

G.R. No. 193237 – DOMINADOR G. JALOSJOS, JR., Petitioner v. COMMISSION ON ELECTIONS and AGAPITO J. CARDINO, Respondents.

G.R. No. 193536 – AGAPITO J. CARDINO, Petitioner v. COMMISSION ON ELECTIONS and DOMINADOR G. JALOSJOS, JR., Respondents.

Promulgated:

OCTOBER 09, 2012

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CONCURRING OPINION

BERSAMIN, J.:

The all-important concern here is the effect of the conviction for robbery by final judgment of and the probation allegedly granted to Dominador G. Jalosjos, petitioner in G.R. No. 193237, on his candidacy for the position of Mayor of Dapitan City; and the determination of the rightful person to assume the contested elective position upon the ineligibility of Jalosjos.

I easily CONCUR with the insightful opinion delivered for the Majority by our esteemed colleague, Senior Associate Justice Carpio. As I see it, these consolidated cases furnish to the Court the appropriate occasion to look again into the candidacy of a clearly ineligible candidate garnering the majority of the votes cast in an election and being proclaimed as the winning candidate to the detriment of the valid candidacy of his rival who has all the qualifications and suffers none of the disqualifications. The ineligible candidate thereby mocks the sanctity of the ballot and reduces the electoral exercise into an expensive joke.

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G.R. No. 193237 is a special civil action for *certiorari* brought by Jalosjos to assail the Resolution dated August 11, 2010,¹ whereby the Commission on Elections (COMELEC) *En Banc* affirmed the Resolution dated May 10, 2010² issued by the COMELEC First Division in SPC No. 09-076 (DC). Both Resolutions declared Jalosjos ineligible to run as Mayor of Dapitan City, Zamboanga Del Norte in the May 10, 2010 national and local elections pursuant to Section 40(a) of *The Local Government Code* (LGC), *viz*:

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

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (b) Those removed from office as a result of an administrative case;

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Additionally, the COMELEC cancelled Jalosjos' certificate of candidacy (CoC) on the ground of material misrepresentation made therein.

Jalosjos charges the COMELEC *En Banc* with committing grave abuse of discretion when it ruled that he was disqualified to run as Mayor of Dapitan City in view of the revocation of his probation; and when it cancelled his CoC without finding that he had deliberately misrepresented his qualifications to run as Mayor.

G.R. No. 193536 is a special civil action for *certiorari* commenced by Agapito J. Cardino, the only other candidate against Jalosjos, in order to set aside the COMELEC *En Banc*'s Resolution dated August 11, 2010,³ to the extent that the Resolution directed the application of the rule of succession as provided in the LGC. Cardino challenges the COMELEC *En Banc*'s application of the rule of succession under the LGC, contending that he

¹ *Rollo*, G.R. No. 193237, pp. 49-56.

² *Id.* at 40-48.

³ *Id.* at 49-56.

should be considered elected as Mayor upon the cancellation of Jalosjos' CoC because he had been the only *bona fide* candidate for the position of Mayor of Dapitan City.⁴ Cardino insists that the cancellation of Jalosjos' CoC retroacted to the date of its filing, thereby reducing him into a non-candidate.⁵

The special civil actions were consolidated on March 29, 2011.⁶

Antecedents

The antecedents are narrated in the Resolution the Court has promulgated on February 22, 2011 in G.R. No. 193237, to wit:

On December 6, 2009, private respondent Agapito J. Cardino filed a Petition to Deny Due Course to and Cancel Certificate of Candidacy of petitioner before respondent Comelec. Petitioner and private respondent were both candidates for Mayor of Dapitan City, Zamboanga del Norte during the 2010 Elections. Private respondent alleged that petitioner misrepresented in his CoC that he was eligible to run for Mayor, when, in fact, he was not, since he had been convicted by final judgment of robbery, a crime involving moral turpitude, and he has failed to serve a single day of his sentence.

The final judgment for robbery stems from the following factual antecedents:

On April 30, 1970, the then Circuit Criminal Court (now Regional Trial Court [RTC]) of Cebu City convicted petitioner of the crime of robbery and sentenced him to suffer the penalty of one (1) year, eight (8) months, and twenty (20) days of *prision correccional*, as minimum, to four (4) years, two (2) months, and one (1) day of *prision mayor*, as maximum. Petitioner appealed his conviction to the Court of Appeals (CA). He later abandoned the appeal, which was thus dismissed on August 9, 1973. Sometime in June 1985, petitioner filed a petition for probation.

On July 9, 1985, Gregorio F. Bacolod (Bacolod), who was then the Supervising Probation Officer of the Parole and Probation Office, recommended to the RTC the grant of petitioner's application for probation. On the same day, the RTC issued an Order granting the probation for a period of one year subject to the terms and conditions stated therein.

⁴ *Rollo*, G.R. No. 193536, p. 9.

