

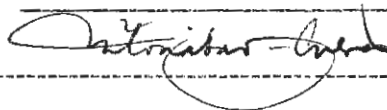
EN BANC

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 Maliari 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



SEPARATE CONCURRING OPINION

M. LOPEZ, J.:

I concur that the Petitions for *Certiorari*, assailing the Commission on Elections (COMELEC) Resolutions, should be dismissed. I submit this opinion to emphasize that the remedies of a petition for disqualification and a petition for cancellation of Certificate of Candidacy (CoC) should not be interchanged. While some grounds invoked in these remedies may overlap, such as residency or citizenship, the nature of the remedy is different and determines the filing period and legal consequences. The choice on which remedy to pursue rests with the petitioner.

Respondent Ferdinand Marcos, Jr. (Marcos, Jr.) was a public officer from the taxable years 1982 to 1985. He was elected as the Vice-Governor and later as Governor of Ilocos Norte from 1982 until he was forced into exile in February 1986 following the EDSA Revolution.¹ Marcos, Jr. failed to file his income tax returns for these taxable years. In 1995, the Regional Trial

¹ *Ponencia*, p. 9. In SPA No. 21-156 (DC), the COMELEC Second Division made a factual finding that Ferdinand Marcos, Jr. ceased to be a public officer when his family was forced to leave the Philippines on February 25, 1986.



Court (RTC) of Quezon City found Marcos, Jr. guilty of violating the National Internal Revenue Code (NIRC) of 1977, as amended, imposed penalties of imprisonment and fines, and ordered him to pay the taxes due to the Bureau of Internal Revenue. The RTC found that Marcos, Jr. failed to pay his income taxes and file his income tax returns for the taxable years of 1982 to 1985. The imposed period of imprisonment was for more than eighteen (18) months.²

Upon review of the RTC Decision, the Court of Appeals (CA) acquitted Marcos, Jr. from charges involving non-payment of deficiency taxes. The CA also modified the imposed penalties for non-filing of income tax returns. It removed the penalty of imprisonment but retained the imposition of fines:

WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:

1. ACQUITTING [Marcos, Jr.] of the charges for violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 x x x and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable year 1982 to 1985 x x x
2. Ordering [Marcos, Jr.] to pay the BIR the deficiency income taxes with interest at the legal rate until fully paid;
3. **Ordering [Marcos, Jr.] a fine of ₱2,000.00 for each charge x x x for failure to file income tax returns for the years 1982, 1983, and 1984; and the fine of ₱30,000.00 x x x for failure to file income tax return for 1985, with surcharges.**

SO ORDERED.³ (Emphasis supplied.)

The CA Decision became final and executory,⁴ and an entry of judgment was entered on November 10, 1997.⁵ Two decades later, Marcos, Jr. filed his CoC for president with the COMELEC during the filing period (October 1 to 8, 2021).⁶ He represented that he was **eligible for the office of**

² *Ponencia*, pp. 6–7. The dispositive portion of the RTC Decision reads:

WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt x x x and sentences him as follows:

1. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge x x x for failure to file income tax returns for the years 1982, 1983, 1984;
2. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge x x x for failure to pay income taxes for the years 1982, 1983, and 1984;
3. To serve imprisonment of three (3) years and pay a fine of ₱30,000.00 x x x for failure to file income tax return for the year 1985;
4. To serve imprisonment of three (3) years and pay a fine of ₱30,000.00 x x x for failure to pay income tax for the year 1985; and
5. To pay the Bureau of Internal Revenue the taxes due x x x

SO ORDERED.

³ *Ponencia*, p. 8.

