Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

FIRST DIVISION

BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERLITA REPUNO, JOANNA KINTANAR CARINO, ELISA TITA PEREZ LUBI, LIZA LAROZA MAZA, DANILO MALLARI DELA FUENTE, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAY, JR., ERLINDA NABLE SENTURIAS SR., ARABELLA CAMMAGAY BALINGAO, SR., CHERRY M. IBARDALOZA, CSSJB, SR. USAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, and JONAS ANGELO LOPENA ABADILLA, *Petitioners,*	SPA NO. 21-212 (DC)
-versus-	
FERDINAND ROMUALDEZ MARCOS, JR., *Respondent.*	
x----------x	
AKBAYAN CITIZENS' ACTION PARTY, DORIS S. NUVAL, JOANNA BERNICE S. CORONACION, JO	

ENRICA ENRIQUEZ ROSALES, RAYMOND JOHN S. NAGUIT, and LORETTA ANN P. ROSALES,
Petitioners,

SPA NO. 21-232 (DC)

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

x----------x

ABUBAKAR M. MANGALEN,
Petitioner,

SPA NO. 21-233 (DC)

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

x----------x

Promulgated:

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SEPARATE OPINION

I vote to grant the petitions for disqualification filed against Respondent Ferdinand Romualdez Marcos, Jr. ("Respondent").

The facts are undisputed.

Respondent was charged with four (4) counts of violation of Section 45 of the 1977 National Internal Revenue Code ("1977 NIRC") for failing to file income tax returns, and four (4) counts of violation of Section 50 of the same 1977 NIRC for failure to pay deficiency taxes. In a *Decision* dated 25 July 1995, the Regional Trial Court ("RTC") of Quezon City, Branch 105, found Respondent guilty of violation of Section 45 and Section 50 of the 1977 NIRC. The dispositive portion of the Decision states:

> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt of the National Internal Revenue Code of 1977, as amended, and sentences him as follows:
>
> 1. To serve imprisonment of six months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212, and Q-92-29217 for failure to file income tax returns for the years 1982, 1983 and 1984;
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> 2. To serve imprisonment of six months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29216, Q-92-29215, and Q-92-29214 for failure to pay income taxes for the years 1982, 1983, and 1984;
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> 3. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Cases No. Q-91-24391 for failure to file income tax return for the year 1985; and
>
> 4. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24390 for failure to pay income tax for the year 1985.
>
> 5. To pay the Bureau of Internal Revenue the taxes due, including such other penalties, interests, and surcharges.

Respondent appealed the decision of the RTC ("RTC Decision") to the Court of Appeals. The appeal was docketed as CA-G.R. CR No. 18569. In a decision dated 31 October 1997 ("CA Decision"), the Court of Appeals upheld the conviction of Respondent for violation of Section 45 of the NIRC but deleted the penalty of imprisonment. The dispositive portion of the CA Decision states:

> WHEREFORE, the Decision of the trial court is modified as follows
>
> 1. . . . . FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-91-29212, Q-92-29213, and Q-92-29217;
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> 2. Ordering the appellant (**respondent convicted candidate Marcos, Jr.**) to pay to the BIR the deficiency income taxes due with interest at the legal rate until fully paid;
>
> 3. Ordering the appellant (**respondent convicted candidate Marcos, Jr.**) to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. *Q-92-29213, Q-92-29212 and Q-92-29217 for failure to file income tax returns for*

the years 1982, 1983 and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

SO ORDERED.

Respondent initially appealed the CA Decision to the Supreme Court but eventually withdrew the same. Thus, in a Resolution dated 8 August 2001, the Supreme Court granted Respondent's *Manifestation and Urgent Motion to Withdraw the Motion for Extension of Time to File a Petition for Review on Certiorari*. This Resolution has already become final and executory as shown in the *Entry of Judgment* dated 31 August 2001.

During the preliminary conference held on 7 January 2022, Respondent admitted the following facts:

1. The Commission has jurisdiction over the case.

2. Respondent served as the Vice Governor of Ilocos Norte from 1982 to 1983.

3. Respondent served as the Governor of Ilocos Norte from 1983 until 1986.

4. Respondent was found guilty by the Quezon City RTC for violations of the 1977 NIRC but that such decision of the RTC was appealed to the Court of Appeals.

5. The Court of Appeals found Respondent guilty of failure to file his income tax returns.

In the same preliminary conference, the parties raised the following issues for resolution by the Commission:

1. Whether Respondent has been sentenced by final judgment to a penalty of more than eighteen (18) months of imprisonment;

2. Whether Respondent is perpetually disqualified from running for public office;

3. Whether Respondent has been convicted by final judgment of a crime involving moral turpitude; and

4. Whether Respondent is qualified to be elected as President of the Philippines

I shall discuss these issues *in seriatim*.