⁵ *Id.*

⁶ *Id.* at 177.

However, on August 8, 1986, Bacolod filed a Motion for Revocation of the probation on the ground that petitioner failed to report to him, in violation of the condition of the probation. Accordingly, the RTC issued an Order dated March 19, 1987, revoking the probation and ordering the issuance of a warrant of arrest. A warrant of arrest was issued but remained unserved.

More than 16 years later, or on December 19, 2003, petitioner secured a Certification from the Central Office of the Parole and Probation Administration (PPA), which was signed by Bacolod, now Administrator of the PPA, attesting that petitioner had fulfilled the terms and conditions of his probation.

At this time, the prosecution also decided to stir the case. It filed a motion for the issuance of an alias warrant of arrest. The RTC granted the motion on January 16, 2004 and issued an Order for the Issuance of an Alias Warrant of Arrest against petitioner.

On January 23, 2004, Bacolod submitted to the RTC a Termination Report stating that petitioner had fulfilled the terms and conditions of his probation and, hence, his case should be deemed terminated. On the same day, petitioner filed an Urgent Motion to Reconsider its January 16, 2004 Order and to Lift the Warrant of Arrest.

On January 29, 2004, James A. Adasa (Adasa), petitioner's opponent for the mayoralty position during the 2004 Elections, filed a Petition for Disqualification against petitioner, based on Section 40(a) of Republic Act (R.A.) No. 7160, the *Local Government Code of 1991*, on the ground that the latter has been convicted of robbery and failed to serve his sentence. Adasa later amended his petition to include Section 40(e) of the same law, claiming that petitioner is also a "fugitive from justice."

Meanwhile, acting on petitioner's urgent motion, the RTC issued an Order dated February 5, 2004, declaring that petitioner had duly complied with the order of probation, setting aside its January 16, 2004 Order, and recalling the warrant of arrest.

Thus, in resolving Adasa's petition, the Comelec Investigating Officer cited the February 5, 2004 RTC Order and recommended that petitioner be declared qualified to run for Mayor. In the Resolution dated August 2, 2004, the Comelec-Second Division adopted the recommendation of the Investigating Officer and denied the petition for disqualification. It held that petitioner has amply proven that he had complied with the requirements of his probation as shown by the Certification from the PPA dated December 19, 2003, which was the basis of the February 5, 2004 RTC Order.

Adasa filed a motion for reconsideration, which the Comelec *En Banc* denied on December 13, 2006.

Adasa then filed a petition for *certiorari* with the Supreme Court (G.R. No. 176285). In a Resolution dated June 3, 2008, the Court dismissed the petition for being moot and academic, the three-year term of office having expired.

In a related incident, Bacolod, who issued the Certification dated December 19, 2003 to petitioner, was charged with violation of Section 3(e) of R.A. No. 3019 and falsification of public document under the Revised Penal Code for issuing said Certification. On September 29, 2008, the Sandiganbayan rendered a decision finding Bacolod guilty as charged. It held that the Certification he issued was definitely false because petitioner did not actually fulfill the conditions of his probation as shown in the RTC Order dated March 19, 1987, which states that the probation was being revoked. Hence, at the time the Certification was issued, there was no longer a probation order to be fulfilled by petitioner.

On May 10, 2010, the elections were held, and petitioner won as Mayor of Dapitan City.

On the same day, the Comelec-First Division issued a resolution granting the Petition to Deny Due Course and cancelling petitioner's CoC. The Comelec noted that the dismissal of Adasa's petition for disqualification hinged on the presumption of regularity in the issuance of the PPA Certification dated December 19, 2003, declaring that petitioner had complied with the requirements of his probation. It opined that, with the decision of the Sandiganbayan convicting Bacolod, it would now appear that the December 19, 2003 Certification was fraudulently issued and that petitioner had not actually served his sentence; thus, the ruling on Adasa's petition is "left with no leg to stand on."

Petitioner moved for reconsideration. The Comelec *En Banc* denied the motion in a resolution dated August 11, 2010. The Comelec ordered him to cease and desist from occupying and discharging the functions of the Office of the Mayor of Dapitan City.⁷

Through the Resolution promulgated on February 22, 2011,⁸ the Court dismissed G.R. No. 193237, disposing:

WHEREFORE, the foregoing premises considered, the Petition for Certiorari is DISMISSED. The assailed Resolution dated May 10, 2010 and Resolution dated August 11, 2010 of the Commission on Elections in SPA Case No. 09-076 (DC) are hereby AFFIRMED.

On March 22, 2011, Jalosjos moved for the reconsideration of the February 22, 2011 Resolution,⁹ raising the same issues he had averred in his petition.

On June 1, 2012, however, Jalosjos filed a manifestation dated May 30, 2012, informing the Court that he had meanwhile tendered his

⁷ *Rollo*, G.R. No. 193237, pp. 355-358.

