Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAJOR GENERAL CARLOS F. GARCIA, AFP (RET.), Petitioner,	**G.R. No. 198554**
	Present:
- versus -	
THE EXECUTIVE SECRETARY, representing the OFFICE OF THE PRESIDENT; THE SECRETARY OF NATIONAL DEFENSE VOLTAIRE T. GAZMIN; THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, GEN. EDUARDO SL. OBAN, JR., and LT. GEN. GAUDENCIO S. PANGILINAN, AFP (RET.), DIRECTOR, BUREAU OF CORRECTIONS, Respondents.	VELASCO, JR., *J., Chairperson,* PERALTA, ABAD, SERENO,* and PERLAS-BERNABE, *JJ.* **Promulgated:** 30 July 2012

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DECISION

PERALTA, *J.*:

For resolution of this Court is the Petition for *Certiorari* dated September 29, 2011 under Rule 65, Section 1 of the Revised Rules of Civil Procedure which seeks to annul and set aside the Confirmation of Sentence dated September 9, 2011, promulgated by the Office of the President.

* Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1271 dated July 24, 2012.

The facts, as culled from the records, are the following:

On October 13, 2004, the Provost Martial General of the Armed Forces of the Philippines (AFP), Col. Henry A. Galarpe, by command of Vice-Admiral De Los Reyes, issued a Restriction to Quarters[1] containing the following:

> 1. Pursuant to Article of War 70 and the directive of the Acting Chief of Staff, AFP to the undersigned dtd 12 October 2004, you are hereby placed under Restriction to Quarters under guard pending investigation of your case.
>
> 2. You are further advised that you are not allowed to leave your quarters without the expressed permission from the Acting Chief of Staff, AFP.
>
> 3. In case you need immediate medical attention or required by the circumstance to be confined in a hospital, you shall likewise be under guard.

Thereafter, a Charge Sheet dated October 27, 2004 was filed with the Special General Court Martial NR 2 presided by Maj. Gen. Emmanuel R. Teodosio, AFP, (Ret.), enumerating the following violations allegedly committed by petitioner:

> CHARGE 1: VIOLATION OF THE 96TH ARTICLE OF WAR (CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN).
>
> SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004, knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net [Worth] for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (₱6,500,000.00); cash dividend received from AFPSLAI from June 2003 to December 2003 in the amount of one million three hundred sixty-five thousand pesos (₱1,365,000.00); dollar peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his [wife's] names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843,

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[1] *Rollo*, p. 73

Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS-195, 1997 Honda Civic Car with Plate Nr. FEC 134, 1997 Mitsubishi L-300 Van with Plate Nr. FDZ 582 and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: his cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (₱6,500,000.00); cash dividend received form AFPSLAI in June 2002 and December 2002 in the total amount of one million four hundred thirty-five thousand pesos (1,435,000.00), dollar and peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his wife[’s] names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843, Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS-195, 1997 Honda Civic Car with Plate Nr. FEC-134, 1997 Mitsubishi L-300 Van with Plate Nr. FDZ-582, and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 3: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, while in the active military service of the Armed Forces of the Philippines, knowingly, wrongfully and unlawfully violate his solemn oath as a military officer to uphold the Constitution and serve the people with utmost loyalty by acquiring and holding the status of an immigrant/permanent residence of the United States of America in violation of the State policy governing public officers, thereby causing dishonor and disrespect to the military professional and seriously compromises his position as an officer and exhibits him as morally unworthy to remain in the honorable profession of arms.

CHARGE II: VIOLATION OF THE 97TH ARTICLE OF WAR (CONDUCT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE).

SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assets in his Statement of Assets and Liabilities and Net worth for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

> SPECIFICATION NO. 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assts in his Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

Petitioner, upon arraignment on November 16, 2004, pleaded *not guilty* on all the charges.

The Office of the Chief of Staff, through a Memorandum[2] dated November 18, 2004, directed the transfer of confinement of petitioner from his quarters at Camp General Emilio Aguinaldo to the ISAFP Detention Center. On the same day, petitioner, having reached the age of fifty-six (56), compulsorily retired from military service after availing of the provisions of Presidential Decree (P.D.) No. 1650,[3] amending Sections 3 and 5 of P.D. 1638, which establishes a system of retirement for military personnel of the Armed Forces of the Philippines.

Pursuant to a Resolution[4] dated June 1, 2005 of the Second Division of the Sandiganbayan, petitioner was transferred from the ISAFP Detention Center to the Camp Crame Custodial Detention Center.

After trial, at the Special General Court Martial No. 2, on December 2, 2005, the findings or the After-Trial Report[5] of the same court was read to the petitioner. The report contains the following verdict and sentence:

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2 *Id*. at 78.

3 Sec. 2. Section 5 of Presidential Decree No. 1638 is hereby amended to read as follows:

Sec. 5 (a). **Upon attaining fifty-six (56) years of age or upon accumulation of thirty (30) years of satisfactory active service, whichever is later**, an officer or enlisted man shall be **compulsorily retired**; Provided, That such officer or enlisted-man who shall have attained fifty-six (56) years of age with at least twenty (20) years of active service shall be allowed to complete thirty (30) years of service but not beyond his sixtieth (60^{th}) birthday, Provided, however, That such military personnel compulsorily retiring by age shall have at least twenty (20) years of active service: Provided, further, That the compulsory retirement of an officer serving in a statutory position shall be deferred until completion of the tour of duty prescribed by law; and, Provided, finally, That the active service of military personnel may be extended by the President, if in his opinion, such continued military service is for the good of the service. (Emphasis supplied.)

