *Chua* finds relevance only in cases where a representation in a CoC, as *expressly required under Section 74*, is alleged to be false, and such representation also relates to a ground for disqualification. Accordingly, *Chua* finds no application in the case at bar.

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[38] *Chua v. Commission on Elections*, supra note 34, at 895.

[39] Section 40 provides for the disqualifications from running for any elective local position.

Nevertheless, I recognize that Section 74 requires that a candidate state in the CoC that he or she is "eligible" for the office sought. It is in this requisite of declaring one's eligibility that the allegation of having been imposed the penalty of perpetual disqualification — the ground relied upon in the Section 78 Petition — should be assessed.

In *Jalosjos, Jr. v. Commission on Elections*[40] (*Jalosjos, Jr.*), the accessory penalty of perpetual special disqualification was considered as an "ineligibility." In ruling in favor of the respondent, the Court held that petitioner's ineligibility existed on the day he filed his CoC, and that the cancellation of his CoC retroacted to the day he filed the same.[41] The Court said:

> x x x As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. As this Court held in *Fermin v. Commission on Elections*, the false material representation may refer to "qualifications or eligibility." **One who suffers from perpetual special disqualification is ineligible to run for public office. If a person suffering from perpetual special disqualification files a certificate of candidacy stating under oath that "he is eligible to run for (public) office," as expressly required under Section 74, then he clearly makes a false material representation that is a ground for a petition under Section 78.** x x x
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> x x x x
>
> The COMELEC properly cancelled Jalosjos' certificate of candidacy. **A void certificate of candidacy on the ground of ineligibility that existed at the time of the filing of the certificate of candidacy can never give rise to a valid candidacy, and much less to valid votes.** Jalosjos' certificate of candidacy was cancelled because he was ineligible from the start to run for Mayor. **Whether his certificate of candidacy is cancelled before or after the elections is immaterial because the cancellation on such ground means he was never a valid candidate from the very beginning, his certificate of candidacy being void *ab initio*. Jalosjos' ineligibility existed on the day he filed his certificate of candidacy, and the cancellation of his certificate of candidacy retroacted to the day he filed it.** Thus, Cardino ran unopposed. There was only one qualified candidate for Mayor in the May 2010 elections — Cardino — who received the highest number of votes.[42] (Emphasis supplied)

Likewise, in *Aratea v. Commission on Elections*,[43] the Court held that both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person that carries these ineligibilities is not eligible to run for elective public

[40] 696 Phil. 601 (2012).
[41] Id. at 633.
[42] Id. at 629-633. Citations omitted.
[43] Supra note 26.

office, and consequently commits a false material representation if he or she states in his or her CoC that he or she is eligible to run for the elective position.[44] The Court ruled:

> The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, **temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*."** The duration of temporary absolute disqualification is the same as that of the principal penalty of *prisión mayor*. On the other hand, under Article 32 of the Revised Penal Code, **perpetual special disqualification means that "the offender shall not be permitted to hold any public office during the period of his disqualification,"** ***which is perpetually.*** **Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.**[45] (Italics in the original; emphasis supplied)

Thus, in view of the foregoing cases, whether the declaration of Marcos, Jr. in his CoC that he has not been convicted for a crime which carried the penalty of perpetual disqualification is a material representation, and whether it is a proper subject of a Section 78 Petition, will depend on whether this declaration pertains to an "eligibility" under Section 74.

Re the Section 78 Petition: Perpetual disqualification impairs one's eligibility and is, thus, material.

As mentioned, Section 78 states that a CoC may be denied due course or cancelled on the exclusive ground that any material representation contained therein, as required under Section 74, is false. In turn, Section 74 provides, among others, that a CoC shall state that the person filing it is *eligible for the office* he or she seeks to be elected to.[46]

Marcos, Jr. contends that his alleged misrepresentations relating to the penalty of perpetual disqualification are not material as the same do not relate to the eligibility of a person to become President of the Philippines, such eligibility being limited to the enumeration under Section 2, Article VII of the 1987 Constitution — to the exclusion of any statutory provision.[47]

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[44] Id. at 728.

[45] Id.

[46] OMNIBUS ELECTION CODE, Sec. 74, the relevant portion of which reads as follows:

> SECTION 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is **eligible for said office**[.] (Emphasis supplied)

[47] *Ponencia,* p. 61.

This position is reductive and contrary to prevailing jurisprudence.

The Court has reiterated that the word "eligible," as used in Section 74 of the OEC, means having "the right to run for elective public office — that is, **having all the qualifications and none of the ineligibilities to run for the public office**."[48] The Court has, thus, ruled that a violation of the three-term limit rule,[49] and suffering from any penalty which produces the effect of deprivation to be elected to office,[50] constitute ineligibilities properly subject of a petition for cancellation of CoC.

Indeed, to adopt a limited view that "eligibility," as contemplated in Section 74 in relation to Section 78, pertains strictly and exclusively to the qualifications as provided in the Constitution or statutes for holding public office, while at the same time asserting that a petition for disqualification can only be filed on the basis of Sections 12 and 68 of the OEC, and Section 40 of the LGC, creates a void, leaving no recourse for instances where a candidate is barred from running for public office on the basis of a penalty of perpetual disqualification or violation of term limitations.

To further illustrate, the 2010 PET Rules allows any registered voter to contest the election of the President or Vice-President on the ground of *ineligibility* or *disloyalty to the Republic of the Philippines*.[51] Adopting a narrow view on what constitutes "ineligibility" restrains voters from alleging that a proclaimed President or Vice-President has been imposed the penalty of perpetual disqualification. That an individual suffering perpetual disqualification may proceed to assume the highest or second highest office in government, provided only that he or she has all the requirements set forth in Section 2, Article VII of the 1987 Constitution, can, thus, easily be seen as an absurdity.