⁴ *Id.*

⁵ *Id.*

⁶ Commission on Elections, RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2) SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST

the president.⁷ He also represented that he was not found liable for an offense with the accessory penalty of perpetual disqualification to hold public office.⁸

On November 2, 2021, petitioners Fr. Christian B. Buenafe et al. (Buenafe) filed a petition to cancel the CoC of Marcos, Jr. under Section 78 in relation to Section 74 of the Omnibus Election Code⁹ (OEC).¹⁰ They argued that Marcos, Jr.'s prior conviction carries the accessory penalty of perpetual disqualification from holding any office, voting, and participating in any election.¹¹ Thus, Marcos, Jr. committed a false material representation when he stated that he was eligible to run for president.¹² The case was docketed as SPA No. 21-256 (DC).¹³

On November 20, 2021, another petition was filed against Marcos, Jr. with the COMELEC.¹⁴ Petitioners Bonifacio Parabuac Ilagan et al. (Ilagan) filed a petition for disqualification under Section 12 of the OEC. They also argued that Marcos, Jr. committed false material representation in his CoC that he has not been found liable for an offense that carries the accessory penalty of perpetual disqualification to hold public office.¹⁵ This argument stems from their claim that the CA Decision is invalid because the penalty of perpetual disqualification to hold office should have been imposed. After all, Marcos, Jr. was a public officer when he violated the 1977 NIRC. The case was docketed as SPA No. 21-212 (DC).

SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS, Resolution No. 10717, promulgated on August 18, 2021 available at https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10717.pdf last accessed on June 27, 2022.

⁷ SEC. 74 of the Omnibus Election code requires candidates to state that they are eligible for the office they are running for. SEC. 74 states that “[t]he 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** x x x.” COMELEC Resolution No. 10717, Section 18 also provides mandatory contents and form of a certificate of candidacy. SEC. 18 (n) provides that the statement that “**the aspirant is eligible for said office**” is a mandatory content of the certificate of candidacy.

⁸ *Ponencia*, pp. 12–13; Commission on Elections, RULES AND REGULATIONS GOVERNING: 1) POLITICAL CONVENTIONS; 2) SUBMISSION OF NOMINEES OF GROUPS OR ORGANIZATIONS PARTICIPATING UNDER THE PARTY-LIST SYSTEM OF REPRESENTATION; AND 3) FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF AND ACCEPTANCE BY OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES IN CONNECTION WITH THE MAY 9, 2022 NATIONAL AND LOCAL ELECTIONS, Resolution No. 10717, SEC. 19 (w), promulgated on August 18, 2021 available at https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10717.pdf last accessed on June 27, 2022. Section 19 (w) provides that an aspirant must state under oath that:

SEC. 19. Contents and Form of Certificate of Candidacy. — The COC shall be under oath and shall state:

x x x x

(w) Whether the aspirant has been found liable for an offense/s which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory.

⁹ Batas Pambansa Bilang 881, Approved on December 3, 1985.

¹⁰ *Ponencia*, p. 5.

¹¹ *Id.* at 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 12–13.

The COMELEC dismissed both petitions. Aggrieved, Buenafe and Ilagan come before this Court and insist that Marcos, Jr.'s CoC should have been cancelled or disqualified. Buenafe's petition was docketed as G.R. No. 260374, while Ilagan's petition was docketed as G.R. No. 260426.

I vote to dismiss both petitions.

A criminal conviction may give rise to separate grounds preventing convicts from pursuing their candidacies for public office. If the conviction carries a penalty for the imprisonment of more than eighteen (18) months or if the crime involves moral turpitude, then the convict may be disqualified to run for public office under Section 12 of the OEC. If the conviction carries with it a penalty of perpetual disqualification to hold public office, then the convict's CoC may be cancelled under Section 78 of the OEC following the case of *Jalosjos, Jr. v. COMELEC*.¹⁶ The petitioner may choose which remedy to avail.

In *Miranda v. Abaya*,¹⁷ the Court enumerated the following circumstances to describe the nature of the CoC filed and related them to the existing remedies under the OEC:

- (1) A candidate may not be qualified to run for election but may have filed a valid certificate of candidacy;
- (2) A candidate may likewise be not qualified and at the same time not have a valid certificate of candidacy. In this case, the certificate of candidacy may be denied due course or cancelled;
- (3) A candidate may be qualified, but his or her certificate of candidacy may be denied due course or cancelled.¹⁸

In the first circumstance, a petition for disqualification under Section 68 of the OEC may be availed. The second circumstance may be challenged via a petition to cancel the CoC of a candidate under Section 78 in relation to Section 74 of the OEC. The third circumstance may be challenged by a petition to declare a candidate as a nuisance under Section 69 of the OEC.¹⁹

Section 78 of the OEC provides that a petition filed under this section should be limited to material representations as required under Section 74 of the OEC:

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.** x x x

¹⁶ *Jalosjos, Jr. v. COMELEC*, 696 Phil. 601, 632 (2012).

¹⁷ 370 Phil. 642, 660 (1999).

¹⁸ See also *Talaga v. COMELEC*, 696 Phil. 786, 829 (2012).

¹⁹ See *Miranda v. Abaya*, *id.* at 17.

In *Fermin v. Comelec*,²⁰ the Court held that a petition under Section 78 of the OEC must refer to the constitutional and statutory provisions on qualifications or eligibility for public offices, such as age, citizenship, and residency requirements. *Fermin* also cautioned against interchanging or confusing “Section 68” and “Section 78” petitions because they are “*different remedies, based on different grounds, and resulting in different eventualities.*” One key difference is the filing period. A petition under Section 78 must be filed within twenty-five (25) days of the CoC filing. Otherwise, it is time-barred without prejudice to file a *quo warranto*, if proper.

In *Fermin*, the Court had to determine whether a petition questioning the one-year residency of the mayoralty candidate was for disqualification or cancellation of CoC under Section 78 because the petition was filed beyond twenty-five (25) days after the CoC was filed. The Court had to make sure that the residency requirement does not pertain to any grounds for disqualification under the OEC or the Local Government Code:

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, *i.e.*, he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office *is not a ground for the “disqualification” of a candidate* under Section 68. The provision only refers to *the commission of prohibited acts and the possession of a permanent resident status in a foreign country* as grounds for disqualification, thus:

SEC. 68. Disqualifications x x x

Likewise, the other provisions of law referring to “disqualification” do not include the lack of the one-year residency qualification as a ground therefor, thus:

Section 12 of the OEC

Section. 12. Disqualifications. — x x x

Section 40 of the Local Government Code (LGC)

Section. 40. Disqualifications. — The following persons are disqualified from running for any elective local position: x x x

Considering that the Dilangalen petition does not state any of these grounds for disqualification, it cannot be categorized as a “Section 68” petition.

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the OEC, or Section 40 of the LGC. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*, [the] Court made the distinction that a candidate who is disqualified under Section 68 can validly

²⁰ 595 Phil. 449, 465 (2008).

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be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate. (Emphases supplied and citations omitted.)

While Section 78 of the OEC mentioned that the petition for cancellation must be anchored "*exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false,*" the Court in *Jalosjos, Jr. v. COMELEC*²¹ may have unwittingly expanded the grounds that may be invoked under a "Section 78" petition by defining what "eligible" means:

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 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. (Emphasis supplied and citations omitted.)

By equating eligibility to the "right to run for public office" without any restrictions, Sections 12 and 68 of the OEC and Section 40 of the Local Government Code for local elective officials may as well be considered proper grounds for a "Section 78" petition. As worded, these law provisions prevent a candidate from pursuing their candidacies:

Omnibus Election Code

Section 12. Disqualifications. — x x x shall be disqualified to be a candidate and to hold any office x x x

Section 68. Disqualifications. — x x x shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office

Local Government Code

Section 40. Disqualifications. — The following persons are disqualified from running for any elective position

Surely, the OEC did not intend to provide different provisions for petitions for disqualification and cancellation of CoC if it only means the same thing. Thus, I express my reservation on the *ponencia's* observation that "*[w]hile the grounds for a petition for disqualification are limited to Sections 12 and 68 of the OEC, and for local elective officials, Section 40 of the LGC, the same grounds may be invoked in a petition to deny due course to or cancel COC if these invoke the representations required under Section 78.*"²²

²¹ 696 Phil. 601, 623 (2012).