Respondent was not sentenced by final judgment to a penalty of imprisonment of more than eighteen (18) months.

As stated, the RTC Decision convicted Respondent for violation of Section 45 and Section 50 of the 1977 NIRC and imposed the penalty of imprisonment for a period of three (3) years each for Case No. Q-91-24390, for failure to pay income tax for the year 1985, and Case No. Q-91-24391, for failure to file income tax return for the year 1985.

The RTC Decision was appealed by Respondent to the Court of Appeals, which rendered a decision on 31 October 1997 acquitting Respondent in Case Nos. Q-92-29216, Q-92-29215, Q-92-29214, and Q-91-24390. Respondent however was found guilty by the Court of Appeals for failure to file his income tax returns for the years 1982 to 1985.

To underscore, it was the CA Decision which became final and executory. Necessarily, it is the CA Decision which serves as this Commission's basis in determining whether Respondent is disqualified under the terms of Section 12 of the OEC.

Regrettably for Petitioners, the CA Decision never meted the penalty of three (3) years of imprisonment against Respondent. As such, the Commission has no basis to conclude, as Petitioners would insist, that Respondent was sentenced by final judgment to imprisonment for a period of at least eighteen (18) months.

This Commission cannot read into the decision of the Court of Appeals something that is clearly not there. It is beyond the purview of this Commission's constitutional mandate and duty to alter the dispositive portion of the CA Decision rendered more than two (2) decades ago. Indeed

if the Court of Appeals made a grievous error in its decision or in its interpretation and application of the law, the remedy is elsewhere and lies not with the Commission.

The Commission has no power over the Court of Appeals as it neither has appellate nor supervisory jurisdiction over such tribunal. In fact, in the present state of the law and the rules, there is no remedy by which a matter pending before the Court of Appeals will somehow end up within the cognizance of the Commission. Thus, the Commission cannot, without overstepping its jurisdiction, disregard the clear language of the dispositive portion of the decision of the Court of Appeals in CA-G.R. CR 18569.

Moreover, even on the assumption that the Commission may somehow modify the decision of the Court of Appeals, such decision has long attained finality. The doctrine of immutability of judgment bars the Commission from modifying decisions even if the purpose of such modification is to correct errors of fact or law.[1]

Hence, the Commission hereby finds that there is no proof on record that Respondent has ever been sentenced by final judgment to imprisonment of more than eighteen (18) months. On this score, the Petitions must fail.

Respondent is not perpetually disqualified from running for public office.

Petitioners insist that Respondent is perpetually disqualified from holding public office in view of Section 252(c) of the 1977 NIRC, as amended by P.D. 1994:

> (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

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1 See *Gadrinab vs. Salamanca Talao, and Lopez*, G.R. No. 194560, 11 June 2014.

The CA Decision however did not impose the penalty of perpetual disqualification upon Respondent. Petitioners argued that the penalty of perpetual disqualification is deemed written in the CA Decision. The Commission regrettably is unable to find any legal basis to allow the imposition of the penalty of perpetual disqualification upon Respondent when the same was not imposed to begin with. There is nothing in the 1977 NIRC or in P.D. 1994 which supports the theory of Petitioners.

Petitioners' reliance on Article 73 of the Revised Penal Code is misplaced. While Article 73 presumes the imposition of the accessory penalties, its application however does not extend to Article 252(c) of the 1977 NIRC. Article 73 of the Revised Penal Code provides:

> Article 73. Presumption in regard to the imposition of accessory penalties. - Whenever 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.

The application of Article 73 therefore is limited only to Articles 40, 41, 42, 43, 44, and 45 of the Revised Penal Code, which all refer only to penalties imposed and prescribed by the penal code:

> **SECTION 3**
> **Penalties in which other accessory penalties are inherent**
>
> Article 40. *Death - Its accessory penalties.* - The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.
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> Article 41. *Reclusion perpetua and reclusion temporal.* - Their accessory penalties. - The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.
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> Article 42. *Prision mayor - Its accessory penalties.* - The penalty of prision mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

> Article 43. *Prision correccional - Its accessory penalties.* - The penalty of prision correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.
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> Article 44. *Arresto - Its accessory penalties.* - The penalty of arresto shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.
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> Article 45. *Confiscation and forfeiture of the proceeds or instruments of the crime.* - Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.
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> Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

Accessory penalties provided in the Revised Penal Code are considered inherent only to principal penalties as defined and prescribed by Articles 40 to 45 of the Revised Penal Code. Penalties imposed by special laws are not included in the coverage of Article 73. In *Benito Estrella vs. People of the Philippines,*[2] the Supreme Court explained that it is only when the penalties are taken from the technical nomenclature of the Revised Penal Code that the legal effects of the system of penalties under the code will be applied to the special law:

> While the offense of Fencing is defined and penalized by a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). In Peralta v. People, the Court judiciously discussed the proper treatment of penalties found in special penal laws vis-a-vis Act No. 4103, viz.:
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> > Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of People v. Simon that the

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2 G.R. No. 212942, 17 June 2020.

> situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.

Also in *People vs. Simon*,[3] the Supreme Court held:

> With respect to the first example, where the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules for the application of penalties under said Code or by other relevant statutory provisions based on or applicable only to said rules for felonies under the Code. In this type of special law, the legislative intendment is clear.

There is nothing in the 1977 NIRC which provides that the penalty of perpetual disqualification shall inhere in the other penalties imposed for violation of the law. The penalties imposed by the 1977 NIRC did not follow or adopt the technical nomenclature of the penalties under the Revised Penal Code. Clearly, there is no merit in Petitioners' asseveration that the penalty of perpetual disqualification under Article 252(c) of the 1977 NIRC is an accessory penalty or a penalty that inheres in the penalty imposed by the Court of Appeals upon Respondent for failure to file his income tax returns.

Respondent's non-filing of Income Tax Returns for the years 1982 to 1985 constitutes moral turpitude.

Petitioners alleged that Respondent's conviction for violation of Section 45 of the 1977 NIRC is an offense which involves moral turpitude. Petitioners point out that the requirement of filing tax returns is an essential component of the State's inherent power of taxation as it ascertains the amount of tax due from every taxpayer. Thus, according to Petitioners, when Respondent decided to evade his duty of filing his income tax returns for the years 1982 to 1985, he was robbing the government of the opportunity to ascertain the correct income tax due from him.

Respondent countered that non-filing of income tax returns cannot be considered as inherently immoral since it is merely an offense *malum*

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3 G.R. No. 93028, 29 July 1994.

prohibitum and that he was not motivated by ill-will when he failed to file such returns. Respondent cites the case of *Republic of the Philippines vs. Ferdinand Marcos II and Imelda R. Marcos*[4] claiming that it was stated by the Court that non-filing of income tax returns is not an offense involving moral turpitude.

After an assiduous analysis of the arguments of the parties and the evidence on record, I find that Respondent's repeated and persistent non-filing of income tax returns in 1982, 1983, 1984, and 1985, which resulted in his conviction, constitutes an offense involving moral turpitude.

The portion in Republic of the Philippines vs. Ferdinand R. Marcos II and Imelda R. Marcos relied upon by Respondent is not a binding precedent.

Respondent relied heavily on *Republic of the Philippines vs. Ferdinand R. Marcos II and Imelda R. Marcos ("Marcos")* in resisting Petitioners' claim that his conviction for failure to file his income tax returns constitutes an offense involving moral turpitude. In *Marcos,* the Republic of the Philippines directly filed a petition under Rule 45 to the Supreme Court from the order of the trial court granting in *solidum* letters testamentary to respondents therein. The petition was thereafter referred by the Supreme Court to the Court of Appeals. The Court of Appeals dismissed the referred petition on the basis of the erroneous appeal taken by the Republic. The dismissal of the referred petition was based on Section 4 of Circular No. 2-90:

> Based thereon, this Court agrees with the ruling of the CA that said resolution gave the CA discretion and latitude to decide the petition as it may deem proper. The resolution is clear that the petition was referred to the CA for consideration and adjudication on the merits **or** any other action as it may deem appropriate. Thus, no error can be attributed to the CA when the action it deemed appropriate was to dismiss the petition for having availed of an improper remedy. More importantly, the action of the CA was sanctioned under Section 4 of Supreme Court Circular 2-90 which provides that "an appeal taken to either the Supreme Court or the Court of Appeals by the wrong mode or inappropriate mode shall be dismissed.