To stress, the penalty of perpetual disqualification is imposed upon a public official preventing him or her from *holding* any public office, in addition to perpetually disqualifying him or her "to vote and to participate in any election."[52] To allow such public official to assume and exercise the duties of any public office because of a supposed void in the remedies brought about by the unreasonably limited treatment of "eligibility" under Section 74 would be to grossly violate the clear mandate of the law providing for the perpetual disqualification.

For the foregoing reasons, I subscribe to the view that a person suffering from the penalty of perpetual disqualification is ineligible to run for elective

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48 *Albania v. Commission on Elections*, 810 Phil. 470, 481 (2017), citing *Aratea v. Commission on Elections*, supra note 26, at 732. Emphasis supplied.

49 *Aratea v. Commission on Elections*, id. at 731-732.

50 See *Jalosjos, Jr. v. Commission on Elections*, supra note 40, at 629-630.

51 2010 PET RULES, Rule 16.

52 PD 1994, Sec. 286(c).

public office, and commits a false material representation if he or she states in his or her CoC that he or she is eligible to so run.[53] As aptly summarized in *Jalosjos, Jr.*:

> Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.[54] (Underscoring supplied)

From the foregoing, it is clear that the subject representations of Marcos, Jr., *i.e.*, that he is eligible to run as President and that he has never been found liable for any offense which carries the penalty of perpetual disqualification to hold public office, are material, the falsity of which constitutes a ground to cancel his CoC.

Hence, there is a need to now look into whether the subject representations are indeed false.

The criminal charges filed against Marcos, Jr. and the pertinent laws

At this juncture, clarifications must be made regarding the different criminal charges filed against Marcos, Jr. and the laws applicable to such cases.

To recall, the Consolidated Petitions relate to charges against Marcos, Jr. filed by the Commissioner of Internal Revenue with the Secretary of Justice in 1991. Therein, he was charged with four (4) counts of failure to file his ITRs for the years 1982 to 1985,[55] as well as four (4) counts of failure to pay income taxes due, also for the years 1982 to 1985.[56] The RTC convicted Marcos, Jr. and sentenced him to serve various periods of imprisonment and various amounts of fine for both sets of criminal charges and for all the years subject thereof.[57]

On appeal, however, the CA,[58] in its Decision dated October 31, 1997, acquitted Marcos, Jr. of the charges for non-payment of deficiency taxes for all the subject years 1982 to 1985, but found him guilty beyond reasonable doubt of failure to file ITRs for all the same subject years, 1982 to 1985.

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[53] *Aratea v. Commission on Elections*, supra note 26, at 728.
[54] *Jalosjos, Jr. v. Commission on Elections*, supra note 40, at 624. Citations omitted.
[55] Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-29217.
[56] Criminal Cases Nos. Q-91-24390, Q-92-29214, Q-92-29215 and Q-92-29216.
[57] See *ponencia*, pp. 6-7.
[58] In CA-G.R. CR No. 18569.

Accordingly, it ordered Marcos, Jr. to pay deficiency income taxes with interest and a fine of ₱2,000.00 each for his failure to file ITRs for the years 1982 to 1984, and ₱30,000.00 for failing to so file his ITR for 1985, plus surcharges. The CA Decision eventually lapsed into finality.[59]

At this point, it is well to emphasize the laws applicable to the criminal charges against Marcos, Jr., considering that an amendatory law was issued during the period subject of said charges which means that different laws are applicable to the subject taxable years.

Specifically, on January 1, 1986, PD 1994 took effect.[60] It introduced substantial amendments to the 1977 NIRC, which included the imposition, upon public officers or employees who are convicted of **any crime under the 1977 NIRC**, of two (2) important penalties: 1) the maximum penalty prescribed for the relevant offense; and 2) the additional penalty of perpetual disqualification from holding public office. The relevant portion of Section 286 of the 1977 NIRC, as amended by PD 1994, states:

> Sec. 286. *General provisions.* – [a] **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein**: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
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> x x x x
>
> [c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election.** If the offender is a certified public accountant, his certificate as a certified public [accountant] shall, upon conviction, be automatically revoked or cancelled.
>
> x x x x (Emphasis and underscoring supplied)

As to the specific crime that Marcos, Jr. was convicted of — failure to file ITRs, the pertinent law varies because, again, of the amendments introduced by PD 1994 in January 1986. Specifically, PD 1994 made the following changes to the old 1977 NIRC: (1) it renumbered Section 73 of the old 1977 NIRC which then became Section 288 under the amended law; and (2) it prescribed a higher fine and longer period of imprisonment, but retained the language of the old law which imposed a punishment of fine OR imprisonment OR both.

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[59] *Ponencia*, p. 8.

[60] PD 1994, Sec. 49, which reads:

SECTION 49. *Effectivity.* — This Decree shall take effect on January 1, 1986.

Section 73 of the old 1977 NIRC stated:

> SEC. 73. *Penalty for failure to file return or to pay tax.* – Any one liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be **punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both.**
>
> x x x x (Emphasis supplied)

On the other hand, Section 288 of PD 1994 states:

> Sec. 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* – Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, **be fined not less than five thousand pesos nor more than fifty thousand pesos, or imprisoned for not less than six months and one day but not more than five years, or both.** (Emphasis supplied)

Again, PD 1994 took effect on January 1, 1986.[61] Meanwhile, the deadline for the filing of 1985 ITRs was on March 15, 1986.[62] Accordingly, for Marcos, Jr.'s failure to file his ITR for the year 1985, the amendments brought about under PD 1994 apply.

To stress, these amendments are the main bases of the petitions filed with the COMELEC. The Section 78 Petition was based on the penalty of perpetual disqualification to hold public office, alleged to have been falsely declared by Marcos, Jr. in his CoC. On the other hand, the petition for disqualification was mainly based on the imposition of the maximum penalty prescribed for the non-filing of ITR (by Section 73 of the old 1977 NIRC as to the years 1982 to 1984; and Section 288 of PD 1994 as to the year 1985), which is alleged to constitute grounds for disqualification under the OEC. Hence, by and large, it is only the failure to file ITR for the year 1985 that is the main subject of controversy in the present case.