⁸ *Id.* at 355-360.

⁹ *Id.* at 373-391.

resignation as Mayor of Dapitan City effective April 30, 2012; that his resignation had been accepted by Governor Rolando E. Yebes of Zamboanga del Norte; and that Vice Mayor Patri Bajamunde-Chan had taken her oath of office as the new Mayor of Dapitan City.

Disposition

I vote to affirm the disqualification of Jalosjos as a candidate for Mayor of Dapitan City; and to sustain the Resolution of the COMELEC *En Banc* cancelling his CoC.

I agree with the Majority that the rule of succession provided by the LGC does not apply to determine who should now sit as Mayor of Dapitan City. Thus, I hold that Cardino, the only other candidate with a valid CoC for Mayor of Dapitan City in the May 10, 2010 elections, had the legal right to assume the position of City Mayor.

Let me specify the reasons for this humble concurrence.

1.
Cardino's petition in SPA Case No. 09-076 (DC)
was a petition to deny due course to
or cancel a CoC under Section 78 of the
Omnibus Election Code

The COMELEC *En Banc* correctly held that the petition of Cardino in SPA Case No. 09-076 (DC) was in the nature of a petition to deny due course to or cancel a CoC under Section 78 of the *Omnibus Election Code*.

In *Salcedo II v. Commission on Elections*,¹⁰ the Court pointed out that there are two remedies available to challenge the qualifications of a candidate, namely:

¹⁰ G.R. No. 135886, August 16, 1999, 312 SCRA 447.

- (1) *Before the election*, pursuant to Section 78 of the *Omnibus Election Code*, to wit:

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

and –

- (2) *After the election*, pursuant to Section 253 of the *Omnibus Election Code*, viz:

Section 253. *Petition for quo warranto.* - Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission within ten days after the proclamation of the results of the election.

The Court has explained that the only difference between the two remedies is that, under Section 78, the qualifications for elective office are misrepresented in the CoC, and the proceedings must be initiated prior to the elections, while under Section 253, a petition for *quo warranto* may be brought within ten days after the proclamation of the election results on either of two grounds, to wit: (a) ineligibility; or (b) disloyalty to the Republic of the Philippines. A candidate is ineligible under Section 253 if he is disqualified to be elected to office; and he is disqualified if he lacks any of the qualifications for elective office.¹¹

In describing the nature of a Section 78 petition, the Court said in *Fermin v. Commission on Elections*:¹²

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she*

¹¹ Id. at 457.

¹² G.R. No. 179695 & 182369, December 18, 2008, 574 SCRA 782.

is running for. It is noted that the candidate states in his/her CoC that he/she is **eligible** for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a “Section 78” petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.¹³

Clearly, the only instance where a petition assailing the qualifications of a candidate for elective office can be filed *prior to* the elections is when the petition is filed under Section 78.¹⁴

A Section 78 petition is not to be confused with a Section 12 or Section 68 petition. The two are different remedies, are based on different grounds, and can result in different eventualities.¹⁵ A person who is disqualified under either Section 12¹⁶ or Section 68¹⁷ is prohibited to continue as a candidate, but a person whose CoC is cancelled or denied due course under Section 78 is not considered a candidate at all because his status is that of a person who has not filed a CoC.¹⁸

¹³ Id., pp. 792-794; emphases are part of the original text.

¹⁴ *Gonzales v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761, 777.

¹⁵ *Fermin v. Commission on Elections*, *supra*, note 12, p. 794.

¹⁶ 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.

This disqualification 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.

¹⁷ Section 68. *Disqualifications*.—Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

¹⁸ *Fermin v. Commission on Elections*, *supra*, note 12, at pp. 794-796, to wit:

x x x [A] petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to

To ascertain whether Cardino's petition against Jaloslos was a petition under Section 78, on one hand, or under Section 12 or Section 68, on the other hand, it is necessary to look at its averments and relief prayed for, *viz*:

1. Petitioner is of legal age, Filipino citizen, married, able to read and write, a registered voter of Precinct No. 0019A, and is and has been a resident of Dapitan City, continuously since birth up to the present;
2. Petitioner duly filed his certificate of candidacy for the position of City Mayor of Dapitan for the election on May 10, 2010, with the Office of the Commission on Election, Dapitan City, on December 1, 2009, which accepted and acknowledged the same, a copy of which is hereto attached as Annex A;
3. Respondent is also of legal age, a resident of Dapitan City, a registered voter of Precinct No. 0187B, likewise filed his certificate of candidacy for the same position with the Office of the Comelec, Dapitan City, as that for which petitioner duly filed a certificate of candidacy, for the May 10, 2010 national and local elections on December 1, 2009, a certified true copy of said COC is hereto attached as Annex B;
4. **Respondent's certificate of candidacy under oath contains material misrepresentation, when he declared under oath, that respondent is eligible for the office he seeks to be elected, [par. 16, COC for Mayor], considering that he is not eligible for the position for which he filed a certificate of candidacy because respondent was convicted by final judgment by the Regional Trial Court of Cebu City in Crim. Case No. CCC-XIV-140-Cebu for Robbery, an offense involving moral turpitude and he was sentenced to suffer the penalty of "one [1] year, eight [8] Months and Twenty [20] Days of prision correctional, as minimum, to Four [4] years, Two [2] months and One [1] day of prision mayor as maximum, a certified true [copy] of which decision is hereto attached as Annex C;**
5. **Respondent failed to serve even a single day of his sentence. The position requires that a candidate be eligible and/or qualified to aspire for the position as required under Section 74 of the Omnibus Election Code;**
6. This petition is being filed within the reglementary period of within five days following the last day for the filing of certificate of candidacy.

WHEREFORE, it is most respectfully prayed of this Honorable Commission:

deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.

1. Declaring respondent, Dominador G. Jalosjos, Jr. ineligible for the position for which he filed certificate of candidacy and **to deny due course to such filing and to cancel the certificate of candidacy [Annex B]; x x x**¹⁹ (Emphasis supplied)

The foregoing make it evident that Cardino's petition contained the essential allegations pertaining to a Section 78 petition, namely: (a) Jalosjos made a false representation in his CoC; (b) the false representation referred to a material matter that would affect the substantive right of Jalosjos to run in the elections for which he filed his CoC; and (c) Jalosjos made the false representation with the intention to deceive the electorate as to his qualification for public office or to deliberately attempt to mislead, misinform, or hide a fact that would otherwise render him ineligible.²⁰

Worthy of noting is that the specific reliefs prayed for by the petition, *supra*, were not only for the declaration that Jalosjos was "ineligible for the position for which he filed certificate of candidacy" but also for denying "due course to such filing and to cancel the certificate of candidacy." Thereby, Cardino's petition attacked both Jalosjos' qualifications to run as Mayor of Dapitan City and the validity of Jalosjos' CoC based on the latter's assertion of his eligibility despite knowledge of his conviction and despite his failure to serve his sentence. The petition was properly considered to be *in all respects* as a petition to deny due course to or cancel Jalosjos' CoC under Section 78 of the *Omnibus Election Code*.

2.

Jalosjos materially misrepresented his eligibility as a candidate for Mayor of Dapitan City; hence, the COMELEC properly cancelled his CoC

The denial of due course to or the cancellation of the CoC under Section 78 of the *Omnibus Election Code* involves a finding not only that a person lacked the qualifications but also that he made a material

¹⁹ *Rollo*, G.R. No. 193237, pp. 58-59.

²⁰ See *Fermin v. Commission on Elections*, *supra*, note 12; *Salcedo II v. Commission on Elections*, *supra*, note 10.

representation that was false.²¹ In *Mitra v. Commission on Elections*,²² the Court added that there must also be a deliberate attempt to mislead, thus:

The false representation under Section 78 must likewise be a “deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible.” Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate’s qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.²³

A petition for the denial of due course to or cancellation of a CoC that is short of the requirements should not be granted.

Based on the antecedents narrated herein, I consider to be warranted the COMELEC *En Banc*’s conclusion to the effect that, *firstly*, his conviction for robbery absolutely disqualified Jalosjos from running as Mayor of Dapitan City, and, *secondly*, Jalosjos deliberately misrepresented his eligibility when he filed his CoC.

First of all, the records show that the erstwhile Circuit Criminal Court in Cebu City had convicted Jalosjos of the felony of robbery on April 30, 1970 and had sentenced him to suffer the indeterminate penalty of one year, eight months and 20 days of *prision correccional*, as minimum, to four years, two months and one day of *prision mayor*, as maximum. Although he had appealed, his appeal was turned down on August 9, 1973. In June 1985,

²¹ Section 78. *Petition to deny due course to or cancel a certificate of candidacy*. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

²² G.R. No. 191938, July 2, 2010, 622 SCRA 744.

²³ *Id.* at 769.

or more than 15 years after his conviction by the Circuit Criminal Court, he filed a petition for probation.

Pursuant to Section 40(a) of the LGC,²⁴ his having been sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment rendered Jalosjos ineligible to run for Mayor of Dapitan City. There is no quibbling about the felony of robbery being an offense involving moral turpitude. As the Court has already settled, “embezzlement, forgery, robbery, and swindling are crimes which denote moral turpitude and, as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude.”²⁵

Anent moral turpitude for purposes of the election laws, the Court has stated in *Teves v. Commission on Elections*:²⁶

Moral turpitude has been 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.

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Thus, in *Dela Torre v. Commission on Elections*, the Court clarified that:

Not every criminal act, however, involves moral turpitude. It is for this reason that “as to what crime involves moral turpitude, is for the Supreme Court to determine.” In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in “*Zari v. Flores*,” to wit:

“It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral

²⁴ Section 40. *Disqualifications*. - The following persons are disqualified from running for any elective local position:

(a) **Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;** (b) Those removed from office as a result of an administrative case;

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²⁵ *Republic v. Marcos*, G.R. Nos. 130371 & 130855, August 4, 2009, 595 SCRA 43, 63; see also *De Jesus-Paras v. Vailoces*, A.C. No. 439, April 12, 1961, 1 SCRA 954, 956.

²⁶ G.R. No. 180363, April 28, 2009, 587 SCRA 1.

turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.”²⁷

It is relevant to mention at this juncture that the ineligibility of a candidate based on his conviction by final judgment for a crime involving moral turpitude is also dealt with in Section 12 of the *Omnibus Election Code*, which specifically states: –

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.**

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or **after the expiration of a period of five years from his service of sentence**, unless within the same period he again becomes disqualified. (Emphasis supplied.)

Pursuant to Section 12, Jalosjos remained ineligible to run for a public office considering that he had not been granted *plenary* pardon for his criminal offense. The expiration of the five-year period defined in Section 12 counted from his service of sentence did not affect the ineligibility, it being indubitable that he had not even served his sentence at all.

It is relevant to clarify, moreover, that the five-year period defined in Section 12 is deemed superseded by the LGC, whose Section 40(a) expressly sets two years after serving sentence as the period of disqualification *in relation to local elective positions*. To reconcile the incompatibility between Section 12 and Section 40(a), the Court has discoursed in *Magno v. Commission on Elections*:²⁸

²⁷ Id. at 12-13.

²⁸ G.R. No. 147904, October 4, 2002, 390 SCRA 495.

It should be noted that the Omnibus Election Code (BP 881) was approved on December 3, 1985 while the Local Government Code (RA 7160) took effect on January 1, 1992. It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. *Legis posteriores priores contrarias abrogant*. In enacting the later law, the legislature is presumed to have knowledge of the older law and intended to change it. Furthermore, the repealing clause of Section 534 of RA 7160 or the Local Government Code states that:

(f) All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any provisions of this Code are hereby repealed or modified accordingly.

In accordance therewith, Section 40 of RA 7160 is deemed to have repealed Section 12 of BP 881. Furthermore, Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and not the other way around. When a subsequent law entirely encompasses the subject matter of the former enactment, the latter is deemed repealed.

In *David vs. COMELEC*, we declared that RA 7160 is a codified set of laws that specifically applies to local government units. Section 40 thereof specially and definitively provides for disqualifications of candidates for elective *local positions*. It is applicable to them only. On the other hand, Section 12 of BP 881 speaks of disqualifications of candidates for *any public office*. It deals with the *election of all public officers*. Thus, Section 40 of RA 7160, insofar as it governs the disqualifications of candidates for local positions, assumes the nature of a special law which ought to prevail.

The intent of the legislature to reduce the disqualification period of candidates for local positions from five to two years is evident. The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law. The reduction of the disqualification period from five to two years is the manifest intent. (Bold emphases supplied)²⁹

Regardless of whether the period applicable was five years or two years, Jalosjos was still ineligible to run for any public office in any election by virtue of his having been sentenced to suffer *prision mayor*. That sentence perpetually disqualified him from running for any elective office considering that he had not been meanwhile granted any plenary pardon by the Chief Executive.

²⁹ Id. at 500-501.

Indeed, in accordance with the express provisions of the *Revised Penal Code*, the penalty of *prision mayor* imposed on Jalosjos for the robbery conviction carried the accessory penalties of **temporary absolute disqualification** and of **perpetual special disqualification from the right of suffrage**. The effects of the accessory penalty of temporary absolute disqualification included the deprivation during the term of the sentence of the right to vote in any election for any popular elective office or to be elected to such office.³⁰ **The effects of the accessory penalty of perpetual special disqualification from the right of suffrage was to deprive the convict perpetually of the right to vote in any popular election for any public office or to be elected to such office; he was further prohibited from holding any public office perpetually.**³¹ These accessory penalties would remain even though the convict would be pardoned as to the principal penalty, unless the pardon expressly remitted the accessory penalties.³²

Secondly, Jalosjos had no legal and factual bases to insist that he *became* eligible to run as Mayor of Dapitan City because he had been declared under the RTC order dated February 5, 2004 to have duly complied with the order of his probation. His insistence has no merit whatsoever.

³⁰ Article 30 of the *Revised Penal Code* gives the effects of the accessory penalties of perpetual or temporary absolute disqualification, to wit:

Article 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.