4 *Rollo*, pp. 80-81.

5 *Id*. at 82.

> MGEN CARLOS FLORES GARCIA 0-5820 AFP the court in closed session upon secret written ballot 2/3 of all the members present at the time the voting was taken concurring the following findings. Finds you:
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> On Specification 1 of Charge 1 – **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.
>
> On Specification 2 of Charge 1 – **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.
>
> On Specification 3 of Charge 1 – **Guilty**
>
> On Specification 1 of Charge 2 – **Guilty**
>
> On Specification 2 of Charge 2 – **Guilty**
>
> And again in closed session upon secret written ballot 2/3 all the members are present at the time the votes was taken concurrently sentences you to be **dishonorably [discharged] from the service, to forfeit all pay and allowances due and to become due and to be confined at hard labor at such place the reviewing authority may direct for a period of two (2) years**. So ordered. (Emphases supplied)

Afterwards, in a document[6] dated March 27, 2006, the Staff Judge Advocate stated the following recommended action:

> IV. RECOMMENDED ACTION:
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> The court, after evaluating the evidence, found accused: GUILTY on Charge 1, GUILTY on Specification 1 on Charge 1 – except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; GUILTY on Charge 1, Specification 2 except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planters Bank and Planter's Development Bank; GUILTY on Specification 3 of Charge 1; GUILTY on Charge 2 and all its specifications. The sentence imposed by the Special GCM is to be dishonorably discharged from the service, to forfeit all pay and allowances due and to become due; and to be confined at hard labor at such place the reviewing authority may direct for a period of two (2) years. As it is, the sentence is proper and legal. Recommend that the sentence be approved. The PNP custodial facility in Camp Crame, Quezon City, is the appropriate place of confinement. The period of

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6 Staff Judge Advocate Review, *id*. at 83-98.

> confinement from 18 October 2004 shall be credited in his favor and deducted from the two (2) years to which the accused was sentenced. Thus, confinement will expire on 18 October 2006. Considering that the period left not served is less than one (1) year, confinement at the National Penitentiary is no longer appropriate.
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> 4. To carry this recommendation into effect, a draft "ACTION OF THE REVIEWING AUTHORITY" is hereto attached.

In an undated document,[7] the AFP Board of Military Review recommended the following action:

> 8. RECOMMENDED ACTION:
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> A. Only so much of the sentence as provides for the mandatory penalty of dismissal from the military service and forfeiture of pay and allowances due and to become due for the offenses of violation of AW 96 (Conduct Unbecoming an Officer and a Gentleman) and for violation of AW 97 (Conduct Prejudicial to Good Order and Military Discipline) be imposed upon the Accused.
>
> B. The records of the instant case should be forwarded to the President thru the Chief of Staff and the Secretary of National Defense, for final review pursuant to AW 47, the Accused herein being a General Officer whose case needs confirmation by the President.
>
> C. To effectuate the foregoing, attached for CSAFP's signature/approval is a proposed 1st Indorsement to the President, thru the Secretary of National Defense, recommending approval of the attached prepared "ACTION OF THE PRESIDENT."

After six (6) years and two (2) months of preventive confinement, on December 16, 2010, petitioner was released from the Camp Crame Detention Center.[8]

The Office of the President, or the President as Commander-in-Chief of the AFP and acting as the Confirming Authority under the Articles of War, confirmed the sentence imposed by the Court Martial against petitioner. The Confirmation of Sentence,[9] reads in part:

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7 *Rollo*, pp. 102-114.

8 Order of Discharge dated December 16, 2010 by the Sandiganbayan Second Division, *id*. at 115.

9 *Rollo*, pp. 70-72. (Emphasis supplied.)

> NOW, THEREFORE, I, BENIGNO S. AQUINO III, the President as Commander-in-Chief of the Armed Forces of the Philippines, do hereby confirm the sentence imposed by the Court Martial in the case of *People of the Philippines versus Major General Carlos Flores Garcia AFP*:
>
> a) To be dishonorable discharged from the service;
> b) To forfeit all pay and allowances due and to become due; and
> c) To be confined for a period of two (2) years in a penitentiary.
>
> FURTHER, pursuant to the 48th and 49th Articles of War, the sentence on Major General Carlos Flores Garcia AFP shall not be remitted/mitigated by any previous confinement. Major General Carlos Flores Garcia AFP shall serve the foregoing sentence effective on this date.
>
> DONE, in the City of Manila, this **9th day of September, in the year of our Lord, Two Thousand and Eleven**.

Consequently, on September 15, 2011, respondent Secretary of National Defense Voltaire T. Gazmin, issued a Memorandum[10] to the Chief of Staff, AFP for strict implementation, the *Confirmation of Sentence in the Court Martial Case of People of the Philippines Versus Major General Carlos Flores Garcia AFP*.

On September 16, 2011, petitioner was arrested and detained, and continues to be detained at the National Penitentiary, Maximum Security, Bureau of Corrections, Muntinlupa City.[11]

Aggrieved, petitioner filed with this Court the present petition for *certiorari* and petition for *habeas corpus*, alternatively. However, this Court, in its Resolution[12] dated October 10, 2011, denied the petition for *habeas corpus*. Petitioner filed a motion for reconsideration[13] dated November 15, 2011, but was denied[14] by this Court on December 12, 2011.

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10 *Id.* at 116.
11 *Id*. at 23.
12 *Id*. at 122-123.
13 *Id*. at 215-238.
14 *Id*. at 239.

Petitioner enumerates the following grounds to support his petition:

GROUNDS

A.

THE JURISDICTION OF THE GENERAL COURT MARTIAL CEASED *IPSO FACTO* UPON THE RETIREMENT OF PETITIONER, FOR WHICH REASON THE OFFICE OF THE PRESIDENT ACTED WITHOUT JURISDICTION IN ISSUING THE CONFIRMATION OF SENTENCE, AND PETITIONER'S ARREST AND CONFINEMENT PURSUANT THERETO IS ILLEGAL, THUS WARRANTING THE WRIT OF HABEAS CORPUS.

B.

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONER REMAINED AMENABLE TO COURT MARTIAL JURISDICTION AFTER HIS RETIREMENT, THE OFFICE OF THE PRESIDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN IMPOSING THE SENTENCE OF TWO (2) YEARS CONFINEMENT WITHOUT ANY LEGAL BASIS, FOR WHICH REASON PETITIONER'S ARREST AND CONFINEMENT IS ILLEGAL, THUS WARRANTING THE WRIT OF HABEAS CORPUS.

C.

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT THE PENALTY OF TWO (2) YEARS CONFINEMENT MAY BE IMPOSED IN ADDITION TO THE PENALTIES OF DISMISSAL AND FORFEITURE, THE SENTENCE HAD BEEN FULLY SERVED IN VIEW OF PETITIONER'S PREVENTIVE CONFINEMENT WHICH EXCEEDED THE 2-YEAR SENTENCE, AND THE OFFICE OF THE PRESIDENT HAS NO AUTHORITY TO REPUDIATE SAID SERVICE OF SENTENCE, FOR WHICH REASON PETITIONER'S ARREST AND CONFINEMENT DESPITE FULL SERVICE OF SENTENCE IS ILLEGAL, THUS WARRANTING THE WRIT OF HABEAS CORPUS.[15]

In view of the earlier resolution of this Court denying petitioner's petition for *habeas corpus*, the above grounds are rendered moot and academic. Thus, the only issue in this petition for *certiorari* under Rule 65 of the Revised Rules of Civil Procedure, which was properly filed with this Court, is whether the Office of the President acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing the Confirmation of Sentence dated September 9, 2011.

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15 *Id*. at 23-25.

In its Comment[16] dated October 27, 2011, the Office of the Solicitor General (OSG) lists the following counter-arguments:

> I.
> PETITIONER'S DIRECT RECOURSE TO THE HONORABLE COURT VIOLATES THE DOCTRINE OF HIERARCHY OF COURTS; HENCE, THE PETITION SHOULD BE OUTRIGHTLY DISMISSED.
>
> II.
> THE GENERAL COURT MARTIAL RETAINED JURISDICTION OVER PETITIONER DESPITE HIS RETIREMENT DURING THE PENDENCY OF THE PROCEEDINGS AGAINST HIM SINCE THE SAID TRIBUNAL'S JURISDICTION HAD ALREADY FULLY ATTACHED PRIOR TO PETITIONER'S RETIREMENT.
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> III.
> THE CONFIRMATION ISSUED BY THE OFFICE OF THE PRESIDENT DIRECTING PETITIONER TO BE CONFINED FOR TWO (2) YEARS IN A PENITENTIARY IS SANCTIONED BY C. A. NO. 408 AND EXECUTIVE ORDER NO. 178, PURSUANT TO THE PRESIDENT'S CONSTITUTIONAL AUTHORITY AS THE COMMANDER-IN-CHIEF OF THE AFP.
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> IV.
> PETITIONER'S RIGHT TO A SPEEDY DISPOSITION OF HIS CASE WAS NOT VIOLATED IN THIS CASE.
>
> V.
> THE IMPOSITION OF THE PENALTY OF TWO (2) YEARS CONFINEMENT ON PETITIONER BY THE GCM, AND AS CONFIRMED BY THE PRESIDENT OF THE PHILIPPINES, IS VALID.
>
> VI.
> ACCORDINGLY, PUBLIC RESPONDENTS DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN ISSUING AND IMPLEMENTING THE CONFIRMATION OF SENTENCE.[17]

Petitioner, in his Reply[18] dated January 20, 2012, disagreed with the arguments raised by the OSG due to the following:

> (A)
> THE CONFIRMATION OF THE COURT MARTIAL SENTENCE IS AN ACT BY THE PRESIDENT, AS THE COMMANDER-IN-CHIEF, AND NOT MERELY AS THE HEAD OF THE EXECUTIVE BRANCH. THEREFORE, THE HONORABLE COURT IS THE ONLY APPROPRIATE COURT WHERE HIS ACT MAY BE IMPUGNED,

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16 *Id*. at 124- 214.
17 *Id*. at 137-138.
18 *Id*. at 240-272.

AND NOT IN THE LOWER COURTS, *I.E.*, REGIONAL TRIAL COURT ("RTC") OR THE COURT OF APPEALS ("CA"), AS THE OSG ERRONEOUSLY POSTULATES.

(B)

ALTHOUGH THE GENERAL COURT MARTIAL ("GCM") RETAINED JURISDICTION "OVER THE PERSON" OF PETITIONER EVEN AFTER HE RETIRED FROM THE ARMED FORCES OF THE PHILIPPINES ('AFP"), HOWEVER, HIS RETIREMENT, CONTRARY TO THE STAND OF THE OSG, SEVERED HIS "JURAL RELATIONSHIP" WITH THE MILITARY, THEREBY PLACING HIM BEYOND THE SUBSTANTIVE REACH OF THE AFP'S COURT MARTIAL JURISDICTION.

(C)

UNDER ART. 29, REVISED PENAL CODE ("RPC"), PETITIONER'S COURT MARTIAL SENTENCE OF TWO (2) YEARS INCARCERATION HAD ALREADY BEEN SERVED IN FULL SINCE HE HAD ALREADY SUFFERED PREVENTIVE IMPRISONMENT OF AT LEAST SIX (6) YEARS BEFORE THE SENTENCE COULD BE CONFIRMED, WHICH MEANS THAT THE PRESIDENT HAD NO MORE JURISDICTION WHEN HE CONFIRMED IT, THEREBY RENDERING THE "CONFIRMATION OF SENTENCE" A PATENT NULLITY, AND, CONSEQUENTLY, INVALIDATING THE OSG'S POSITION THAT THE PRESIDENT STILL HAD JURISDICTION WHEN HE CONFIRMED THE SENTENCE.[19]

Petitioner raises the issue of the jurisdiction of the General Court Martial to try his case. According to him, the said jurisdiction ceased *ipso facto* upon his compulsory retirement. Thus, he insists that the Office of the President had acted without jurisdiction in issuing the confirmation of his sentence.

This Court finds the above argument bereft of merit.

Article 2 of the Articles of War[20] circumscribes the jurisdiction of military law over persons subject thereto, to wit:

> Art. 2. Persons Subject to Military Law. - The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law," whenever used in these articles:

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19 *Id*. at 240-241.

20 Commonwealth Act No. 408, as amended.

> (a) All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;
>
> (b) Cadets, flying cadets, and probationary second lieutenants;
>
> (c) All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;
>
> (d) All persons under sentence adjudged by courts-martial.
>
> (As amended by Republic Acts 242 and 516).

It is indisputable that petitioner was an officer in the active service of the AFP in March 2003 and 2004, when the alleged violations were committed. The charges were filed on October 27, 2004 and he was arraigned on November 16, 2004. Clearly, from the time the violations were committed until the time petitioner was arraigned, the General Court Martial had jurisdiction over the case. Well-settled is the rule that jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.[21] Therefore, petitioner's retirement on November 18, 2004 did not divest the General Court Martial of its jurisdiction. In *B/Gen. (Ret.) Francisco V. Gudani, et al. v. Lt./Gen. Generoso Senga, et al.*,[22] this Court ruled that:

> This point was settled against Gen. Gudani's position in *Abadilla v. Ramos*, where the Court declared that **an officer whose name was dropped from the roll of officers cannot be considered to be outside the jurisdiction of military authorities when military justice proceedings were initiated against him before the termination of his service**. Once jurisdiction has been acquired over the officer, it continues until his case is terminated. Thus, the Court held:

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21 *Abadilla v. Ramos*, No. L-79173, December 7, 1987, 156 SCRA 92, 102.

22 G.R. No. 170165, August 15, 2006, 498 SCRA 671.

> The military authorities had jurisdiction over the person of Colonel Abadilla at the time of the alleged offenses. This jurisdiction having been vested in the military authorities, it is retained up to the end of the proceedings against Colonel Abadilla. Well-settled is the rule that jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.
>
> Citing Colonel Winthrop's treatise on Military Law, the Court further stated:
>
> We have gone through the treatise of Colonel Winthrop and We find the following passage which goes against the contention of the petitioners, *viz*. —
>
> 3. Offenders in general — Attaching of jurisdiction. It has further been held, and is now settled law, in regard to military offenders in general, that if the military jurisdiction has once duly attached to them previous to the date of the termination of their legal period of service, they may be brought to trial by court-martial after that date, their discharge being meanwhile withheld. This principle has mostly been applied to cases where the offense was committed just prior to the end of the term. In such cases the interests of discipline clearly forbid that the offender should go unpunished. It is held therefore that if before the day on which his service legally terminates and his right to a discharge is complete, proceedings with a view to trial are commenced against him — as by arrest or the service of charges, — the military jurisdiction will fully attach and once attached may be continued by a trial by court-martial ordered and held after the end of the term of the enlistment of the accused x x x
>
> Thus, military jurisdiction has fully attached to Gen. Gudani inasmuch as both the acts complained of and the initiation of the proceedings against him occurred before he compulsorily retired on 4 October 2005. We see no reason to unsettle the Abadilla doctrine. The OSG also points out that under Section 28 of Presidential Decree No. 1638, as amended, "[a]n officer or enlisted man carried in the retired list [of the Armed Forces of the Philippines] shall be subject to the Articles of War x x x" To this citation, petitioners do not offer any response, and in fact have excluded the matter of Gen. Gudani's retirement as an issue in their subsequent memorandum.[23]

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[23] *Id*. at 692-693. (Citations omitted)

It is also apt to mention that under Executive Order No. 178, or the Manual for Courts-Martial, AFP, the jurisdiction of courts-martial over officers, cadets, soldiers, and other military personnel in the event of discharge or other separation from the service, and the exceptions thereto, is defined thus:

> 10. COURT-MARTIAL – Jurisdiction in general – Termination – General Rules – The general rule is that court-martial jurisdiction over officers, cadets, soldiers and others in the military service of the Philippines ceases on discharge or other separation from such service, and that jurisdiction as to any offense committed during a period of service thus terminated is not revived by a reentry into the military service.
>
> Exceptions – To this general rule there are, however, some exceptions, among them the following:
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> x x x x
>
> In certain case, where the person's discharge or other separation does not interrupt his status as a person belonging to the general category of persons subject to military law, court-martial jurisdiction does not terminate. Thus, where an officer holding a reserve commission is discharged from said commission by reason of acceptance of a commission in the Regular Force, there being no interval between services under the respective commissions, **there is no terminating of the officer's military status**, but merely the accomplishment of a change in his status from that of a reserve to that of a regular officer, and that court-martial jurisdiction to try him for an offense (striking enlisted men for example) committed prior to the discharge is not terminated by the discharge. So also, **where a dishonorable discharged general prisoner is tried for an offense committed while a soldier and prior to his dishonorable discharge, such discharge does not terminate his amenability to trial for the offense.** (Emphases supplied.)

Petitioner also asserts that the General Court Martial's continuing jurisdiction over him despite his retirement holds true only if the charge against him involves fraud, embezzlement or misappropriation of public funds citing this Court's ruling in *De la Paz v. Alcaraz,et al.*[24] and *Martin v. Ver*.[25] However, this is not true. The OSG is correct in stating that in *De la*

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[24] 99 Phil. 130 (1956)

[25] G.R. No. L-62810, July 25, 1983, 123 SCRA 745.

Paz,[26] military jurisdiction over the officer who reverted to inactive status was sustained by this Court because the violation involved misappropriation of public funds committed while he was still in the active military service, while in *Martin*,[27] military jurisdiction was affirmed because the violation pertained to illegal disposal of military property. Both cited cases centered on the nature of the offenses committed by the military personnel involved, justifying the exercise of jurisdiction by the courts-martial. On the other hand, in the present case, the continuing military jurisdiction is based on prior attachment of jurisdiction on the military court before petitioner's compulsory retirement. This continuing jurisdiction is provided under Section 1 of P.D. 1850,[28] as amended, thus:

> Section 1. *Court Martial Jurisdiction over Integrated National Police and Members of the Armed Forces*. - Any provision of law to the contrary notwithstanding – (a) uniformed members of the Integrated National Police who commit any crime or offense cognizable by the civil courts shall henceforth be exclusively tried by courts-martial pursuant to and in accordance with Commonwealth Act No. 408, as amended, otherwise known as the Articles of War; (b) all persons subject to military law under article 2 of the aforecited Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; **Provided, that, in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act Numbered 408, as amended, or court-martial jurisdiction over the person of the accused military or Integrated National Police personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached beforehand unless otherwise provided by law**: Provided further, that the President may, in the interest of justice, order or direct, at any time before arraignment, that a particular case be tried by the appropriate civil court. (Emphasis supplied.)

Having established the jurisdiction of the General Court Martial over the case and the person of the petitioner, the President, as Commander-in-Chief, therefore acquired the jurisdiction to confirm petitioner's sentence as mandated under Article 47 of the Articles of War, which states:

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[26] *Supra* note 24.

[27] *Supra* note 25.

[28] PROVIDING FOR THE TRIAL BY COURTS-MARTIAL OF MEMBERS OF THE INTEGRATED NATIONAL POLICE AND FURTHER DEFINING THE JURISDICTION OF COURTS-MARTIAL OVER MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES.

> Article 47. *Confirmation – When Required*. - In addition to the approval required by article forty-five, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:
>
> (a) **Any sentence respecting a general officer**;
>
> (b) Any sentence extending to the dismissal of an officer except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field;
>
> (c) Any sentence extending to the suspension or dismissal of a cadet, probationary second lieutenant; and
>
> (d) Any sentence of death, except in the case of persons convicted in time of war, of murder, mutiny, desertion, or as spies, and in such excepted cases of sentence of death may be carried into execution, subject to the provisions of Article 50, upon confirmation by the commanding general of the Army in the said field.
>
> When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary. (As amended by Republic Act No. 242). (Emphasis supplied.)

In connection therewith, petitioner argues that the confirmation issued by the Office of the President directing him to be confined for two (2) years in the penitentiary had already been fully served in view of his preventive confinement which had exceeded two (2) years. Therefore, according to him, the Office of the President no longer has the authority to order his confinement in a penitentiary. On the other hand, the OSG opines that petitioner cannot legally demand the deduction of his preventive confinement in the service of his imposed two-year confinement in a penitentiary, because unlike our Revised Penal Code[29] which specifically

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[29] Art. 29. *Period of preventive imprisonment deducted from term of imprisonment.* - Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists or have been convicted previously twice or more times of any crime; and
2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

mandates that the period of preventive imprisonment of the accused shall be deducted from the term of his imprisonment, the Articles of War and/or the Manual for Courts-Martial do not provide for the same deduction in the execution of the sentence imposed by the General Court Martial as confirmed by the President in appropriate cases.

On the above matter, this Court finds the argument raised by the OSG unmeritorious and finds logic in the assertion of petitioner that Article 29 of the Revised Penal Code can be made applicable in the present case.

The OSG maintains that military commissions or tribunals are not courts within the Philippine judicial system, citing *Olaguer, et al. v. Military Commission No. 4*,[30] hence, they are not expected to apply criminal law concepts in their implementation and execution of decisions involving the discipline of military personnel. This is misleading. In *Olaguer*, the courts referred to were military commissions created under martial law during the term of former President Ferdinand Marcos and was declared unconstitutional by this Court, while in the present case, the General Court Martial which tried it, was created under Commonwealth Act No. 408, as amended, and remains a valid entity.

In *Marcos v. Chief of Staff, Armed Forces of the Philippines,*[31] this Court ruled that a court-martial case is a criminal case and the General Court Martial is a "court" akin to any other courts. In the same case, this Court clarified as to what constitutes the words "any court" used in Section 17[32] of

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If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment (As amended by Republic Act 6127, June 17, 1970).

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment (As amended by E.O. No. 214, July 10, 1988).

30 G.R. Nos. L-54558 and L-69882, May 22, 1987, 150 SCRA 144.

31 89 Phil, 246 (1951).

32 Sec. 17. No Senator or Member of the House of Representatives shall directly or indirectly be

the 1935 Constitution prohibiting members of Congress to appear as counsel in any criminal case in which an officer or employee of the Government is accused of an offense committed in relation to his office. This Court held:

> We are of the opinion and therefore hold that it is applicable, because t**he words "any court" includes the General Court-Martial, and a court-martial case is a criminal case within the meaning of the above quoted provisions of our Constitution**.
>
> It is obvious that the words "any court," used in prohibiting members of Congress to appear as counsel "in any criminal case in which an officer or employee of the Government is accused of an offense committed in relation to his office," **refers, not only to a civil, but also to a military court or a Court-Martial**. Because, in construing a Constitution, "it must be taken as established that where words are used which have both a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended." (11 American Jurisprudence, pp. 680-682).
>
> In the case of Ramon Ruffy vs. Chief of Staff of the Philippine Army,* 43 Off. Gaz., 855, we did not hold that the word "court" in general used in our Constitution does not include a Court-Martial; what we held is that the words "inferior courts" used in connection with the appellate jurisdiction of the Supreme Court to "review on appeal certiorari or writ of error, as the law or rules of court may provide, final judgments of inferior courts in all criminal cases in which the penalty imposed is death or life imprisonment," as provided for in section 2, Article VIII, of the Constitution, do not refer to Courts-Martial or Military Courts.
>
> Winthrop's Military Law and Precedents, quoted by the petitioners and by this Court in the case of *Ramon Ruffy et al vs. Chief of Staff of the Philippine Army, supra*, has to say in this connection the following:
>
> > Notwithstanding that the court-martial is only an instrumentality of the executive power having no relation or connection, in law, with the judicial establishments of the country, it is yet, so far as it is a court at all, and within its field of action, as fully a court of law and justice as is any civil tribunal. As a court of law, it is bound, like any court, by the fundamental principles of law, and, in the absence of special provision of the subject in the military code, it observes in general the rules of evidence as adopted in the common-law courts. As a court of justice, it is required by the terms of its statutory oath, (art. 84.) to adjudicate between the U.S. and the accused "without partiality, favor,

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financially interested in any contract with the Government or any subdivision or instrumentality thereof, or in any franchise or special privilege granted by the Congress during his term of office. He shall not appear as counsel before the Electoral Tribunals or before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office. x x x.

> or affection," and according, not only to the laws and customs of the service, but to its "conscience," i.e. its sense of substantial right and justice unaffected by technicalities. In the words of the Attorney General, **court-martial are thus, "in the strictest sense courts of justice**. (Winthrop's Military Law and Precedents, Vol. 1 and 2, 2nd Ed., p. 54.)

In re Bogart, 3 Fed. Cas., 796, 801, citing 6 Op. Attys. Gen. 425, with approval, the court said:

> In the language of Attorney General Cushing, **a court-martial is a lawful tribunal existing by the same authority that any other exists by, and the law military is a branch of law as valid as any other, and it differs from the general law of the land in authority only in this: that it applies to officers and soldiers of the army but not to other members of the body politic, and that it is limited to breaches of military duty.**
>
> And in re Davison, 21 F. 618, 620, it was held:
>
> That court-martial are lawful tribunals existing by the same authority as civil courts of the United States, have the same plenary jurisdiction in offenses by the law military as the latter courts have in controversies within their cognizance, and in their special and more limited sphere are entitled to as untrammelled an exercise of their powers.

And lastly, American Jurisprudence says:

> SEC. 99. *Representation by Counsel*. — It is the general rule that one accused of the crime has the right to be represented before the court by counsel, and this is expressly so declared by the statues controlling the procedure in court-martial. It has been held that a constitutional provision extending that right to one accused in any trial in any court whatever applies to a court-martial and gives the accused the undeniable right to defend by counsel, and that a court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the state. (Citing the case of State ex rel Huffaker vs. Crosby, 24 Nev. 115, 50 Pac. 127; 36 American Jurisprudence 253)

The fact that a judgment of conviction, not of acquittal, rendered by a court-martial must be approved by the reviewing authority before it can be executed (Article of War 46), does not change or affect the character of a court-martial as a court. A judgment of the Court of First Instance imposing death penalty must also be approved by the Supreme Court before it can be executed.

That court-martial cases are criminal cases within the meaning of Section 17, Article VI, of the Constitution is also evident, because the crimes and misdemeanors forbidden or punished by the Articles of War are

offenses against the Republic of the Philippines. According to section 1, Rule 106, of the Rules of Court, a criminal action or case is one which involves a wrong or injury done to the Republic, for the punishment of which the offender is prosecuted in the name of the People of the Philippines; and pursuant to Article of War 17, "the trial advocate of a general or special court-martial shall prosecute (the accused) in the name of the People of the Philippines."

Winthtrop, in his well known work "Military Law and Precedents' says the following:

> **In regard to the class of courts to which it belongs, it is lastly to be noted that the court-martial is strictly a criminal court.** It has no civil jurisdiction whatever; cannot enforce a contract, collect a debt, or award damages in favor of an individual. . . . **Its judgment is a criminal sentence not a civil verdict; its proper function is to award punishment upon the ascertainment of guilt.** (Winthrop's Military Law and Precedents, Vols. 1 & 2, 2nd Ed., p. 55.)
>
> In N. Y. it was held that the term "criminal case," used in the clause, must be allowed some meaning, and none can be conceived, other than a prosecution for a criminal offense. Ex parte Carter. 66 S. W. 540, 544, 166 No. 604, 57 L.R.A. 654, quoting People vs. Kelly, 24 N.Y. 74; Counselman vs. Hitchcock, 12 S. Ct. 195; 142 U.S. 547, L. Ed. 111o. (Words and Phrases, Vol. 10, p. 485.)

Besides, **that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the defendant for the same offense, because the latter would place the accused in jeopardy**, is shown by the decision of the Supreme Court of the United States in the case of Grafton vs. United States, 206 U. S. 333; 51 Law. Ed., 1088, 1092, in which the following was held:

> If a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance; x x x and restricting our decision to the above question of double jeopardy, we judge that, consistently with the above act of 1902, and for the reasons stated, the plaintiff in error, a soldier in the Army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory.[33] (Emphasis supplied.)

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[33] *Marcos v. Chief of Staff, AFP*, *supra* note 31, at 248-251.

Hence, as extensively discussed above, the General Court Martial is a court within the strictest sense of the word and acts as a criminal court. On that premise, certain provisions of the Revised Penal Code, insofar as those that are not provided in the Articles of War and the Manual for Courts-Martial, can be supplementary. Under Article 10 of the Revised Penal Code:

> Art. 10. *Offenses not subject to the provisions of this Code*. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

A special law is defined as a penal law which punishes acts not defined and penalized by the Revised Penal Code.[34] In the present case, petitioner was charged with and convicted of Conduct Unbecoming an Officer and Gentleman (96th Article of War) and Violation of the 97th Article of War, or Conduct Prejudicial to Good Order and Military Discipline, both of which are not defined and penalized under the Revised Penal Code. The corresponding penalty imposed by the General Court Martial, which is two (2) years of confinement at hard labor is penal in nature. Therefore, absent any provision as to the application of a criminal concept in the implementation and execution of the General Court Martial's decision, the provisions of the Revised Penal Code, specifically Article 29 should be applied. In fact, the deduction of petitioner's period of confinement to his sentence has been recommended in the Staff Judge Advocate Review, thus:

> x x x Recommend that the sentence be approved. The PNP custodial facility in Camp Crame, Quezon City, is the appropriate place of confinement. **The period of confinement from 18 October 2004 shall be credited in his favor and deducted from the two (2) years to which the accused was sentenced**. Thus, confinement will expire on 18 October 2006. Considering that the period left not served is less than one (1) year, confinement at the National Penitentiary is no longer appropriate.[35] (Emphasis supplied.)

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34 See *U.S. v. Serapio*, 23 Phil. 584, 593 (1912).

35 *Rollo*. p. 98.

The above was reiterated in the Action of the Reviewing Authority, thus:

> In the foregoing General Court-Martial case of People of the Philippines versus MGEN. CARLOS F. GARCIA 0-5820 AFP (now Retired), the verdict of GUILTY is hereby approved.
>
> The sentence to be dishonorably discharged from the service; to forfeit all pay and allowances due and to become due; and to be confined at hard labor at such place as the reviewing authority may direct for a period of two (2) years is also approved.
>
> **Considering that the Accused has been in confinement since 18 October 2004, the entire period of his confinement since 18 October 2004 will be credited in his favor**. Consequently, his two (2) year sentence of confinement will expire on 18 October 2006.
>
> The proper place of confinement during the remaining unserved portion of his sentence is an official military detention facility. However, the Accused is presently undergoing trial before the Sandiganbayan which has directed that custody over him be turned over to the civilian authority and that he be confined in a civilian jail or detention facility pending the disposition of the case(s) before said Court. For this reason, the Accused shall remain confined at the PNP's detention facility in Camp Crame, Quezon City. The Armed Forces of the Philippines defers to the civilian authority on this matter.
>
> Should the Accused be released from confinement upon lawful orders by the Sandiganbayan before the expiration of his sentence adjudged by the military court, the Provost Marshal General shall immediately take custody over the Accused, who shall be transferred to and serve the remaining unserved portion thereof at the ISAFP detention facility in Camp General Emilio Aguinaldo, Quezon City.[36] (Emphasis supplied.)

Nevertheless, the application of Article 29 of the Revised Penal Code in the Articles of War is in accordance with the Equal Protection Clause of the 1987 Constitution. According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[37] It requires public bodies and institutions to treat similarly situated individuals in a similar manner.[38] The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary

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[36] *Rollo*, p. 100.

[37] *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Sison, Jr. v. Ancheta*, G.R. No. L-59431, July 25, 1984, 130 SCRA 654; *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 7842, July 14, 1989, 175 SCRA 343, 375.

[38] *Guino v. Senkowski,* 54 F 3d 1050 (2d. Cir. 1995), cited in Am. Jur. 2d, Vol. 16 (b), p. 302.

discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities.[39] In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[40] It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) the classification rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[41] "Superficial differences do not make for a valid classification."[42] In the present case, petitioner belongs to the class of those who have been convicted by any court, thus, he is entitled to the rights accorded to them. Clearly, there is no substantial distinction between those who are convicted of offenses which are criminal in nature under military courts and the civil courts. Furthermore, following the same reasoning, petitioner is also entitled to the basic and time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.[43] It must be remembered that the provisions of the Articles of War which the petitioner violated are penal in nature.