Re the Section 78 Petition: The penalty of perpetual disqualification was not imposed upon Marcos, Jr. for his failure to file ITR for the year 1985 as the same was not expressly stated in the CA Decision.

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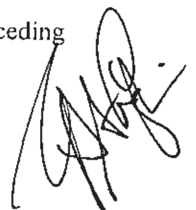
[61] Id.

[62] See 1977 NIRC, Sec. 45(c), which provides that individual returns covering income of the preceding taxable year "shall be filed on or before the fifteenth day of March each year[.]"



As mentioned, Section 286 of PD 1994, which applies to the charge of non-filing of Marcos, Jr.'s 1985 ITR, prescribes the additional penalty of perpetual disqualification to hold public office. Despite the clear language of the law, the CA Decision, in its dispositive portion, did not expressly impose such penalty. The decretal portion of the CA Decision made mention only of the payment of deficiency taxes and fines as the penalties imposed. It is petitioners' theory, however, that the perpetual disqualification is *deemed* imposed as it is an accessory penalty that is supposedly automatically imposed upon conviction for the subject crime. Alternatively, petitioners posit that the CA Decision is void for having completely ignored the directive of the law to impose perpetual disqualification on offenders who happen to be public officers and employees.

I am not persuaded.

As a general rule, the penalties imposed should be expressly stated in the decision convicting the accused of a crime with which the latter is charged.[63] To be clear, it is not a statute's designation of a penalty being "principal" or "accessory" that determines whether a penalty should be expressly stated or already be deemed imposed. To reiterate, as a rule, penalties should be expressly stated.[64] Penalties are "deemed imposed" only when the statute says so. The prime example of this is the Revised Penal Code[65] (RPC) as it implements a system of having accessory penalties deemed automatically imposed upon the imposition of certain principal penalties. The RPC does this through its Article 73, which states that "[w]henever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict." Articles 40 to 45, in turn, provide for the accessory penalties to various principal penalties.

It must be emphasized, however, that the RPC does this only for the crimes it punishes. To recall, the RPC provides that "[o]ffenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code."[66] The system, therefore, that there are penalties "deemed included" operate only for crimes punished by the RPC or any such special penal law that employs or will employ the same system. <u>In other words, the principle that "accessory penalties" are deemed imposed with the "principal penalties" is not inherent in Philippine criminal law.</u>

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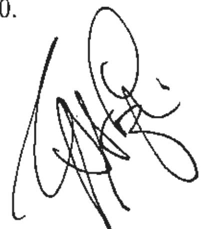
[63] See *Velarde v. Social Justice Society*, 472 Phil. 285 (2004), where the Court clarified that, "[i]n a criminal case, the disposition should include a finding of innocence or guilt, the specific crime committed, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs." Id. at 325.

[64] See id.

[65] Act No. 3815, AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS, December 8, 1930.

[66] Id., Art. 10.



To illustrate, in *People v. Perez*,[67] decided prior to the enactment of the RPC, the Court stated that "accessory penalties are to be imposed upon the convict expressly[. Further], according to Viada, they are not to be presumed to have been imposed."[68] These bolster the point that criminal penalties are to be expressly stated in decisions, unless the law itself — like the RPC — provides for a system of "accessory penalties" being deemed automatically imposed with the imposition of some "principal penalties."[69]

Associate Justice Jhosep Y. Lopez (J. Lopez) and Associate Justice Amy C. Lazaro-Javier submit that as the penalty of perpetual disqualification in the present case is a principal penalty, then the same should have been expressly imposed as a penalty by the CA, as opposed to an accessory penalty which is deemed imposed with the pertinent principal penalty. J. Lopez discusses that accessory penalties are inherent and made dependent on the existence of principal penalties. Accordingly, as Section 286(c) of the 1977 NIRC does not specify a principal penalty to which the penalty of perpetual disqualification attaches, then the latter penalty cannot be characterized as an accessory penalty; it is clearly a principal penalty.[70]

With respect, I disagree with this view.

In *People v. Rafanan*,[71] the Court characterized as an accessory penalty the penalty of temporary special disqualification under Article 346 of the RPC, which attached, not to a specified penalty, but by virtue of the status of the accused as a high school principal.[72] Further, in RA 9847,[73] the penalty of perpetual disqualification is characterized as an "accessory penalty" which penalty likewise attaches not to a particular "principal" penalty, but to any offense committed under the law when committed by a public officer or an officer of the law.[74]

As in the present case, the subject law therein did not make mention of a predicate principal penalty, yet the Court categorized as an accessory the subject penalty of the case.

What is clear, therefore, is that the CA ***should have*** expressly stated that Marcos, Jr. was imposed the penalty of perpetual disqualification as a result of his conviction for violating Section 45 of the 1977 NIRC. As

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67 47 Phil. 984 (1924).
68 Id. at 987.
69 See id.
70 Separate Concurring Opinion of *J.* Lopez, pp. 13-14.
71 261 Phil. 965 (1990).
72 Id. at 981.
73 AN ACT ESTABLISHING MOUNTS BANAHAW AND SAN CRISTOBAL IN THE PROVINCES OF LAGUNA AND QUEZON AS A PROTECTED AREA UNDER THE CATEGORY OF PROTECTED LANDSCAPE, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES, otherwise known as the "MTS. BANAHAW-SAN CRISTOBAL PROTECTED LANDSCAPE (MBSCPL) ACT OF 2009," December 11, 2009.
74 Id., Sec. 18.

mentioned, however, the CA did not. This failure, thus, results in the perpetual disqualification not having been imposed as a penalty.