2. **The deprivation of the right to vote in any election for any popular office or to be elected to such office.**

3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

³¹ Article 32 of the *Revised Penal Code* expressly declares:

Article 32. *Effect of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.* — **The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.**

³² Article 42 of the *Revised Penal Code* reads:

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.

Probation, by its legal definition, is only “a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.”³³ The grant of probation cannot by itself remove a person’s disqualification to be a candidate or to hold any office due to its not being included among the grounds for the removal of the disqualification under Section 12 of the *Omnibus Election Code, supra*. Although the original text of Section 4 of Presidential Decree No. 968 (*Probation Law of 1976*) stated that:—

xxx [a]n application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

the amendment of Presidential Decree No. 968 by Presidential Decree No. 1990³⁴ has made more explicit that probation only suspends the execution of the sentence under certain conditions set by the trial court, *viz*:

Section 4. *Grant of Probation.* — Subject to the provisions of this Decree, **the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best**; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

For sure, probation or its grant has not been intended to relieve the convict of *all* the consequences of the sentence imposed on his crime involving moral turpitude. Upon his final discharge as a probationer, the convict is restored only to “*all civil rights lost or suspended as a result of his*

³³ Section 3(a), Presidential Decree No. 968.

³⁴ Approved on October 5, 1985.

conviction.” This consequence is according to the second paragraph of Section 16 of the *Probation Law of 1976*, which states: “The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.” There is no question that civil rights are distinct and different from political rights, like the right of suffrage or the right to run for a public office.

Even assuming that Jalosjos had been validly granted probation despite his having appealed his conviction (considering that the amendment stating that an appeal barred the application for probation took effect only on October 5, 1985 but his application for probation was earlier made in June 1985), his disqualification pursuant to Section 40(a) of the LGC would have still attached simply because the legal effect of a validly-granted probation was only to suspend the execution of sentence,³⁵ not to obliterate the consequences of the sentence on his political rights.

In reality, Jalosjos could not even legitimately and sincerely rely on his supposed final discharge from probation. He was fully aware that he did not at all satisfy the conditions of his probation,³⁶ contrary to what Section 10 and Section 16 of the Probation Law definitely required, to wit:

Section 10. *Conditions of Probation.* — Every probation order issued by the court shall contain conditions requiring that the probationer shall:

(a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within seventy-two hours from receipt of said order; .

(b) report to the probation officer at least once a month at such time and place as specified by said officer. x x x

³⁵ Section 4, Presidential Decree No. 968, states:

Section 4. *Grant of Probation.* — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

³⁶ *Rollo*, G.R. No. 193237, pp. 159-160.

Section 16. *Termination of Probation.* — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspend as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

The probationer and the probation officer shall each be furnished with a copy of such order.

The records indicate that the RTC revoked the order of probation on March 19, 1987 upon a motion filed by one Gregorio Bacolod, the Supervising Probation Officer who had recommended the approval of the application for probation. The revocation was premised on Jalosjos' failure to report to Bacolod in violation of the conditions of his probation. Following the revocation, the RTC issued a warrant for the arrest of Jalosjos, but the warrant has remained unserved until this date. With the revocation of his probation and in the absence of an order of final discharge, Jalosjos was still legally bound to serve the sentence for robbery.

I point out for emphasis that the February 5, 2004 order of the RTC declaring that Jalosjos had duly complied with the order of probation deserved no consideration for the following reasons, namely: (a) the certification attesting that Jalosjos had fulfilled the terms and conditions of his probation was secured by and issued to him only on December 19, 2003, more than 16 years from the issuance of the RTC order revoking his probation; (b) the certification was issued by Bacolod, the same Supervising Probation Officer who had moved for the revocation of the probation; and (c) the Sandiganbayan later on found the certification to have been falsified by Bacolod considering that at the time of its issuance there was no longer a probation order to be fulfilled by Jalosjos.³⁷

³⁷ On that basis, the Sandiganbayan convicted Bacolod of two crimes, one, for a violation of Section 3(e) of Republic Act No. 3019, and, two, for falsification of public document under the *Revised Penal Code*.

And, thirdly, Jalosjos argues that he acted in good faith in representing in his CoC that he was qualified to run as Mayor of Dapitan City,³⁸ having relied on the previous ruling of the COMELEC adjudging him eligible to run and to be elected as Mayor of Dapitan City;³⁹ and that it cannot then be said that he deliberately attempted to mislead or to deceive the electorate as to his eligibility.

The argument is devoid of merit.

The COMELEC Resolution dated August 2, 2004, on which Jalosjos has anchored his claim of good faith, was rendered on the basis of the RTC order dated February 5, 2004 that had declared Jalosjos to have sufficiently complied with the conditions of his probation based on the certification dated December 19, 2003. As earlier emphasized, however, the issuance of the certification dated December 19, 2003 that became the basis for the RTC order dated February 5, 2004 proved to be highly irregular, and culminated in the Sandiganbayan convicting Bacolod of falsification in relation to his issuance of the certification.