²² *Ponencia*, p. 22.

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I submit that *Jalosjos, Jr. v COMELEC*²³ should be revisited to reflect the distinctions between a petition for disqualification and a petition for cancellation of CoC. In his Separate Opinion in *Talaga v. COMELEC*,²⁴ Supreme Court Justice Arturo Brion provided an analysis by which eligibility requirements and disqualification are reconciled. This analysis supports the earlier pronouncements in *Fermin* that Section 78 of the OEC should refer to the constitutional and statutory provisions on qualifications such as age, citizenship, and residence:

The Concept of Disqualification and its Effects.

To disqualify, in its simplest sense, is (1) to deprive a person of a power, right or privilege; or (2) to make him or her ineligible for further competition because of violation of the rules. It is in these senses that the term is understood in our election laws.

Thus, anyone who may qualify or may have qualified under the general rules of eligibility applicable to all citizens may be **deprived of the right to be a candidate or may lose the right to be a candidate** (if he has filed his CoC) because of a trait or characteristic that applies to him or an act that can be imputed to him *as an individual, separately from the general qualifications that must exist for a citizen to run for a local public office*. Notably, **the breach of the three-term limit** is a trait or condition that can possibly apply *only* to those who have previously served for three consecutive terms in the same position sought immediately prior to the present elections.

In a disqualification situation, the grounds are the individual traits or conditions of, or the individual acts of disqualification committed by, a candidate as provided under Sections 68 and 12 of the OEC and Section 40 of LGC 1991, and which generally have nothing to do with the eligibility requirements for the filing of a CoC.

Sections 68 and 12 of the OEC (together with Section 40 of LGC 1991, outlined below) cover the following as traits, characteristics or acts of disqualification: (i) corrupting voters or election officials; (ii) committing acts of terrorism to enhance candidacy; (iii) overspending; (iv) soliciting, receiving or making prohibited contributions; (v) campaigning outside the campaign period; (vi) removal, destruction or defacement of lawful election propaganda; (vii) committing prohibited forms of election propaganda; (viii) violating rules and regulations on election propaganda through mass media; (ix) coercion of subordinates; (x) threats, intimidation, terrorism, use of fraudulent device or other forms of coercion; (xi) unlawful electioneering; (xii) release, disbursement or expenditure of public funds; (xiii) solicitation of votes or undertaking any propaganda on the day of the election; (xiv) declaration as an insane; and (xv) committing subversion, insurrection, rebellion or any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude.

Section 40 of LGC 1991, on the other hand, essentially repeats those already in the OEC under the following disqualifications:

²³ 696 Phil. 601, 631 (2012).

²⁴ 696 Phil. 786, 859 (2012).

- a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- b. Those removed from office as a result of an administrative case;
- c. Those convicted by final judgment for violating the oath of allegiance to the Republic;
- d. Those with dual citizenship;
- e. Fugitives from justice in criminal or non-political cases here or abroad;
- f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- g. The insane or feeble-minded.

Together, these provisions embody the disqualifications that, by statute, can be imputed against a candidate or a local elected official to deny him of the chance to run for office or of the chance to serve if he has been elected.

A unique feature of "disqualification" is that under Section 68 of the OEC, it **refers only to a "candidate,"** not to one who is not yet a candidate. Thus, the grounds for disqualification do not apply to a would-be candidate who is still at the point of filing his CoC. **This is the reason why no representation is required in the CoC that the would-be candidate does not possess any ground for disqualification. The time to hold a person accountable for the grounds for disqualification is after attaining the status of a candidate, with the filing of the CoC.**

To sum up and reiterate the essential differences between the eligibility requirements and disqualifications, the former are the requirements that apply to, and must be complied by, all citizens who wish to run for local elective office; these must be positively asserted in the CoC. The latter refer to individual traits, conditions or acts that serve as grounds against one who has qualified as a candidate to lose this status or privilege; essentially, they have nothing to do with a candidate's CoC.

When the law allows the **cancellation of a candidate's CoC, the law considers the cancellation from the point of view of the requirements that every citizen who wishes to run for office must commonly satisfy.** Since the elements of "eligibility" are common, the vice of ineligibility attaches to and affects both the candidate *and* his CoC. In contrast, when the law allows the disqualification of a candidate, the law looks only at the disqualifying trait or condition specific to the individual; if the "eligibility" requirements have been satisfied, the disqualification applies only to the person of the candidate, leaving the CoC valid. A previous conviction of subversion is the best example as it applies not to the citizenry at large, but only to the convicted individuals; a convict may have a valid CoC upon satisfying the eligibility requirements under Section 74 of the OEC, but shall nevertheless be disqualified. (Emphases originally supplied and citations omitted.)

Nonetheless, there are grounds for a petition for disqualification, which may overlap with a Petition for Cancellation of CoC. The case of *Chua v.*

COMELEC²⁵ cited in the *ponencia* recognized these overlapping grounds. In *Chua*, a candidate for councilor was allegedly a permanent resident of a foreign country. The candidate's permanent residency issue may fall under Section 68²⁶ of the OEC or Section 40 (f) of the Local Government Code²⁷, which are proper for a petition for disqualification. The residency issue may also be considered a ground to cancel the CoC of a candidate because it relates to the statutory provisions on qualifications or eligibility for public office²⁸ under Section 39 of the Local Government Code.²⁹ Incidentally, Section 74 of the OEC also requires that the candidate state under oath that they are not a permanent resident of a foreign country. Thus, *Chua* correctly held that the petitioner might choose the remedy of either a petition for disqualification or a petition for cancellation of CoC. At any rate, the proper characterization of the petitions filed with the COMELEC is not material in this case because the COMELEC resolved the petitions on the merits and the legal consequences of disqualifying or cancelling the CoC of Marcos, Jr. are immaterial. Also, the Buenafe petition asserting false material representation was filed on time, while the Ilagan petition for disqualification under Section 12 of the OEC was likewise timely filed.

Section 12 of the OEC³⁰ is inapplicable to Marcos, Jr. It provides that a person sentenced by final judgment to a penalty of eighteen (18) months or for a crime involving moral turpitude is disqualified from being a candidate and holding any office. The second paragraph of the same section also provides that the disqualification to be a candidate shall be removed "*after the expiration of five (5) years from his service of sentence.*" Here, the petitioners failed to show that Marcos, Jr. was sentenced to suffer imprisonment. The CA Decision modified the trial court's decision and removed the penalties of imprisonment.

The petitioners' argument that the CA Decision is void because the penalty of imprisonment was deleted fails to persuade. As pointed out in the *ponencia*, the penalty of **imprisonment and fine** was only introduced in

²⁵ 783 Phil. 876, 895 (2016).

²⁶ Section 68. Disqualifications. — x x x Any person who is a permanent resident of or an immigrant of a foreign country in accordance with the residence requirement provided in the election laws.

²⁷ Section 40. Disqualifications. — The following persons are disqualified from running for any elective Local position:

x x x x

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code.

²⁸ *Chua v. COMELEC*, 783 Phil. 876, 894 (2016); citing *Fermin v. COMELEC*, 595 Phil. 449, 465-466 (2008).

²⁹ Section 39. Qualifications. — (a) An elective local official must be x x x a resident therein for at least one (1) year immediately preceding the day of the election;

³⁰ Batas Pambansa Bilang 881, Approved on December 3, 1985; Section 12 provides:

SECTION 12. *Disqualifications.* — Any person who x x x has been sentenced by final judgment for x x x 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.