Anent petitioners' argument that this failure of the CA Decision to include the penalty of perpetual disqualification rendered the same "void," the *ponencia* holds, that as the CA Decision has already attained finality, then the Court can no longer modify the same.[75]

While I agree with the *ponencia* that the Court cannot modify the CA Decision, I elucidate on the bases of my conclusions, which slightly differ from the *ponencia*'s discussions.

To make its point, the *ponencia* cites *Estarija v. People*[76] (*Estarija*), where the Court ruled that the questioned judgment, despite imposing an erroneous penalty, could no longer be modified as it had long attained finality. While I agree with the applicability of *Estarija*, it must be clarified that the rulings therein must be qualified by the Court's more recent ruling in *People v. Celorio*[77] (*Celorio*). The case of *Celorio* involved a judgment which imposed a sentence that was based on a non-existent or repealed law. The People then assailed the judgment through a petition for *certiorari.* The Court held that the judgment was void, and therefore created no rights and imposed no duties. As the judgment was void, the Court said that it could not have attained finality even with the accused's decision to file for probation — which, under normal circumstances, would have rendered the judgment final and executory. The Court then went on to modify the penalty imposed on the accused.

Celorio thus qualifies *Estarija* in that the Court is not entirely powerless to modify a judgment with an erroneous penalty that has supposedly attained finality. The error in a judgment could be of such character so as to render it void – and thus, such judgment would not attain finality. What separates *Estarija* from *Celorio* is that the penalty in *Estarija* was still within the range prescribed by law, while the penalty in *Celorio* came from a law that has already been repealed. The penalty in *Estarija* was considered erroneous because the lower court (1) did not impose an indeterminate penalty, as required by the Indeterminate Sentence Law, but instead imposed a straight penalty, and (2) did not impose the penalty of perpetual disqualification. However, as mentioned, the straight penalty imposed was still within the range provided by the law. It was, thus, reasonable to rule that the judgment had attained finality even though the penalty was erroneous.

It is through this modified doctrine in *Estarija* that Marcos, Jr.'s case should be looked at. In Marcos, Jr.'s case, the penalty imposed by the CA was within the penalty prescribed by law, albeit without the additional penalty of

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[75] See *ponencia*, pp. 77-78.
[76] 619 Phil. 457 (2009).
[77] G.R. No. 226335, June 23, 2021.

perpetual disqualification. While there was ultimately an error in the CA Decision, the said decision still attained finality as the penalty was within the range prescribed by law.

Moreover, both *Estarija* and *Celorio* involved proceedings raised by the parties in the respective cases — either through an appeal by the accused himself or through a petition for *certiorari* by the People. Here, petitioners intend to void the CA Decision even while they are not parties to the case.

Based on the foregoing reasons, it is my view that the CA Decision is not void or cannot be voided in this proceeding.

Re the Section 78 Petition: Not having been explicitly imposed the penalty of perpetual disqualification, Marcos, Jr.'s representation that he is eligible to run for public office is not false. However, his representation that he was never found guilty of an offense which <u>carries</u> the penalty of perpetual disqualification, is false.

Having established that the subject representations relating to Marcos, Jr.'s alleged perpetual disqualification from holding public office are material, the next question to ask is: are such representations false?

To recall, two (2) representations in Marcos, Jr.'s CoC relate to the subject penalty: 1) that he is eligible to run as President of the Philippines; and 2) that he has not been found liable for any offense which carries the penalty of perpetual disqualification to hold public office.

The first representation — that Marcos, Jr. is eligible to run for public office — is not false. For failure of the CA Decision to expressly state that Marcos, Jr. was imposed the penalty of perpetual disqualification as a result of his conviction, he was not rendered ineligible to run for any public office.

However, the second representation — that he was not found liable for any offense which ***carries*** the penalty of perpetual disqualification — is false. Indeed, a conviction under Section 73 of the 1977 NIRC and Section 288 of the 1977 NIRC, as amended by PD 1994, when committed by a public official or employee, *carries* with it the penalty of perpetual disqualification from holding any public office, to vote and to participate in any election.[78]

Re the Section 78 Petition: Marcos, Jr. lacked the requisite intent to

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[78] See 1977 NIRC, Sec. 286(c), as amended by PD 1994.

deceive the electorate in making the material representations relating to his alleged perpetual disqualification.

The third requisite for a Section 78 Petition to prosper is that the false material representations must have been made with a malicious intent to deceive the electorate.[79]

First, the material representation that he is eligible to run for President of the Philippines, as mentioned, is not false and, hence, could not have been made with malicious intent.

Second, the representation that he was not found liable for any offense which ***carries*** the penalty of perpetual disqualification, while false, was not intended to deceive the electorate. Arising from the same omission of the CA to expressly impose the penalty of perpetual disqualification, Marcos, Jr. cannot be imputed with having intended to deceive or mislead the electorate in representing that he was not found liable with an offense that carries such penalty.

The rule is that any mistake on a doubtful or difficult question of law may be the basis of good faith.[80] Further, when the dispositive part of a final decision or order is definite, clear, and unequivocal, and can wholly be given effect without need of interpretation or construction, the same is controlling.[81]

Marcos, Jr. can thus be said to have legitimately relied on the dispositive portion of the CA Decision which did not impose upon him the penalty of perpetual disqualification. As the CA Decision is straightforward, it is contrary to good faith to require that Marcos, Jr. look beyond the language of his judgment of conviction in search of other penalties imposable upon him.

To conclude my position regarding the Section 78 Petition: I concur with the *ponencia* that Marcos, Jr. did not commit false material representation in his CoC. His representation that he is eligible to run for President is, while material, not false. On the other hand, his representation that he was never found liable with an offense that ***carries*** the penalty of perpetual disqualification to hold public office, while material and false, was not made with an intent to deceive the electorate. The requisites for a Section 78 Petition to prosper not having been established by petitioners, the COMELEC was correct in dismissing the same.