Clearly, Jalosjos' reliance on the COMELEC Resolution dated August 2, 2004 was definitely not in good faith, but was contrary to every juridical conception of good faith, which, according to *Heirs of the Late Joaquin Limense v. Vda. De Ramos*,⁴⁰ is –

xxx an intangible and abstract quality with no technical meaning or statutory definition; and it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. **It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and**

³⁸ Id. at 28.

³⁹ Id. at 27-28.

⁴⁰ G.R. No. 152319, October 28, 2009, 604 SCRA 599.

absence of intention to overreach another.⁴¹

In contrast, Jalosjos had knowledge of the circumstances surrounding the finality of his conviction and the revocation of his probation. He never denied and cannot now dispute his failure to comply with the conditions of his probation, for he fully knew that he had never duly reported to Bacolod during the period of his probation. The following findings rendered by the Sandiganbayan in its Decision dated September 29, 2008 convicting Bacolod of falsification of a public document and violation of Republic Act No. 3019 sustained the fact that Jalosjos had been unable to fulfil the terms of his probation: –

xxx [T]he subject Certification of the accused [Bacolod] attesting that “*as per records*” Mr. Jalosjos “*has fulfilled the terms and conditions of his probation and his case is deemed terminated,*” is nevertheless false because **the PPA Central Office had no records of an order of final discharge issued by the court to support the facts narrated in the subject certification that Mr. Jalosjos has fulfilled the terms and conditions of his probation and that his case is deemed terminated.**

Besides, the accused failed to submit any oral or documentary evidence to establish that at the time he issued the subject Certification on December 19, 2003, Mr. Jalosjos has already fulfilled the terms and conditions of his probation. His belated submission on January 23, 2004 of a termination report dated January 12, 2004 does not cure or remedy the falsity of the facts narrated in the subject certification. Rather, it strengthens the theory of the prosecution that **at the time the accused issued the subject Certification on December 19, 2003, probationer Jalosjos had not yet fulfilled the terms and conditions of his probation because, if it were so, his submission of the said termination report would no longer be necessary.** Since the PPA Central Office had no record of a court order of final discharge of the probationer from probation, then he should have been truthful and certified to that effect.⁴²

Nor could Jalosjos even feign a lack of awareness of the issuance of the warrant for his arrest following the revocation of his probation by the RTC on March 19, 1987. This is because he filed an Urgent Motion for Reconsideration and to Lift Warrant of Arrest in the RTC upon obtaining the falsified certification issued by Bacolod.⁴³ The absurdity of his claim of good

⁴¹ Id. at 612; emphasis is supplied.

⁴² *Rollo*, G.R. No. 193237, pp. 159-160.

⁴³ Id. at 153.

faith was well-known even to him because of his possession at the time he filed his CoC of all the information material to his conviction and invalid probation. Being presumed to know the law, he knew that his conviction for robbery and his failure to serve his sentence rendered him ineligible to run as Mayor of Dapitan City. As a result, his affirmation of his eligibility in his CoC was truly nothing but an act tainted with bad faith.

3.

**Jalosjos did not file a valid CoC for the May 10,
2010 elections; not being an official candidate,
votes cast in his favor are considered stray**

The filing of a CoC within the period provided by law is a mandatory requirement for any person to be considered a candidate in a national or local election. This is clear from Section 73 of the *Omnibus Election Code*, to wit:

Section 73. *Certificate of candidacy* — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

In turn, Section 74 of the *Omnibus Election Code* specifies the contents of a CoC, viz:

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

A CoC, according to *Sinaca v. Mula*,⁴⁴ “is in the nature of a formal manifestation to the whole world of the candidate’s political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.”

Accordingly, a person’s declaration of his intention to run for public office and his declaration that he possesses the eligibility for the position he seeks to assume, followed by the timely filing of such declaration, constitute a valid CoC that render the declarant an official candidate.

In *Bautista v. Commission on Elections*,⁴⁵ the Court stated that a cancelled CoC does not give rise to a valid candidacy. A person without a valid CoC cannot be considered a candidate in much the same way as any person who has not filed any CoC cannot at all be a candidate.⁴⁶ Hence, the cancellation of Jalosjos’ CoC rendered him a non-candidate in the May 10, 2010 elections.

But, even without the cancellation of his CoC, Jalosjos undeniably possessed a disqualification to run as Mayor of Dapitan City. The fact of his ineligibility was by itself adequate to invalidate his CoC without the necessity of its express cancellation or denial of due course by the COMELEC. Under no circumstance could he have filed a valid CoC. The accessory penalties that inhered to his penalty of *prision mayor* perpetually disqualified him from the right of suffrage as well as the right to be voted for in any election for public office. The disqualification was by operation of a mandatory penal law. For him to be allowed to ignore the perpetual disqualification would be to sanction his lawlessness, and would permit him

⁴⁴ G.R. No. 135691, September 27, 1999, 315 SCRA 266, 276.

⁴⁵ G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493.

⁴⁶ *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, 624.

to make a mockery of the electoral process that has been so vital to our democracy. He was not entitled to be voted for, leaving all the votes cast for him stray and legally non-existent.

In contrast, Cardino, the only remaining candidate, was duly elected and should legally assume the position of Mayor of Dapitan City. According to the Court in *Santos v. Commission on Elections*:⁴⁷

Anent petitioner's contention that his disqualification does not *ipso facto* warrant the proclamation of private respondent, We find the same untenable and without legal basis since votes cast for a disqualified candidate fall within the category of invalid non-existent votes because a disqualified candidate is no candidate at all in the eyes of the law. Section 155 of the Election Code provides —

“Any vote cast in favor of a candidate who has been disqualified shall be considered as stray and *shall not be counted* but it shall not invalidate the ballot.” (Italics supplied)

Considering that all the votes garnered by the petitioner are stray votes and therefore should not be counted, We find no error, much less any grave abuse of discretion on the part of the Comelec, in proclaiming private respondent Ricardo J. Rufino the duly elected Mayor of Taytay, Rizal, he having obtained the highest number of votes as appearing and certified in the canvass of votes submitted by the Municipal Board of Canvassers petitioner having been legally disqualified. Such a proclamation finds legal support from the case of *Ticzon vs. Comelec* 103 SCRA 671, wherein disqualified candidate Ticzon likewise questioned the legality of the Resolution of the Comelec which not only disqualified him but further proclaimed Dizon, the only candidate left for the disputed position, and this Court upheld the proclamation of Cesar Dizon as Mayor of San Pablo City.⁴⁸

Although the doctrine of the sovereign will has prevailed several times in the past to prevent the nullification of an election victory of a disqualified candidate, or of one whose CoC was cancelled, the Court should not now be thwarted from enforcing the law in its letter and spirit by any desire to respect the will of the people expressed in an election. The objective of prescribing disqualifications in the election laws as well as in the penal laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. Unless the Court leads the

⁴⁷ G.R. No. L-58512, July 23, 1985, 137 SCRA 740.

⁴⁸ Id. at 749.

way to see to the implementation of the unquestionable national policy behind the prescription of disqualifications, there would inevitably come the time when many communities of the country would be electing convicts and misfits. When that time should come, the public trust would be trivialized and the public office degraded. This is now the appropriate occasion, therefore, to apply the law in all its majesty in order to enforce its clear letter and underlying spirit. Thereby, we will prevent the electoral exercise from being subjected to mockery and from being rendered a travesty.

In closing, I consider to be appropriate and fitting the Court's following pronouncement in *Velasco v. Commission on Elections*:⁴⁹

x x x [W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that *while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people*. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC*.

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptible of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements.

In the process, the rule of law suffers; the clear and unequivocal legal command, framed by a Congress representing the national will, is

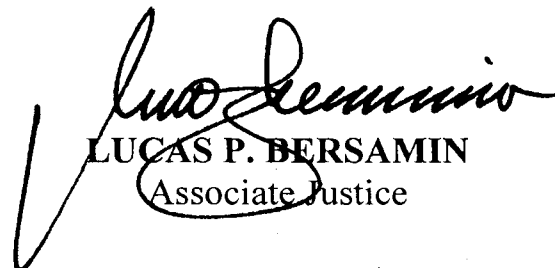
⁴⁹ G.R. No. 180051, December 24, 2008, 575 SCRA 590.

rendered inutile because the people of a given locality has decided to vote a candidate into office despite his or her lack of the qualifications Congress has determined to be necessary.

In the present case, Velasco is not only going around the law by his claim that he is registered voter when he is not, as has been determined by a court in a final judgment. Equally important is that he has made a material misrepresentation *under oath in his COC* regarding his qualification. For these violations, he must pay the ultimate price – the nullification of his election victory. He may also have to account in a criminal court for making a false statement under oath, but this is a matter for the proper authorities to decide upon.

We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects *beyond matters of form* and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. The balance must always tilt in favor of upholding and enforcing the law. To rule otherwise is to slowly gnaw at the rule of law.⁵⁰

ACCORDINGLY, I JOIN the Majority in granting the petition in G.R. No. 193536; in dismissing the petition in G.R. No. 193237 for lack of merit; and in affirming the COMELEC *En Banc* Resolution dated February 22, 2011 subject to the modification that Agapito J. Cardino be proclaimed as the duly elected Mayor of Dapitan City, Zamboanga during the May 10, 2010 national and local elections, and thus entitled to assume the office of Mayor of Dapitan City.


LUCAS P. BERSAMIN
Associate Justice

⁵⁰ Id. at 614-615.