This disqualifications to be a candidate herein provided shall be deemed removed x x x after the expiration of a period of five years from his service of sentence x x x. (Emphases supplied.)

1998³¹ or years after Marcos, Jr. was supposed to file his income tax returns. The amendment cannot be given retroactive effect because it is not favorable to the accused.³² When Marcos, Jr. failed to file his income tax returns, the penalty of only a fine satisfied the provisions of the 1977 NIRC. Thus, the Court of Appeals may exercise discretion in imposing the penalty of imprisonment, a fine, or both. Here, the CA imposed penalties that were within the prescribed range.

Further, the circumstances surrounding Marcos, Jr.'s non-filing of income tax returns negate a finding that he committed a crime involving moral turpitude because there is no fraudulent intent. As aptly observed by the *ponencia* and pointed out by Justice Japar Dimaampao, Marcos, Jr. was a provincial government employee during the taxable years of 1982 to 1985. The provincial government was duty-bound to withhold the corresponding taxes from Marcos, Jr.'s income.³³ Thus, Marcos, Jr.'s failure to file his income tax returns was not animated by wilfulness to defeat or circumvent the tax law to illegally reduce his tax liability.³⁴ The frequency of non-filing of income tax returns is immaterial because Marcos, Jr.'s correct taxes should have already been properly withheld. Curiously, in *Republic of the Philippines v. Marcos II*,³⁵ the Court has already held that the crime of failure to file an income tax return is not a crime involving moral turpitude because fraudulent intent is not an element of the crime.

Considering that Marcos, Jr. was not sentenced to imprisonment and his conviction does not involve moral turpitude, Section 12 of the OEC is not applicable. Whether Marcos, Jr. paid the fine or the deficiency taxes is immaterial because it is not a ground for disqualification. It becomes material only if Marcos, Jr.'s conviction involves moral turpitude or imprisonment of more than 18 months because the ground for disqualification under Section 12 ceases after five (5) years from service of the sentence. The payment of the fine would be equated to the service of the sentence. It serves as the reckoning point for counting the five (5) years.³⁶

I also agree with the *ponencia* that Marcos, Jr. is not suffering from "*perpetual disqualification from holding any office, to vote and to participate in any election*" because it was not imposed. However, I submit that there was no error in sentencing. Section 40 of Presidential Decree No. 1994 (1977 NIRC, as amended),³⁷ amending the 1977 NIRC, provides the guidelines on

³¹ *Ponencia*, p. 53.

³² *Id.*

³³ Reflections of Justice Japar Dimaampao, p. 7 citing Section 94 of the 1977 National Internal Revenue Code:

SECTION 94. *Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

³⁴ Reflections of Justice Japar Dimaampao, p. 6.

³⁵ 612 Phil. 355, 375 (2009).

³⁶ See *Ty-Delgado v. HRET*, 779 Phil. 268, 278 (2016).

³⁷ FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, Presidential Decree No. 1994; The decree took effect on January 1, 1986.

how penalties are imposed, who is liable, and additional penalties to be imposed depending on the circumstances of the violator. The succeeding sections provide the prescribed penalties depending on the provisions violated:

Section 40. Title XI of the National Internal Revenue Code is hereby amended as follows:

x x x

Chapter II - Crimes, Other Offenses and Forfeitures

“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.

“(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another, shall be liable [in] the same manner as the principal.

“(c) If the offender is not citizen of the Philippines, he shall be adopted 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 account shall, upon conviction, be automatically revoked or cancelled.