Re Petition for Disqualification: The CA's final judgment against Marcos, Jr. did not impose a penalty of

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[79] See *Caballero v. Commission on Elections*, supra note 36, at 118-119.
[80] *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 908 (1999).
[81] *Obra v. Spouses Badua*, 556 Phil. 456, 461 (2007).

imprisonment of more than eighteen (18) months.

To recall, Ilagan, *et al.* maintain that Marcos, Jr. is disqualified under Section 12 of the OEC which disqualifies a person who has been sentenced: 1) to a penalty of imprisonment of more than eighteen (18) months; or 2) for a crime involving moral turpitude.

Section 12 provides:

> SECTION 12. *Disqualifications*. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to **a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office**, unless he has been given plenary pardon or granted amnesty.
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> x x x x (Emphasis supplied)

Ilagan, *et al.* argue that the CA Decision which removed the penalty of imprisonment written in the RTC Decision and imposed only the penalty of fine, is void as it completely ignored the directive of Section 286 of the 1977 NIRC, as amended by PD 1994, which prescribes the maximum penalty for offenders who are public officers. They maintain that courts do not have the power to impose a lower penalty than that which is authorized by law. Ilagan, *et al.* claim that since the CA Decision is void, it produced no legal effect and it never became final and executory.

As earlier discussed, Section 286 mandates, among others, that if the offender is a public officer, he shall suffer the ***maximum*** penalty, thus:

> Sec. 286. *General provisions.* — [a] **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein**: x x x
>
> x x x x
>
> [c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **<u>If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election</u>**. If the offender is a certified public accountant, his certificate as a certified public [accountant] shall, upon conviction, be automatically revoked or cancelled.
>
> x x x x (Emphasis and underscoring supplied)

As also earlier explained, Section 286, insofar as it imposes the maximum penalty on public officials, is relevant only for the charge of failure to file Marcos, Jr.'s 1985 ITR the filing for which was due on March 15, 1986, hence, covered by PD 1994 which took effect on January 1, 1986. Thus, only the law applicable to the 1985 ITR is relevant. This is Section 288 of the 1977 NIRC, as amended by PD 1994, which I quote anew:

> Sec. 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* – Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, **be fined not less than five thousand pesos nor more than fifty thousand pesos, <u>or</u> imprisoned for not less than six months and one day but not more than five years, <u>or both</u>**. (Emphasis supplied)

From the above, I submit that the maximum penalty is the imposition of *both* payment of fines and imprisonment,[82] *i.e.*, a fine of ₱50,000.00 *and* imprisonment of five (5) years. Thus, the CA again erred in failing to impose the maximum penalty prescribed by Section 286 for the offense of failure to file Marcos, Jr.'s 1985 ITR.

<u>However</u>, in the same way that the CA Decision, despite its failure to impose the penalty of perpetual disqualification, cannot be voided, the CA's error in not imposing the maximum penalties prescribed by law is also an error that does not justify the modification or voiding of the CA Decision. The penalty actually imposed by the CA — the fine of ₱30,000.00[83] — is still within the range of penalties prescribed by Section 288. The CA Decision cannot, thus, be said to be void and is, thus, still covered by the rule on immutability of judgments.

Re Petition for Disqualification: Failure to file annual ITR is not a crime involving moral turpitude.

Ilagan, *et al.*, also allege that Marcos, Jr., is disqualified under Section 12 of the OEC as he had been convicted of failure to file ITRs, a crime allegedly involving moral turpitude.

Moral turpitude has been defined as any act which is contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in

[82] See *U.S. v. Cueto*, 38 Phil. 935 (1918).
[83] *Ponencia*, p. 8.

general.[84] However, not all crimes or offenses involve moral turpitude.[85] The term is a flexible concept and must be determined according to the particular facts and circumstances prevailing in each case in relation to the offense charged.[86]

In *Zari v. Flores*,[87] the Court held that generally, crimes *mala prohibita* do not involve moral turpitude:

> [Moral turpitude] implies something immoral in itself, regardless of the fact that it is punishable by law or not. **It must not merely be mala prohibita, but the act itself must be inherently immoral.** The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in the fact of their being positively prohibited.[88] (*Emphasis supplied.*)

As to the offense of failure to file annual ITRs, the Court has previously addressed the same issue in an earlier case also involving Marcos, Jr., in *Republic v. Marcos II*[89] (*Marcos II*).

In the said case, the State opposed the grant of letters testamentary to Marcos, Jr. and his appointment as executor of the estate of his father, the late dictator Ferdinand E. Marcos, Sr., on the ground of conviction of an offense involving moral turpitude, for his prior conviction of failure to file annual ITRs. The Court held that Marcos, Jr. was not disqualified as an executor as the failure to file his annual ITRs is not a crime involving moral turpitude.[90]

The Court differentiated the three (3) violations with regard to the filing of an ITR under the NIRC: (1) the filing of a false return, (2) a fraudulent return with intent to evade tax; and (3) failure to file a return. Citing *Aznar v. Court of Tax Appeals*[91] (*Aznar*), the Court segregated the first two offenses as involving falsity and fraud, while the third case involves only an omission. Thus, the filing of a false return and fraudulent return, with intent to evade tax, involve moral turpitude as they entail willfulness and fraudulent intent on the part of the individual. In contrast, the mere failure to file a return, where the mere omission is already a violation, does not involve moral turpitude. Thus, the Court held that there was no ground to disqualify Marcos, Jr. as executor of his late father's estate.[92]

It is also important to note that Marcos, Jr. was acquitted by the CA of the crime of failure to pay income tax, and as earlier discussed, the said

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[84] *Soriano v. Dizon*, 515 Phil. 635, 641 (2006).
[85] *Dela Torre v. COMELEC*, 327 Phil. 1144, 1150 (1996).
[86] Id. at 1150-1151.
[87] 183 Phil. 27 (1979).
[88] Id. at 33. Citations omitted.
[89] 612 Phil. 355 (2009).
[90] Id. at 375 and 377.
[91] 157 Phil. 510 (1974).
[92] *Republic v. Marcos II*, supra note 89, at 376-377.

decision has long become final and immutable. Thus, what remains is Marcos, Jr.'s conviction for failure to file ITRs, which is not a crime involving moral turpitude.