Thus the Republic assailed the Court of Appeal's dismissal of the referred petition before the Supreme Court. Having found the dismissal to

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4 Gr. Nos. 130371 and 130855, 4 August 2009.

be in order, the Supreme Court in *Marcos* upheld the decision of the Court of Appeals. Consequently when the Supreme Court upheld the dismissal of the referred petition based on Section 4 of Circular No. 2-90, it has already and fully ruled on the correctness of the decision of the Court of Appeals. The discussion taken by the Supreme Court with respect to the factual issues concerning the disqualification of respondent therein based on moral turpitude is no longer necessary as the propriety of the dismissal of the referred petition based on Circular No. 2-90 was already determined by the Supreme Court. The Supreme Court's continued discussion of the alleged disqualification of respondent based on his conviction for failure to file his income tax returns is already an *obiter dictum.*

Black's Law Dictionary defines an obiter dictum in this manner:

> A remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding precedent.[5]

In *Land Bank of the Philippines vs. Suntay and Lubrica,*[6] the Court defined the term *obiter dictum* in this wise:

> An *obiter dictum* has been defined as an opinion expressed by a court **upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way,** that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or **introduced by way of illustration, or analogy or argument.** It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. **It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.**

In discussing and ruling on therein respondent's disqualification, the Supreme Court stated:

> On the other hand, the eight cases filed against respondent Ferdinand Marcos II involve four charges for violation of Section 45 (failure to file income tax returns) and four charges for violation of Section 50 (non-

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5 Black's Law Dictionary, Sixth Edition, St. Paul, Minn. West Publishing Co. 1990, at 1072.
6 G.R. No. 188376, 14 December 2011.

payment of deficiency taxes) of the National Internal Revenue Code of 1977 (NIRC).

It is a matter of record, that in CA-G.R. CR No. 18569, the CA acquitted respondent Ferdinand Marcos II of all the four charges for violation of Section 50 and sustained his conviction for all the four charges for violation of Section 45. It, however, bears to stress, that the CA only ordered respondent Marcos II to pay a fine for his failure to file his income tax return. **Moreover, and as admitted by petitioner, said decision is still pending appeal.**

Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming arguendo that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.

Clearly, the Court's statements concerning moral turpitude were only uttered by the way, and were not essential for the resolution of the issue in *Marcos*. As stated, the issue in *Marcos* was the propriety of the dismissal by the Court of Appeals of the referred petition because of the erroneous mode of appeal resorted to by the Republic. The extended statement by the Court with respect to therein respondent's disqualification is no longer necessary for the disposition of the main issue of the case; the statement was a point by the way---a collateral discussion. Second and more importantly, it bears stressing that the Court's ruling that respondent therein (herein Respondent) is not disqualified is grounded on the finding that the criminal cases adverted to by the Republic were still subject of an appeal:

Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, even assuming arguendo that his conviction is later on affirmed, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.

Clearly, the Supreme Court in *Marcos* held that respondent is not disqualified because his conviction has not yet attained finality. The discussion as to whether or not respondent is disqualified was resolved by the Court in the negative based on the fact that the criminal convictions alluded to by the Republic were still the subject of a pending appeal. On this point, this finding that the criminal convictions are still not final and

executory was all that was necessary to answer the extended question as to the disqualification of respondent based on moral turpitude. However, after holding that respondent was not disqualified because the criminal cases relied upon by the Republic are still pending and not final, the Supreme Court went on to further state:

> More importantly, **even assuming *arguendo* that his conviction is later on affirmed**, the same is still insufficient to disqualify him as the "failure to file an income tax return" is not a crime involving moral turpitude.

The afore-quoted statement is the centerpiece of Respondent's defense against the claim that it was convicted of an offense involving moral turpitude. However, having already settled that the criminal case against Respondent has not yet attained finality, the ensuing above-quoted discussion by the Court based on a hypothetical scenario was, yet again, no longer necessary; it is an *obiter dictum*. It was clearly a discussion made only by way of argument, as headlined by the phrase "assuming arguendo."

It is also apparent that such portion of the decision anticipates an event which may or may not take place. As the Court found that the conviction of Respondent was under appeal, it was not yet necessary to discuss what the Court's decision would be if Respondent's appeal would later on be dismissed. Thus, the statement of the Court in *Marcos* was only on a hypothetical or theoretical basis.

It must be borne in mind that the Court does not adjudicate upon premature or theoretical matters.[7] The Court does not issue a definitive ruling based on mere suppositions.[8] Hence, any discussion by the Court on a matter which necessarily anticipates something that has not yet come to pass—or may not even come into fruition at all--cannot have the force of adjudication.

In sum, the only real issue in *Marcos* was the application of Supreme Court Circular 2-90 and the propriety of Rule 45 as a mode of questioning the issuance of letters testamentary by the trial courts. The extended discussion on factual matters was uncalled for. Moreover, even in the discussion of factual questions, the discussion on the disqualification was itself unnecessary. Even so, the question on the disqualification of therein respondent was addressed by the simple finding that the conviction relied

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7 *Kilusang Mayo Uno, et al. vs. Aquino, et al.*, G.R. 210500, 2 April 2019.