“(d) In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

“Sec. 287. Attempt to evade or defeat tax. — x x x

“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.**

“Sec. 289. Penal liability of corporations. — x x x

“Sec. 290. Penal liability for making false entries, records or reports. — x x x

“Sec. 291. Unlawful pursuit of business. — x x x

“Sec. 292. Illegal collection of foreign payments. — x x x

x x x (emphases supplied)

Here, Section 286 (c) is not applicable. Thus, the CA is not required to impose the maximum penalty of a fine of fifty thousand pesos, imprisonment of five (5) years, or both, as provided under Section 288. The additional penalties of dismissal from "*public service and perpetually disqualified from holding any public office, to vote and to participate in any election*" could not be imposed. *First*, the amendment to the 1977 NIRC introducing the provision under Section 286 (c) became effective only in January 1986. Thus, the non-filing of income tax returns for the taxable years of 1982 to 1984 will not merit the additional penalty of "*perpetual disqualification from holding any public office, to vote and to participate in any election*" applicable to public officers. Section 73 of Presidential Decree No. 1158³⁸ (1977 NIRC) is applicable for these taxable years, which only prescribes the penalty of a "*fine of not more than two thousand pesos or imprisonment for not more than six months, or both.*" *Second*, the COMELEC Second Division made a factual finding that Marcos, Jr. was no longer a public officer when the deadline to file the income returns for the taxable year of 1985 lapsed.³⁹ Although the income tax return pertains to the taxable year of 1985, when he was still a public officer, Marcos, Jr. was no longer a public officer when he omitted to file his income tax return. The reckoning point must be when Section 45 of the 1977 NIRC, as amended, was violated — "*the fifteenth day of March of each year, covering income of the preceding taxable year*"⁴⁰ or on March 1986. Thus, the CA's imposition of a fine of ₱30,000.00 follows Section 288 of the 1977 NIRC, as amended. The imposed penalty was within the prescribed range. Even assuming that Marcos, Jr. was still a public officer then, the CA merely committed an error in sentencing, which is not enough to invalidate the CA Decision. I join Justice Alfredo Benjamin Caguioa in that the error cannot be considered grave, which would amount to a lack of jurisdiction because the imposed penalty was still within the range of penalty of Section 288 of the 1977 NIRC, as amended.⁴¹

Accordingly, Marcos, Jr.'s CoC should not be cancelled. The representations in his certificate of candidacy that he is eligible for the office of the president and that he was not found liable for the accessory penalty of perpetual disqualification to hold public office are not false. It follows that

³⁸ A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, Presidential Decree No. 1158 (1977).

³⁹ *Ponencia*, p. 11

⁴⁰ A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, Presidential Decree No. 1158 (1977), Section 45 (c) states:

CHAPTER VI

Returns and Payments of Tax

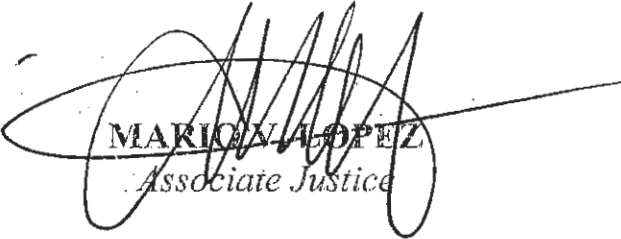
SECTION 45. Individual returns. — x x x

(c) *When to file.* — The return of the following individuals shall be filed on or before the fifteenth day of March of each year, covering income of the preceding taxable year, covering income of the preceding taxable year:

(A) Residents of the Philippines, whether citizens or aliens, whose income have been derived solely from salaries, wages, interest, dividends, allowances, commissions, bonuses, fees, pensions, or any combination thereof. x x x

⁴¹ Justice Alfredo Benjamin Caguioa's Separate Opinion, pp. 23-24.

there is no intention to deceive the electorates of his eligibility. Marcos, Jr. is also not disqualified from running for president in the 2022 national and local elections. The petitioners failed to establish that Section 12 of the OEC is applicable. Utmost, the petitioners' causes of action are dependent on a strained interpretation that the CA Decision is void and how the CA should have exercised its discretion in sentencing Marcos, Jr. As discussed above, the petitioners are mistaken.



MARICELA LOPEZ
Associate Justice