Ilagan, *et al.* point out that Marcos, Jr. failed to file ITRs for four (4) consecutive years which shows his utter disregard of the law. However, as discussed above, it is the nature of the crime which determines whether it involves moral turpitude, not the frequency of the violation.

In this connection, Associate Justice Japar B. Dimaampao (J. Dimaampao) submits that failure to file ITRs *may or may not* be a crime involving moral turpitude[93] and advances that when the violation is attended by the element of willfulness, the non-filing of ITRs becomes tax evasion.[94] To determine whether willfulness is attendant, the esteemed justice states:

> x x x [W]illfulness may be determined through, among others, the contemporaneous and subsequent acts of taxpayers, their level of discernment, their educational attainment, the frequency of their non-filing of income tax returns, the amount of income concealed, and such other considerations peculiar to each and every case. No factor from the foregoing can singularly establish tax evasion. In the ultimate analysis, willful intent to evade taxes is a question of fact that would depend on the totality of the circumstances surrounding the case.[95] (Underscoring supplied)

J. Dimaampao then concludes that, taking into account the *totality of circumstances* surrounding the case, Marcos, Jr.'s failure to file his ITRs was not attended by willfulness and, thus, did not involve moral turpitude.[96]

I respectfully disagree with this manner of determining that Marcos, Jr.'s failure to file ITR lacked moral turpitude.

There is no dispute that if non-filing of ITRs is found to be a deliberate means to evade or defeat taxes, the same constitutes fraud and involves moral turpitude.[97] In fact, a finding of willfulness in the failure to file returns or supply information required under the 1977 NIRC is meted with surcharges on the tax or deficiency tax.[98] Clearly, therefore, the law already takes into consideration the deliberateness and willfulness of a taxpayer's omission and imposes additional penalties when the same is proven.

In the present Consolidated Petitions, however, Marcos, Jr. was convicted for violation of Section 45 of the 1977 NIRC,[99] without any finding

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93 See Reflections of *J.*Dimaampao, pp. 5-6.
94 Id. at 6.
95 Id. at 7.
96 Id.
97 See *Republic v. Marcos II*, supra note 89, at 377; *Aznar v. Court of Tax Appeals*, supra note 91, at 523.
98 See 1977 NIRC, Secs. 72, 97, 131, 193, 262, 264, 268, and 269.
99 1977 NIRC, Sec. 45, the relevant portion of which reads:

of circumstances or *indicia* that he was motivated by a fraudulent intent to evade payment of taxes.[100] It is likewise undisputed that the CA Decision had long attained finality and had become immutable.

Despite this, J. Dimaampao proceeds to make a determination on whether Marcos, Jr.'s failure to file his ITRs constitutes an act involving moral turpitude by taking into account the "totality of circumstances" surrounding the case.

As mentioned, it is at this juncture that I dissent.

The law is clear when it states that the ground for disqualification of a candidate is his or her having been sentenced by final judgment for *a crime involving moral turpitude.*[101] The qualifying clause "involving moral turpitude" pertains to the offense — not to the accused's personal circumstances or any acts of the accused after his conviction.

More importantly, in each criminal case, the lower courts evaluate the attendant circumstances in determining the accused's guilt as well as the imposable penalty, should guilt be proven beyond reasonable doubt. These findings, as a rule, may no longer be re-litigated because of the doctrine of

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SECTION 45. *Individual returns.* — (a) *Requirements.* — (1) The following individuals are required to file an income tax return, if they have a gross income of at least P1,800 for the taxable year:

(A) Every Filipino citizen, whether residing in the Philippines or abroad[.]

See 1977 NIRC, Sec. 73, which reads:

SECTION 73. *Penalty for failure to file return or to pay tax.* — Any one liable to pay the tax, to make a return or to supply information required under this Code, who <u>refuses or neglects</u> to pay such tax, <u>to make such return</u> or to supply such information at the time or times herein specified in each year, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than six months, or both. (Underscoring supplied)

100 See 1977 NIRC, Sec. 72, which reads:

SECTION 72. *Surcharges for failure to render returns and for rendering false and fraudulent returns.* — In case of <u>willful neglect</u> to file the return or list required under this Title within the time prescribed by law, x x x, the Commissioner of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty *per centum* of the amount of such tax or deficiency tax. x x x (Underscoring supplied)

See also 1977 NIRC, Secs. 287 and 288, as amended by PD 1994, which read:

Sec. 287. *Attempt to evade or defeat tax.* —Any person who <u>willfully attempts</u> in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than ten thousand pesos or imprisoned for not more than two years, or both.

Sec. 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* — Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who <u>willfully fails to</u> pay such tax, <u>make such return</u>, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not less than five thousand pesos nor more than fifty thousand pesos, or imprisoned for not less than six months and one day but not more than five years, or both. (Underscoring supplied)

101 OMNIBUS ELECTION CODE, Sec. 12.

immutability of judgments[102] in relation to the constitutional proscription against double jeopardy.[103]

In the same way that the CA Decision, specifically its erroneous imposition of penalties in this case, as discussed above, can no longer be disturbed, more so must the Court exercise restraint in trying facts long settled.

I, thus, reject the bent to re-assess the totality of circumstances, including the acts of Marcos, Jr. long after a judgment of guilt, solely to determine whether the crime committed involves moral turpitude.

The above bent sets a dangerous precedent. In every case requiring the determination of the presence of moral turpitude, the courts will be empowered to essentially look into the character of the accused and his or her actions and behavior even after the crime has already been committed. And, as in the present actions, even after the judgment finding him or her guilty of the crime had long attained finality and had become immutable. Ultimately, the "totality of circumstances" approach sanctions a judgment of character separate from the judgment of guilt and an endless probe into an already convicted person's every move.