The OSG is correct when it argued that the power to confirm a sentence of the President, as Commander-in-Chief, includes the power to approve or disapprove the entire or any part of the sentence given by the court martial. As provided in Article 48 of the Articles of War:

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39 *Edward Valves, Inc. v. Wake Country*, 343 N.C. 426, cited in Am. Jur. 2d, Vol. 16 (b), p. 303.
40 *Lehr v. Robertson*, 463 US 248, 103 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.
41 *Beltran v. Secretary of Health,* 512 Phil. 560, 583 (2005).
42 Cruz, *Constitutional Law*, 2003 ed., p. 128.
43 *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 303, citing *People v. Ladjaalam*, 395 Phil. 1, 35 (2000).

> Article 48. *Power Incident to Power to Confirm*. - The power to confirm the sentence of a court-martial shall be held to include:
>
> (a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt;
>
> (b) **The power to confirm or disapprove the whole or any part of the sentence**; and
>
> (c) The power to remand a case for rehearing, under the provisions of Article 50. (Emphasis supplied.)

In addition, the President also has the power to mitigate or remit a sentence. Under Article 49 of the Articles of War:

> Article 49. *Mitigation or Remission of Sentence*. - The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence.
>
> Any unexpected portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and Disciplinary Barracks of the Armed Forces of the Philippines or Philippine Constabulary, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority, and no approved sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in Article 52.
>
> When empowered by the President to do so, the commanding general of the Army in the field or the area commander may approve or confirm and commute (but not approve or confirm without commuting), mitigate, or remit and then order executed as commuted, mitigated, or remitted any sentence which under those Articles requires the confirmation of the President before the same may be executed. (As amended by Republic Act No. 242).

Thus, the power of the President to confirm, mitigate and remit a sentence of erring military personnel is a clear recognition of the superiority of civilian authority over the military. However, although the law (Articles of War) which conferred those powers to the President is silent as to the

deduction of the period of preventive confinement to the penalty imposed, as discussed earlier, such is also the right of an accused provided for by Article 29 of the RPC.

As to petitioner's contention that his right to a speedy disposition of his case was violated, this Court finds the same to be without merit.

No less than our Constitution guarantees the right not just to a speedy trial but to the speedy disposition of cases.[44] However, it needs to be underscored that speedy disposition is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[45] In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[46]

In this case, there was no allegation, whatsoever of any delay during the trial. What is being questioned by petitioner is the delay in the confirmation of sentence by the President. Basically, the case has already been decided by the General Court Martial and has also been reviewed by the proper reviewing authorities without any delay. The only thing missing then was the confirmation of sentence by the President. The records do not show that, in those six (6) years from the time the decision of the General Court Martial was promulgated until the sentence was finally confirmed by the President, petitioner took any positive action to assert his right to a

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[44] Constitution, Art. III, Sec. 16:
All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

[45] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 138-139, citing *Binay v. Sandiganbayan*, G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65, 93.

[46] *Dela Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485; *Alvizo v. Sandiganbayan*, G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63-64.

speedy disposition of his case. This is akin to what happened in *Guerrero v. Court of Appeals,*[47] where, in spite of the lapse of more than ten years of delay, the Court still held that the petitioner could not rightfully complain of delay violative of his right to speedy trial or disposition of his case, since he was part of the reason for the failure of his case to move on towards its ultimate resolution. The Court held, *inter alia:*

> In the case before us, the petitioner merely sat and waited after the case was submitted for resolution in 1979. It was only in 1989 when the case below was reraffled from the RTC of Caloocan City to the RTC of Navotas-Malabon and only after respondent trial judge of the latter court ordered on March 14, 1990 the parties to follow-up and complete the transcript of stenographic notes that matters started to get moving towards a resolution of the case. More importantly, it was only after the new trial judge reset the retaking of the testimonies to November 9, 1990 because of petitioner's absence during the original setting on October 24, 1990 that the accused suddenly became zealous of safeguarding his right to speedy trial and disposition.
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> x x x x
>
> In the present case, there is no question that petitioner raised the violation against his own right to speedy disposition only when the respondent trial judge reset the case for rehearing. It is fair to assume that he would have just continued to sleep on his right − a situation amounting to laches − had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was reraffled, the accused showed signs of asserting his right which was granted him in 1987 when the new constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.
>
> While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of

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47 G.R. No. 107211, June 28, 1996, 257 SCRA 703.

> the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises.[48]

Time runs against the slothful and those who neglect their rights.[49] In fact, the delay in the confirmation of his sentence was to his own advantage, because without the confirmation from the President, his sentence cannot be served.

Anent petitioner's other arguments, the same are already rendered moot and academic due to the above discussions.

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[50] Thus, applying, the earlier disquisitions, this Court finds that the Office of the President did not commit any grave abuse of discretion in issuing the Confirmation of Sentence in question.

WHEREFORE, the Petition for *Certiorari* dated September 29, 2011 of Major General Carlos F. Garcia, AFP (Ret.) is hereby **DISMISSED**. However, applying the provisions of Article 29 of the Revised Penal Code, the time within which the petitioner was under preventive confinement should be credited to the sentence confirmed by the Office of the President, subject to the conditions set forth by the same law.

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48 *Id.* at 714-716.

49 See *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 560.

50 *Barbieto v. CA,* G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840-841, citing *Neri v. Senate Committee on Accountability of Public Officers and Investigations, Senate Committee on Trade and Commerce, and Senate Committee on National Defense and Security*, G.R. No. 180643, March 25, 2008, 549 SCRA 77, 131.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

MARIA LOURDES P. A. SERENO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)