8 *Senator De Lima vs. Hon. Juanita Guerrero, et al.*, G.R. No. 229781, 10 October 2017.

on by the Republic is still subject of an appeal and is yet to attain finality. Further discussion made by the Court on the issue, which was the crux of Respondent's reliance on the case of *Marcos,* was clearly uttered only by the way, or by way of an argument, resting as it did on a hypothesis or on a hypothetical scenario. It was clearly an *obiter dictum,* an *obiter* within an *obiter* even.

Clearly, the discussion on moral turpitude in *Marcos* which is now being relied upon by Respondent does not form a binding precedent.

Respondent's repeated and persistent failure to file his income tax returns for 1982, 1983, 1984, and 1985 constitutes an offense involving moral turpitude.

Under Section 12 of the Omnibus Election Code, any person convicted of a crime or offense involving moral turpitude is disqualified to be a candidate for any elective position:

> 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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> The 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.

The term moral turpitude has been defined by the Supreme Court as anything that is contrary to justice, modesty, or good morals, and depicts baseness, vileness, or depravity:

> Moral turpitude is defined as everything which is done 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 general.[9]

Respondent cites the Concurring Opinion of Justice Brion in *Teves vs. COMELEC and Teves*[10] (*"Teves Concurrence"*) wherein three approaches to determine whether an offense involve moral turpitude were used. The first approach determines whether the act itself is intrinsically immoral. The second approach looks into the element of the offense. While the third approach determines whether there was ill-will on the part of the offender. Respondent argues that the use of any of these approaches shows that the offense of failure to file tax returns does not involve moral turpitude.

It bears pointing out that concurring opinions, while persuasive in proper cases, are not binding precedents. There is nothing in any decision of the Court which limits the manner of determining the involvement of moral turpitude to the three approaches enumerated in the *Teves Concurrence*.

Significantly, the so-called "first approach" explained in the *Teves Concurrence* does not seem to hold true under all circumstances. The Supreme Court has held that even an offense *malum prohibitum*, that is, an offense that is not inherently evil, may still involve moral turpitude. This is the essence of the pronouncement of the Court in *Dela Torre vs. COMELEC and Villanueva*,[11] thus:

> This guideline nonetheless proved short of providing a clear-cut solution, for in "International Rice Research Institute v. NLRC," the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as malum in se or as malum prohibitum. **There are crimes which are mala in se and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are mala prohibita only**. In the final analysis, whether or not a crime involves moral turpitude **is ultimately a question of fact and frequently depends on all the circumstances surrounding** the violation of the statue.

Thus, Respondent's argument that failure to file income tax returns does not involve moral turpitude because it is merely an offense *malum prohibitum* fails to hold water.

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9 *Ty-Delgado vs. House of Representatives Electoral Tribunal and Pichay*, G.R. No. 219603, 26 January 2016.

10 G.R. No. 180363, 28 April 2009.

11 G.R. No. 121592, 5 July 1996.

In the "third approach" or what Justice Brion refers to as the "subjective approach," the case of *IRRI vs. NLRC*[12] was cited. In that case, the Court held that even though the respondent therein was convicted of homicide, his offense did not involve moral turpitude. The Court pointed out the totality of the circumstances obtaining in that case. The Court then explained that not all convictions of the crime of homicide do not involve moral turpitude, thus:

> This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be **a question of fact and frequently depends on all the surrounding circumstances.**[13]

The ruling in both cases of *Dela Torre* and *IRRI* is clear and unmistakable: first, crimes or offenses that are *mala prohibita* may also involve moral turpitude. The nature of an offense as *malum prohibitum* is not preclusive of its being an offense involving moral turpitude; second, the question as to whether a crime or offense involves moral turpitude is ultimately a question of fact that requires an examination and analysis of the facts and circumstances surrounding the act, or omission, constituting the offense or crime. In simpler terms, moral turpitude is a flexible concept; its determination is not restricted to fixed and intransigent straightjacket standards, but is analyzed with due regard to facts and circumstances surrounding the act or omission.

Respondent averred that when all of the circumstances surrounding his failure to file income tax returns are taken into consideration, it cannot be said that he was motivated by ill-motive because the taxes on his income have already been withheld by the Provincial Government, and therefore he does not stand to benefit from his offense.

I do not agree.

One thing is certain: by not filing an income tax return, he deprived the government of the chance to ascertain whether what were withheld correctly corresponded with what he earned.

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12 G.R. No. 97239, 12 May 1993.

13 Emphasis supplied.

In fact, even as the Court of Appeals acquitted Respondent of the offense of failure to pay income taxes, he was still made to pay deficiency taxes. Apparently, either Respondent had additional income aside from his compensation as a public official or there were errors in the amount withheld at source. This must be so since Respondent even stipulated in the proceedings before the RTC that he, in fact, had deficiency taxes.

This would not have happened had Respondent filed his annual tax returns. Any deficiency would have right away been noticed and rectified. While it may not have been Respondent's duty to withhold the tax from his salary, it was certainly his duty to inform the BIR how much he should pay and to rectify any deficiency between the tax withheld and the tax due.

By failing to file his return, Respondent seriously incapacitated the BIR from determining whether the correct taxes were paid. In fact, it took several years and a special audit team before the BIR was finally able to determine that Respondent has deficiency taxes. It need not be belabored that as a result of Respondent's failure to file his returns, he was able to evade payment of such deficiency taxes.

While the absolute sum of the deficiency taxes may not seem very large today, it was significant more than thirty years ago. Using Respondent's own evidence,[14] it appears that he evaded payment of 100% of his income taxes in 1982,[15] 40% of his income taxes in 1983,[16] 28.7% of his income taxes in 1984,[17] and 29.2% of his income taxes in 1985.[18] Thus, contrary to Respondent's assertions, he stood to benefit, and in fact he did benefit, from his failure to file his income tax returns. Notably, if Respondent's failure to file his income tax returns were not discovered, he would have successfully evaded his obligations to pay his taxes in full.

For decades, the Government was deprived of the taxes which Respondent failed to pay. In a very real sense, Respondent's failure to file his tax returns, which in turn led to the belated discovery of deficiency taxes, had a deleterious effect to public interest.

Moreover, a closer look into the circumstances surrounding Respondent's offense would reveal that Respondent's failure to file his

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14 Computation of Deficiency Income Taxes and Fines.
15 Php 107.80 of unpaid tax out of the total of Php 107.8 tax due.
16 Php 3, 617.58 of unpaid tax out of the total of Php 8,966 tax due.
17 Php 1,828.48 of unpaid tax out of the total of Php 6,370.48 tax due.
18 Php 2,656.93 of unpaid tax out of the total of Php 9,073.20 tax due.

income taxes is not just a mere omission or mistake on his part but a deliberate and conscious effort to evade a positive duty required by law.

In *Aznar vs. Court of Tax Appeals et al,*[19] the Supreme Court held that a false return implies a deviation from the truth; a fraudulent return is an intentional entry with intent to evade the taxes due; and failure to file a return is a mere omission:

> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity", "fraud" and "omission".** That there is a difference between "false return" and "fraudulent return" cannot be denied. **While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**

In Respondent's case however, his repeated and consistent failure to file his income tax returns for four (4) straight years, while occupying a very important chief executive position in government tasked with the duty to enforce the laws of the land, clearly shows that his acts can no longer be casually considered as mere omissions; the fact that these omissions were repeated, persistent, and consistent is reflective already of a conscious design and intent to avoid a positive duty under the law and intent to evade the taxes due.

In the final analysis, the facts surrounding Respondent's failure to file his income tax returns are markedly telling of the character or nature of the acts or omissions committed by Respondent. To reiterate, the unlawful act alluded to as basis for Respondent's disqualification is not merely a singular and isolated act, or a single instance of non-filing of income tax returns. As borne by the records, Respondent failed to file his annual income tax returns for four (4) consecutive years. Indeed, a single omission may be considered

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[19] G.R. No. L-20569, 23 August 1974.

a simple neglect, oversight, or inadvertence; where such omission however has happened four (4) times, and for four (4) consecutive years, the omissions already betray the willfulness of the act. They reveal a deliberate intent to violate the law, a conscious design to evade a positive duty, and a wanton disregard of a legal and social duty.

As a high government official at that time, Respondent must be well-aware of his obligation to file his tax returns. As such high official, Respondent had staff to help him in administrative matters. Thus, there is no possible excuse for not exerting the slightest of efforts to comply with what everyone else complies with. Respondent's repeated violation of the law is reflective of and constitutes an act of baseness in the duties which he owes his fellow Filipinos and his country.

Significantly, at the time when Respondent chose not to comply with his duty to society, not only was he a high-ranking government official, he was also the son of the President of the Philippines. Undoubtedly, Respondent wielded considerable power and influence. Instead of setting a good example for his constituents to emulate, Respondent acted as if the law did not apply to him.

Thus, the inevitable conclusion is that Respondent knowingly and deliberately chose not to comply with a positive duty enjoined by law. Respondent disregarded the possible deleterious effects that his acts will have against public interest. Taken together, all of these circumstances reveal that Respondent's failure to file his tax returns for almost half a decade is reflective of a serious defect in one's moral fiber. For these reasons, I find that the totality of the circumstances shows that Respondent's conviction for the offense of non-filing of his tax returns for four (4) consecutive years involves moral turpitude.

Respondent is disqualified from running for the position of President of the Philippines.

Respondent argues that even if non-filing of income tax returns involves moral turpitude, he is still qualified to run as president since he has already served his sentence by paying the fines imposed by the Court of Appeals. To support this claim, Respondent submitted in evidence a receipt

from the Land Bank of the Philippines ("LBP OR") dated 27 December 2001[20] showing that he paid a total of Php 67,137.27, a *Computation of Deficiency Income Taxes and Fines,* and a Certification from BIR RDO 42 dated 9 December 2001.

On the other hand, to prove that Respondent has not yet served his sentence, Petitioners adduced a Certification issued by Judge Sto. Tomas-Bacud, Officer-in-Charge of the Regional Trial Court of Quezon City, Branch 105 ("Branch 105") attesting that there is no record on file of: 1) compliance of payment or satisfaction of the Decision of the Regional Trial Court dated 27, 1995 or the Court of Appeals decision dated July 27, 1995; and 2) Entry in the Criminal Docket of the RTC dated July 27, 1995 as affirmed/modified by the Court of Appeals ("RTC Certification").

After a careful analysis of the evidence of both parties, I find that the RTC Certification issued by Judge Sto. Tomas-Bacud must be given more weight.

First. As the officer-in-charge of Branch 105, Judge Sto. Tomas-Bacud is certainly privy to the records of the branch and is thus in a position to certify matters that are mandated by the law and the rules to be entered into the records of the court.

Under Section 44, Rule 39 of the Rules of Court, once there has been satisfaction of judgment, the clerk of court is required to enter the same in the court docket and in the execution book. As the court of origin, it is Branch 105 which is tasked to execute the judgment of the Court of Appeals in CA-G.R. CR 18569.[21] Thus, the fines, as penalties imposed by the court, should be paid to Branch 105. If it were true that Respondent has satisfied the judgment against him, then there would have been an entry thereof in the execution book and the court docket. In the absence of any indication of any irregularity in the certification issued by Judge Sto. Tomas-Bacud or in the manner by which it was issued, the same certification must be given due weight.

To be sure, during the preliminary conference held on 7 January 2022, Respondent admitted that he did not pay the fines to the RTC:

Atty. Salvador

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20 O.R. No. 10622824

21 Section 1, Rule 39.

> Yes, Your Honor. That with respect to the non-filing of ITRs from 82, 83, 84, and 85 no fine or penalty was paid to the Regional Trial Court, Branch 105 . . .
>
> Comm. Guanzon
> Okay, so they did not pay the fine in the Court . . .
>
> Atty. Salvador
> In the Court, Your Honor . . .
>
> Comm. Guanzon
> Okay. But do you admit that they paid, they said they paid in the BIR. Counsel, I'm sorry, do you say that you paid to the BIR, the taxes? Your client paid to the BIR?
>
> Atty. Barcena
> Yes, Your Honor there's a payment . . .
>
> Comm. Guanzon
> May 20, 2001, correct?
>
> Atty. Barcena
> Yes, Your Honor.
>
> Comm. Guanzon
> You did not pay to the Court?
>
> Atty. Barcena
> Yes, Your Honor.[22]

Second. Without proof to show that he has already served his sentence and paid to the RTC the fines imposed in the CA Decision, Respondent nonetheless presented in evidence the LBP O.R. allegedly issued on 27 December 2001. It bears stressing however that the said LBP O.R. contained an entry showing that the collection or payment was for a lease rental. It did not bear any other indication as to the nature and purpose of the payment. Furthermore the LBP O.R. was not machine validated. These irregularities in the LBP O.R. were left unexplained by Respondent. The LBP O.R. also does not contain any indication on its face that the payment was for the deficiency taxes payable to the BIR, or fines payable to the RTC.

Additionally, the LBP O.R. contains an erasure or correction as to its date of issuance. While a correction on the date of the official receipt does not render the document void, it is unusual that such error was not even

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[22] Transcript of Stenographic Notes, 7 January 2022.

counter-signed. The fact that the LBP O.R. was purportedly issued by a bank no less, which is expected to exercise extraordinary diligence in the conduct of its business, makes the particular document highly suspect.

Third. Respondent's BIR Certification likewise does not state what the certification was for, specifically what the payment was for. Other than a mere mention of the amounts paid, no further detail is included in the certification which will show that the payments reflected therein were for the purpose of settling the tax deficiencies and fines imposed by the CA Decision. While the certification supposedly included a computation of tax deficiencies and fines as attachment, the said attachment did not appear to be a part of the certification; it did not bear any seal or attestation by the same signatories of the BIR Certification. The BIR Certification likewise did not make a definite reference to the attachment. Furthermore, it is also baffling why the certification was issued by BIR RDO 42 in San Juan City, when it is public knowledge that Respondent's residence address is in Ilocos Norte.

Finally. Respondent failed to submit any order from Branch 105 directing him to pay the fines and deficiency taxes as directed by the Court of Appeals. Respondent did not adduce any evidence showing that he transmitted to RTC Branch 105 any proof of payment or compliance or any document showing payment of fines. It appears that Respondent inexplicably bypassed RTC Branch 105 altogether in serving his penalty. Again, this raises doubts on Respondent's alleged service of his penalty.

Between the certification adduced by Petitioners and a set of documents offered by Respondent which, unfortunately, provides more questions than answers, the former is certainly far more credible. It is therefore not difficult to hold that the scale of evidence tilts in favor of Petitioners. Thus, I find that to this date, Respondent has yet to satisfy the sentence meted against him in CA-G.R. C.R. 18569.

Respondent argues that the RTC Certification stated only that the RTC has no record of compliance or satisfaction of the sentence imposed on Respondent, and not that Respondent has not satisfied or served his sentence. According to Respondent, the RTC has already disposed of its records relative to Respondent's case; hence the tenor of the Certification. Respondent's ratiocination fails to convince.

Under Section 12 of the OEC, the disqualification is deemed removed only once there is a showing that the sentence has already been served, and the required period as provided in Section 12 is met. It is therefore Respondent's burden to prove that he has already served the sentence. If sentence has been served, the RTC should have a record of the same. The Certification submitted by Petitioners precisely attests to the absence of any record of service of sentence by Respondent. The Certification did not state that the absence of the requested record was due to the unavailability of the case records in view of their disposal. The Commission hence cannot make this assumption as suggested by Respondent. If Respondent truly believes that the Certification was issued on account of the fact that the records of the case have already been disposed, then he should have at the very least obtained a Certification from the RTC to that effect.

As a final point, Respondent pointed out that with the passage of R.A. No. 10963, or the TRAIN Law, the non-filing of income tax returns by pure compensation earners has already been decriminalized. The TRAIN Law introduced in its Section 14 a new Section 51-A to the 1997 NIRC, thus:

> Sec. 51-A. Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income - Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped "received: by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

Respondent claims that he is a pure compensation earner; therefore according to Respondent, under the new Section 51-A, whatever penalties that were previously imposed against him have already been remitted or extinguished. This is error.

To be sure, Respondent claims to benefit from Section 51-A on the basis solely of his allegation that he is a pure compensation earner. A closer look at Section 51-A however reveals that the exception to the filing of an income tax return shall apply only under the following conditions:

1. the taxpayer is receiving purely compensation income;
2. the taxpayer only has one employer in the Philippines; and

3. the income tax is correctly withheld by the employer.

Not only was there no evidence on record showing that Respondent met all three conditions above, Respondent likewise and more importantly did not even make the most basic allegation and claim that he in fact met all three (3) conditions so as to be entitled to the benefit of Section 51-A. He simply stated that Section 51-A applies to him because he was a pure compensation earner in 1982, 1983, 1984, and 1985. Thus, even assuming that Respondent's allegation is true---that he was a compensation earner in 1982, 1983, 1984, and 1985---the same still is not sufficient for the Commission to conclude that he is entitled to the benefit of Section 51-A. The provision clearly requires more: the taxpayer must only have one (1) employer in the Philippines, and the income tax due must have been correctly withheld by the employer.

Moreover, it bears stressing that as found by the Court of Appeals in its decision, Respondent admitted to being liable for deficiency taxes relative to his income for the years 1982, 1983, 1984, and 1985. Respondent also effectively admitted such fact when he repeatedly alleged before the Commission that he had already paid the said deficiency to the BIR. Evidently, Respondent cannot claim that the taxes due on his compensation income for the years 1982, 1983, 1984, and 1985 were correctly withheld. Necessarily, Respondent clearly does not fall under the coverage of Section 51-A.

In view of the foregoing, I vote to **GRANT** the Petitions for Disqualification and declare Respondent **FERDINAND R. MARCOS II DISQUALIFIED** from running for the position of President of the Philippines.

MA. ROWENA AMELIA V. GUANZON
Presiding Commissioner