As such, I firmly take the position that whether a crime involves moral turpitude should be assessed only on the basis of the nature and elements of the crime itself. Again, the phrase "involving moral turpitude" qualifies the crime. Contemporaneous or subsequent acts of the accused and circumstances which are not material in the determination of one's guilt should likewise have no effect in the classification of the crime as involving or not involving moral turpitude.

Surely, it is in the best interest of justice to be rigid and uncompromising in safeguarding the citizens' rights from post-conviction intrusion.

For avoidance of doubt, I submit that non-filing of ITRs *per se*, as in this case, does not involve moral turpitude. This is in contrast with willful neglect to file ITRs, amounting to tax evasion, which is a separate offense requiring the element of willfulness. Indeed, in the case of *Marcos II*, citing *Aznar*, the Court extensively explained the differences among the *distinct and separate* cases of false return, fraudulent return with intent to evade tax, and failure to file return, which are segregated by the NIRC itself into three (3) different classes: falsity, fraud, and omission.[104]

To this end, I cannot subscribe to the position that the "totality of circumstances" should be considered in determining whether a crime involves

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[102] See *Spouses Tabalno v. Dingal, Sr.*, 770 Phil. 556 (2015).
[103] See *People v. Celorio*, supra note 77.
[104] *Republic v. Marcos II*, supra note 89, at 376.

moral turpitude. I maintain that the existence of moral turpitude should be decided solely on the nature and elements of the offense Marcos, Jr. was found guilty of — his failure to file ITRs.

As applied in this case, I submit that failure to file ITRs, an act punished based on a taxpayer's mere omission, does not involve moral turpitude.

Re Petition for Disqualification: Non-payment of fines is not a ground for disqualification under Section 12 of the OEC.

I likewise do not subscribe to the argument of petitioners that Marcos, Jr.'s alleged non-payment of the penalty of fine evinces moral turpitude. It is the view of petitioners that since Marcos, Jr. has not yet served his penalty, the same constitutes an evasion of sentence which is a violation of the law involving moral turpitude under Section 12 of the OEC, which reads:

> SECTION 12. *Disqualifications.* — Any person who has been declared by competent authority insane or incompetent, or has been **sentenced by final judgment** for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or **for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office**, unless he has been given plenary pardon or granted amnesty.
>
> x x x x (Emphasis and underscoring supplied)

At the outset, Section 12 provides that a person shall be disqualified to be a candidate if he or she has been *sentenced by final judgment* for a crime involving moral turpitude. There is, however, neither allegation nor evidence on record that a criminal prosecution for evasion of service of sentence has been instituted against Marcos, Jr., much less a final adjudication of guilt. On this note alone, Ilagan, *et al.*'s reliance on the non-payment of fines as a ground for disqualification loses footing.

Assuming arguendo that Marcos, Jr. has yet to pay the deficiency taxes and fines due him, this act does not constitute the crime of evasion of service of sentence as defined and penalized under Article 157[105] of the RPC, the elements of which are: (1) the offender is a *convict* by final judgment; (2) he is *serving* his sentence which consists in deprivation of liberty; and (3) he evades service of sentence by *escaping* during the term of his sentence.[106] The

[105] ART. 157. *Evasion of service of sentence.* – The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be *prision correccional* in its maximum period.

[106] *Tanega v. Masakayan*, 125 Phil. 966, 969 (1967).

second and third elements are not present. Marcos, Jr. was neither imposed the penalty of imprisonment nor did he evade imprisonment by escaping during the term of his sentence.

Hence, regarding the petition for disqualification, as Marcos, Jr. was not sentenced to a penalty of more than eighteen (18) months or convicted of a crime involving moral turpitude, I concur with the *ponencia* that he is not disqualified as a candidate under Section 12 of the OEC. The COMELEC may, thus, not be faulted for dismissing the petition for disqualification.

Conclusions

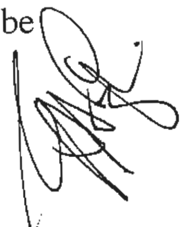
Summarizing my views:

First, the Court has and will retain jurisdiction to rule on the present petitions, even after Marcos, Jr. assumes and takes his oath of office on June 30, 2022. The sole judge of all contests relating to the election, returns and qualifications of the President and the Vice-President under Section 4, Article VII of the 1987 Constitution is the "Supreme Court, sitting *en banc*." The PET is merely a function of the Court and the independence bestowed upon the Court, sitting as the PET, with its own rules, budget allocation and seal, are intended merely to better facilitate the awesome task of resolving contests involving the two (2) highest positions in the land, pursuant to Section 4, Article VII of the 1987 Constitution.

The doctrine on when the jurisdiction of the COMELEC ends and when the jurisdiction of the HRET begins as laid down in *Reyes* is inapplicable to the Court *vis-à-vis* the PET. Unlike the COMELEC *vis-à-vis* the electoral tribunals, the PET and the Court are one and the same. The Court, thus, does not lose jurisdiction nor does the PET acquire such upon the happening of the conditions in *Reyes*. Instead, *Reyes* determines when the case becomes an election contest involving the "President" and the "Vice-President" and, consequently, when the Court, sitting as the PET, may take cognizance of the case. For this purpose, the present action may be re-docketed and transferred to the PET, akin to the transfer of cases from the RTC to the RTC sitting as a specialized court in proper cases as discussed in *Gonzales*.

Second, while a Section 78 Petition is distinct from a petition for disqualification as to grounds and effects, a Section 78 Petition may include grounds for disqualification if the false material representation in a CoC relates to such grounds. However, such false representation, in order to be "material," must relate exclusively to the matters enumerated under Section 74, following the clear letter of Section 78.

Third, the ground invoked in the present Section 78 action relating to the alleged perpetual disqualification of Marcos, Jr. is material as the same impairs his eligibility to run for office — a matter expressly required to be



declared in the CoC by Section 74. Stated differently, a person suffering from perpetual disqualification is ineligible to run for any public office, and he or she, thus, commits a false material representation if he or she makes a contrary declaration in his or her CoC.

Fourth, while Marcos, Jr.'s representations in his CoC relating to his alleged perpetual disqualification is material, the same is not false. This is because such penalty, while prescribed by PD 1994 for the offense of non-filing of ITR for the year 1985 with which he was convicted of by final judgment by the CA, the same was not actually and expressly imposed as a penalty in the CA Decision.

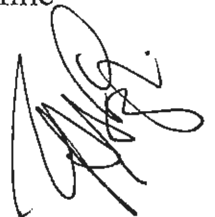
Penalties, as a rule and regardless of their characterization as either "principal" or "accessory," must be expressly imposed in a court's decision. The characterization of a penalty as an accessory penalty does not *ipso facto* allow for its automatic or implied imposition with the imposition of a principal penalty, in the absence of a law providing for the same. Neither can it be concluded that a penalty is not an accessory penalty upon the mere fact that the law does not mention a predicate principal penalty to which it attaches.

Fifth, although the CA Decision fails to impose the proper penalty of perpetual disqualification for Marcos, Jr.'s failure to file his 1985 ITR, the penalty of fine actually imposed in such decision is still within the range of penalties provided under the law. As such, the decision cannot be said to be a void judgment which can be altered as an exception to the rule on immutability of final judgments.

Sixth, Marcos, Jr.'s representation that he was eligible to run for President of the Philippines was not false because the penalty of perpetual disqualification was not imposed upon him in the CA Decision. However, his representation that he has not been found guilty of an offense which carries the penalty of perpetual disqualification was false.

Seventh, Marcos, Jr. lacked the requisite malicious intent to deceive the electorate when he made the representations relating to his alleged perpetual disqualification. He cannot be faulted for relying on the clear language of the CA Decision which, again, did not expressly impose upon him said penalty.

Eighth, the CA's final judgment did not impose upon Marcos, Jr. a penalty of imprisonment of more than eighteen (18) months. While it appears that the CA again erred in failing to impose the maximum penalty of both fine and imprisonment prescribed by the 1977 NIRC for violators who are public officials, the penalty of fine actually imposed in the CA Decision is still within the range of penalties prescribed by the law. Hence, similar to the position I take as to the failure of the CA to impose the proper penalty of perpetual disqualification, the CA's failure to impose the proper penalty of both fine



and imprisonment can no longer be corrected in the present case as the judgment is not void and has long attained finality and immutability.

Ninth, the crime for which Marcos, Jr. was convicted — failure to file annual ITR — is, by definition, one that does not involve moral turpitude. It is the nature of the crime which determines whether or not it involves moral turpitude, not the circumstances of the accused or his contemporaneous or subsequent acts. As such, it is neither necessary nor proper to inquire into the circumstances surrounding Marcos, Jr.'s failure to file his ITR. Likewise, his alleged failure to pay the fines imposed by the CA does not amount to a conviction for the crime of evasion of service of sentence which allegedly involves moral turpitude.

In these lights, I agree with the *ponencia*'s dismissal of the Consolidated Petitions. Contrary to the allegations of petitioners, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions.

Marcos, Jr. did not commit false material representation in his CoC when he made declarations therein relating to his alleged perpetual disqualification and ineligibility as the elements for the same are not established. Consequently, the Section 78 Petition was rightfully dismissed by the COMELEC. Likewise, the petition for disqualification was correctly dismissed as Marcos, Jr. was not convicted, by final judgment, of an offense involving moral turpitude, nor was he imposed the penalty of imprisonment of more than eighteen (18) months. There are, in fine, no valid grounds to support his disqualification under the OEC.

On a final note, it may be well to clarify that the ruling of the Court in refusing to alter the decision of the CA on the basis of the same having attained finality and, thus, immutability, should not, in any way, be taken to mean that it sanctions the CA's egregious mistake in failing to impose the proper penalties upon Marcos, Jr. under Section 286 in relation to Section 288 of the 1977 NIRC, as amended by PD 1994.

To be sure, the duty of the courts is to apply or interpret the law, not to make or amend it.[107] When the same is clear — as in this case — there is no other recourse but to apply it.[108] A judge is not only bound by oath to apply the law; he or she must also be conscientious and thorough in doing so. Certainly, judges, by the very delicate nature of their office, should be more circumspect in the performance of their duties.[109]

Nevertheless, although the CA was remiss in performing its duty in imposing the proper penalties, as discussed, its error, egregious though it may

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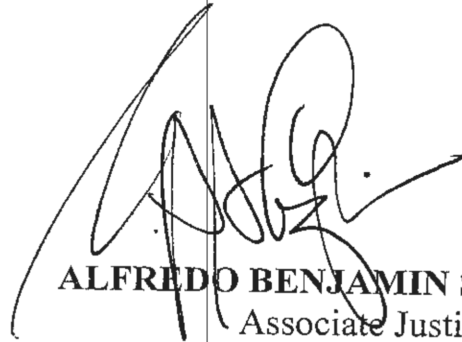
[107] *Silverio v. Republic*, 562 Phil. 953, 973 (2007).
[108] See *Office of the Court Administrator v. Tormis*, 794 Phil. 1 (2016).
[109] Id. at 29.

have been, does not rise to a level that renders its judgment void. Thus, the Court's hands are tied in correcting the same under the doctrine of immutability of judgments. Still, this case presents an opportune moment to enjoin the courts to be more circumspect in applying the clear letter of the law and imposing the penalties mandated therein.

Considering the above, I vote to dismiss the Consolidated Petitions.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice