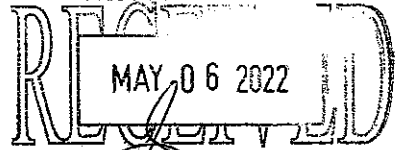




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES

PUBLIC INFORMATION OFFICE



BY: _____
TIME: _____

EN BANC

JOSEPH ROBLE PEÑAS
Petitioner,

UDK-16915

Members:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO, and
MARQUEZ, JJ.

-versus-

COMMISSION ON ELECTIONS,
represented by the **CAMPAIGN**
FINANCE UNIT
Respondent.

Promulgated:

February 15, 2022

X-----X
LAZARO-JAVIER, J.

DECISION

The Case

Petitioner Joseph Roble Peñas assails the following issuances of the Commission on Elections (COMELEC) in E.O. Case No. 14-422 entitled *Commission on Elections represented by the Campaign Finance Unit v. Joseph Roble Peñas*:

1. Resolution No. 18-0665¹ dated November 5, 2018, finding probable cause for his indictment for violation of Section 100² in relation to Section 262³ of Batas Pambansa 881 (BP 881), the *Omnibus Election Code* (OEC), as amended by Republic Act (RA) 7166,⁴ for election overspending;
2. Resolution⁵ No. 20-0121-33 dated December 9, 2020, denying his motion for reconsideration.

Antecedents

On November 28, 2009, petitioner filed his certificate of candidacy for Mayor of Digos City, Davao Del Sur for the 2010 National and Local Elections (NLE). He ran under the banner of the Nationalist People's Coalition (NPC). For the 2010 NLE, Digos City had a total of 93,801 registered voters.

On June 7, 2010, in compliance with COMELEC Resolution No. 8944,⁶ petitioner filed with respondent COMELEC his Statement of Contributions and Expenditures (SOCE)⁷ where he declared his total election campaign expenditures in the amount of ₱600,000.00.

By Letter⁸ dated October 1, 2014, respondent's Campaign Finance Unit informed petitioner that under Section 13⁹ of RA 7166, a candidate who

¹ *Rollo*, pp. 73-83.

² SECTION 100. *Limitations upon expenses of candidates.* — No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: *Provided*, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: *Provided, further*, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

³ SECTION 262. *Other election offenses.* — Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.

⁴ AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES.

⁵ *Rollo*, pp. 97-99.

⁶ Rules and Regulations Governing Electoral Contributions and Expenditures in Connection with the May 10, 2010 National and Local Elections.

⁷ *Rollo*, p. 39.

⁸ *Id.* at 40.

⁹ SEC. 13. *Authorized Expenses of Candidates and Political Parties.* — The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

(a) For candidates — Ten pesos (P10.00) for President and Vice-President; and for other candidates, Three pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: *Provided*, That, a candidate without any political party and without support from any political party may be allowed to spend Five pesos (P5.00) for every such voter; and

(b) For political parties — Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

belongs to a political party is only allowed to spend three pesos (₱3.00) for every registered voter in the constituency where he or she seeks to be elected. Hence, petitioner was allowed to spend up to ₱281,403.00 only for his election campaign. By spending ₱600,000.00 for his election campaign, as reported in his SOCE, petitioner clearly exceeded the expenditure limit allowed by law. Petitioner was given ten (10) days from receipt of the letter to submit his written explanation why no charges should be filed against him for election overspending.

On October 29, 2014, petitioner submitted an *Affidavit of Correction/Explanation*¹⁰ to the COMELEC Law Department. He explained that he failed in good faith to specify the breakdown of his expenses in his SOCE. Because he was overwhelmed with emotions for having won in the mayoralty elections in his city, he failed to thoroughly review the SOCE which his secretary prepared. Petitioner clarified that of his reported ₱600,000.00 total campaign expenditures, ₱112,924.10 was spent for the printing of sample ballots and ₱245,000.00, for lawyer's fees. These items, he claimed, should not have been included in the computation of expenses incurred by a candidate conformably with Section 8¹¹ of COMELEC Resolution No. 8944 for the May 10, 2010 NLE, and Section 3, Rule 4¹² of COMELEC Resolution No. 9476¹³ for the 2013 NLE. Had these amounts been deducted from the ₱600,000.00 expenditure he earlier reported, his expenses would have only totaled ₱241,574.01 for his election campaign, well within the expenditure limit prescribed by law.

On November 6, 2014, the COMELEC Campaign Finance Unit filed a formal complaint¹⁴ against petitioner for alleged violation of Section 100 in relation to Section 262 of the OEC, as amended by RA 7166, for election overspending.

Any provision of law to the contrary notwithstanding, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission, shall not be subject to the payment of any gift tax.

¹⁰ *Rollo*, pp. 55-57.

¹¹ Rule 4, Section 3 provides:

Section 8. Lawful expenditures. - No candidate or treasurer of a party shall, directly or indirectly, make any expenditure except for the following purposes:

xxx

i. For employment of counsel;

xxx

k. For printing sample ballots in such color, size and maximum number as may be authorized by the Commission.

The expenditures for items (i), (j), and (k), shall not be taken into account in determining whether the expenditure limit has been breached by the candidate or party in the conduct of campaign activities.

¹² **Section 3. Lawful expenditures.** - No candidate or treasurer of a party shall, directly or indirectly, make any expenditure except for the following purposes:

xxx

i. For employment of counsel;

xxx

k. For printing sample ballots in such color, size and maximum number as may be authorized by the Commission.

¹³ Rules and Regulations Governing Campaign Finance and Disclosure in Connection with the 13 May 2013 National and Local Elections and Subsequent Elections Thereafter.

¹⁴ *Rollo*, pp. 26-32.

On February 9, 2015, petitioner submitted his Counter-Affidavit¹⁵ dated January 26, 2015 where he essentially averred that on September 22, 2009, he was appointed party Chairman of NPC for Digos City, Davao Del Sur for the 2010 NLE. As City Chair, he was authorized by the NPC to pay for any and all expenses of NPC-Digos City as well as reasonable expenses redounding to the benefit of all NPC local candidates. For this reason, he spent ₱112,924.10 for the printing of sample ballots for NPC candidates both for the national and local elections. Too, he engaged the legal services of Atty. Leopoldo Diones (Atty. Diones) to address the collective legal concerns of NPC local candidates in Digos City. He paid Atty. Diones ₱245,500.00 as lawyer's fees, albeit, it was listed as "Miscellaneous Expenses" in his SOCE.

The expenses for the printing of sample ballots and payment for the legal services of Atty. Diones were NPC political party expenses and not his own personal expenditure as mayoralty candidate, thus, should have been excluded from the computation of his expenditures during the 2010 campaign period. This is in accordance with Section 102(i) and (k) of the OEC¹⁶ which categorically state that the expenses for engagement of legal services and printing of sample ballots, respectively, are *excluded* from the computation of campaign expenses. The exclusion of these items would bring his total campaign expenditure to ₱241,574.01 only, well within the allowed expenditure limit of ₱281,403.00 for Digos City.

Rulings of the COMELEC *En Banc*

By Resolution No. 18-0665¹⁷ dated November 5, 2018, the COMELEC *En Banc* found probable cause to hold petitioner for trial and consequently ordered the filing of an Information against him for violation of the OEC, *viz*:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **adopt** the recommendation of the Law Department finding **probable cause** to hold respondent **JOSEPH R. PEÑAS** for trial and the **filing** of **information** for violation of Section 100 of B.P. Blg. 881, otherwise known as the Omnibus Election Code (OEC), as amended by R.A. No. 7166, in relation to Section 262 of the same Code.

¹⁵ *Id.* at 41-53.

¹⁶ Section 102. Lawful expenditures. – To carry out the provisions of the preceding sections, no candidate or treasurer of a political party shall, directly or indirectly, make any expenditure except for the following purpose:

x x x x

(i) For employment of counsel, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof;

x x x x

(k) For printing of sample ballots in such color, size and maximum number as may be authorized by the Commission and the cost of such printing shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof;

x x x x

¹⁷ *Rollo*, pp. 73-83.

Let the Law Department implement this Resolution.

SO ORDERED.

The COMELEC *En Banc* essentially ruled that petitioner's plea to admit the correction of entries in his SOCE was a mere afterthought to avoid criminal liability. At any rate, the correction and supporting receipts were self-serving and should be scrutinized in a full-blown trial.¹⁸

Petitioner filed a Motion for Reconsideration dated December 13, 2018 which was denied under Resolution No. 20-00121-33 dated December 9, 2020.

The Present Petition

Petitioner now charges the COMELEC with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict him for overspending for his campaign during the 2010 NLE, notwithstanding that: (1) he submitted an Affidavit of Correction/Explanation to rectify the errors in his SOCE; (2) the SOCE was considered though the same had not been duly executed; and (3) the COMELEC incurred inordinate delay in resolving the complaint.

On number (2), he asserts that the notarized SOCE he filed on June 7, 2010 had not been duly executed. For although the aforesaid SOCE stated that it was "*supported by receipts, vouchers and other documents reflecting full, true, accurate and complete election contributions received and expenditures incurred xxx*",¹⁹ in truth, the SOCE was not supported by such documents. Hence, although the SOCE was notarized, the same does not bind him since he himself admits that the document was defective.²⁰

As for number (3), he charges respondent with inordinate delay in conducting the preliminary investigation in his case, thus, violating his right to a speedy disposition of his case. He invokes Section 8, Rule 34 of the COMELEC Rules of Procedure ordaining that preliminary investigation must be terminated within twenty (20) days from receipt of the counter-affidavit and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter. As it was, the COMELEC failed to observe the prescribed period because it took the COMELEC approximately three (3) years and nine (9) months from submission of his counter-affidavit to issue the resolution finding probable cause to charge him with election overspending, and approximately two (2) more years to resolve his verified motion for reconsideration. In total, it took the COMELEC more than ten (10) years from the filing of his SOCE to indict him for alleged violation of the OEC.²¹

¹⁸ *Id.* at 79.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 18.

²¹ *Id.*

In its Comment, respondent COMELEC, represented by the Office of the Solicitor General through Assistant Solicitor General Henry S. Angeles, and Associate Solicitors Michael Pio V. Cua and Gerard Samuel Alphonsus B. Contreras, counters that the petition must fail on both procedural and substantive grounds.

On procedural ground, petitioner alleged that on February 4, 2021, he received Minute Resolution No. 20-00121-33, denying his motion for reconsideration. Petitioner then counted thirty (30) days from February 4, 2021 before filing the present petition before the Court on March 8, 2021, citing Section 3, Rule 64 of the Rules of Court. Petitioner, however, failed to deduct the seven (7)-day period between his receipt of Minute Resolution No. 18-0665 on December 6, 2021 until the filing of his motion for reconsideration on December 13, 2021 as required under Section 3, Rule 64.

Applying the provision, petitioner only had twenty-three (23) days left, not a full thirty (30)-day period, from February 4, 2021 or until February 27, 2021 to file a petition for *certiorari*. But since February 27, 2021 was a Saturday, petitioner's recourse could have only been filed on March 1, 2021 at the latest. Clearly, the present petition was filed seven (7) days late on March 8, 2021, hence, should be dismissed outright.

Too, dismissal of the present petition is warranted because petitioner is not without any other plain, speedy and adequate remedy in the ordinary course of law. For the issuance of Resolution No. 20-0121-33 signaled the end of preliminary investigation before the COMELEC and the start of the criminal proceedings before the trial court. What petitioner should have done was submit himself to the jurisdiction of the trial court, appear during arraignment and enter his plea, and proceed to the trial of the ensuing criminal case²² instead of filing a petition for *certiorari* before the Court.

Going now to the issue of inordinate delay, its determination is not a numbers game²³ and the entire context of the case should be considered, more so in this case where the government agency involved is tasked to administer the elections of the country.

The complaint here was filed in 2014. It was only resolved in 2018 or four (4) years later. Petitioner filed a motion for reconsideration in 2018 which eventually got resolved in 2021. Meantime, the Comelec was busy with the intervening elections in 2016 and 2019, hence, it was unable to immediately act on the complaint and petitioner's motion for reconsideration.

At any rate, petitioner failed to make a timely assertion of his right to a speedy disposition of his case. As held in *Cagang v. Sandiganbayan*,²⁴ petitioner should have done overt acts to manifest his assertion of the right, such as the filing of a motion for early resolution. Failing in this, petitioner

²² Comment, p. 10.

²³ Comment, p. 18.

²⁴ See 837 Phil. 815 (2018)

was deemed to have acquiesced to the delay, if any, and had already waived his right to the speedy disposition of the case.

On substantive grounds, the OSG asserts that the finding of probable cause against petitioner was well-supported by evidence, specifically, by his own SOCE. Besides, under Section 7, Rule 34²⁵ of the COMELEC Rules of Procedure, a complaint initiated *motu proprio* by the COMELEC, as in this case, is presumed to be based on sufficient probable cause.

In any event, petitioner cannot deny the due execution of his SOCE. As a notarized document, petitioner avowed therein, under penalty of law, the truth of the contents of the instrument or document.

Further, the COMELEC did not err when it did not give weight to petitioner's *Affidavit of Correction/Explanation*, the same being self-serving and having been filed merely as an afterthought when petitioner had already been notified of the legal consequences of the declaration in his SOCE. In any case, the legal effect, if at all, of petitioner's affidavit should be threshed out during the proceedings in the criminal case in court, not during the preliminary investigation.

Our Ruling

We grant the petition.

On the late filing of the petition

As correctly argued by the OSG, petitioner erred in reckoning the thirty (30)-day period within which to file the present petition from his receipt of the denial of his motion for reconsideration. In *Pates v. COMELEC*,²⁶ the Court already decreed that the fresh-period rule which resets the reglementary period for seeking judicial relief is inapplicable to petitions for *certiorari* under Rule 64. On the contrary, the intervening period used for the filing of any motion for reconsideration is deductible from the thirty (30) days granted under Section 3 thereof.

Petitioner received copy of the COMELEC *En Banc*'s Resolution No. 18-0665 finding probable cause for his indictment on December 6, 2018. It took him at least seven (7) days therefrom to file his motion for reconsideration dated December 13, 2018. Deducting this seven (7)-day period from the thirty (30) days granted under Section 3, Rule 64 of the Rules of Court, petitioner had twenty-three (23) days left to file the present petition for *certiorari* from February 4, 2021 when he received the Minute Resolution No. 20-0121-33, denying his motion for reconsideration. In other words, he had until February 27, 2021 to file the present petition. But petitioner filed his

²⁵ Sec. 7. Presumption of Existence of Probable Cause. - A complaint initiated *motu proprio* by the Commission is presumed to be based on sufficient probable cause and the investigating officer must forthwith issue the subpoena mentioned in the immediately preceding section.

²⁶ See 609 Phil. 260, 265-266 (2009).



petition only on March 8, 2021, clearly beyond the period prescribed by Rule 64.

Even then, we cannot lose sight of the fact that procedural rules were precisely conceived to aid the attainment of justice such that if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.²⁷ In exceptional cases, the Court allows a liberal construction of the Rules of Court in order to promote its objective to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.²⁸

In setting aside technical infirmities and thereby giving due course to tardy appeals, the Court has not been oblivious to, or unmindful of, the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, this Court's decisions were not meant to undermine the force and effectivity of the periods set by law. The Court hastens to add though that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.²⁹ Here, the Court finds a compelling reason to relax the strict application of procedural rules -- the COMELEC's assailed actions were tainted with grave abuse of discretion which is correctible through the extraordinary writ of *certiorari*, as will be further discussed below. To rule otherwise would unnecessarily expose petitioner to the expense and rigors of a public trial when records indubitably show that his plea for relief is based on meritorious grounds. The Court, thus, deems the relaxation of procedural rules warranted in this case as the ultimate purpose of substantial justice so requires.

Certiorari as the plain, speedy, adequate remedy

The COMELEC contends that petitioner erroneously resorted to this Court *via* a petition for *certiorari* when he is not without a plain, speedy and adequate remedy in the ordinary course of law. The COMELEC posits that petitioner should have just allowed the trial of the criminal case against him to proceed where he may participate and adduce evidence of his innocence.

To emphasize, however, recourse to Rule 65 does not require absence of a judicial remedy to a party. It is the inadequacy – not the absence – of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of *certiorari*.³⁰ *Adequate remedy* simply means that “xxx a remedy which will promptly relieve the petitioner from the

²⁷ *Basco v. CA*, 392 Phil. 251, 266 (2000).

²⁸ *Latogan v. People*, G.R. No. 238298, January 22, 2020.

²⁹ *Heirs of Juan M. Dinglasan v. Ayala Corporation*, G.R. No. 204378, August 05, 2019.

³⁰ *A.L. Ang Network, Inc. v. Mondejar*, 725 Phil. 288, 295-296 (2014).

injurious effects of that judgment and the acts of the inferior court or tribunal concerned.”³¹

Indeed, a petition for *certiorari* or prohibition may even prosper despite the availability of other remedies in certain exceptional circumstances, such as: (a) when public welfare and the advancement of public policy so dictate; (b) when the interests of substantial justice so require; or (c) when the questioned order amounts to an oppressive exercise of judicial authority.³²

In petitioner’s case, a full-blown trial is not a speedy and adequate remedy. Going through a public trial would not afford petitioner an expeditious relief from the detrimental effect of a wrongful charge of an election offense, especially one that is filed despite inordinate delay.

Petitioner had already been deprived of the prompt disposition of the complaint against him by the protracted preliminary investigation. It would be more unjust to further subject him to public trial when there is evidence early on that otherwise contradicts the initial findings of the COMELEC. Withal, the original action of *certiorari* will afford petitioner immediate relief from the deleterious effects of the COMELEC’s whimsical and arbitrary exercise of jurisdiction. Thus, the Court will not shun from its duty of affording petitioner a prompt and effective legal remedy.

Respondent COMELEC Acted in Grave Abuse of Discretion

The COMELEC, through its authorized legal officers, has the exclusive power to conduct preliminary investigations of all election offenses and to prosecute them.³³ This power emanates from Article IX, Section 2, Paragraph 6 of the 1987 Constitution which empowers the COMELEC to “investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices.”³⁴ This grant of authority is reiterated in Section 265 of the OEC as amended by RA No. 9369, *viz.*:

SECTION 265. Prosecution. – The Commission shall, through its duly authorized legal officers, have the power, concurrent with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same.

As with ordinary criminal cases, the COMELEC is tasked with finding probable cause whenever it conducts preliminary investigation of election-related offenses. It is settled though that the finding of probable cause in the

³¹ *Conti v. CA*, 366 Phil. 956, 965 (1999).

³² *See Philippine Basketball Association v. Gaitre*, 608 Phil. 670, 679 (2009).

³³ *See Peña v. Martizano*, 451 Phil. 356, 365 (2003).

³⁴ *Garcia v. COMELEC*, 624 Phil. 723, 733 (2010).

prosecution of election offenses rests in the sound discretion of the COMELEC.³⁵ Generally, the Court will not interfere with such finding of the COMELEC absent a clear showing of grave abuse of discretion.³⁶

A court or tribunal can only be considered as having acted with grave abuse of discretion when its act is done in a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.” The abuse of discretion must be so patent and gross as to amount to an “evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.” From the foregoing definition, it is clear that the special civil action of certiorari can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.³⁷

Here, the Court finds that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it recommended the filing of an Information against petitioner despite the inordinate and oppressive delay which attended the conduct of preliminary investigation.

The COMELEC is guilty of inordinate delay

Article III, Section 16 of the 1987 Constitution enshrines the guarantee to speedy disposition of cases, thus:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

As elucidated in *Magante v. Sandiganbayan*,³⁸ the provision expanded the speedy trial guarantee afforded to the accused in a criminal proceeding under the 1935 Constitution:

x x x Though both concepts are subsumed under the more basic tenet of procedural due process, the right to speedy disposition of cases, to contrast with the right to speedy trial, sweeps more broadly as it is not confined with criminal cases; it extends even to other adversarial proceedings before any judicial, quasi-judicial, and administrative tribunals. No branch of government is, therefore, exempt from duly observing the constitutional safeguard and the right confirms immunity from arbitrary delay. x x x

³⁵ *Id.*

³⁶ *Albaña et al. v. Belo, et al.*, 617 Phil. 340, 352 (2009) citing *Baytan v. COMELEC*, 444 Phil. 812, 820 (2003).

³⁷ *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 482 (2011).

³⁸ 836 Phil. 1108, 1118 (2018).

11

Hence, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice, including herein respondent COMELEC.

In *Cagang v. Sandiganbayan*,³⁹ the Court laid down certain guidelines in resolving issues concerning inordinate delay, *viz.*:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay

³⁹ *Supra* note 24.

inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

Applying these guidelines, there is clear inordinate delay in how the COMELEC handled the preliminary investigation and subsequent resolution of petitioner's case.

First. The right to speedy disposition of cases may be invoked to question the inordinate delay in the course of preliminary investigations by the COMELEC. While fact-finding proceedings and investigations such as these do not form part of the criminal prosecution proper, the respondent may already be prejudiced by such proceedings.⁴⁰

To be sure, a respondent, such as petitioner, though not yet imprisoned is nevertheless disadvantaged by the uncertainties of his potential criminal case. He is forced to live under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed,

⁴⁰ See *People v. Sandiganbayan and Holganza*, G.R. No. 232737. October 02, 2019.

and he is subjected to public obloquy.⁴¹ Not to mention, his reputation is already tarnished despite the presumption of innocence in his favor.

Second. The COMELEC failed to observe its own prescribed period for resolving cases when it finally recommended the filing of an Information against petitioner on December 9, 2020 or more than six (6) years from when the formal complaint was filed on November 12, 2014.

The COMELEC is Constitutionally committed to act promptly on cases filed before it. In fact, this is one of the reasons why Article IX-C, Section 3 of the 1987 Constitution authorized the COMELEC to promulgate its own rules of procedure:

SECTION 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure **in order to expedite disposition of election cases**, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*. (Emphasis added)

Article IX-A, Section 6 of the 1987 Constitution reiterates this authority of the COMELEC to promulgate its own rules concerning pleadings and practice before it, thus:

SECTION 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase, or modify substantive rights.

Pursuant to its rule-making power, the COMELEC promulgated its Rules of Procedure, Section 8, Rule 34 of which ordains that a preliminary investigation must be terminated within **twenty (20) days** and a resolution must thereafter be issued **within five (5) days**, thus:

x x x x

Sec. 8. Duty of Investigating Officer. - The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

x x x x

⁴¹ *Remulla v. Sandiganbayan*, 808 Phil. 739, 754 (2017), citing *Corpuz v. Sandiganbayan*, 484 Phil. 399, 917 (2004).

As stated, the complaint against petitioner was filed on November 12, 2014. Subsequently, petitioner filed his counter-affidavit on February 9, 2015. By Resolution No. 18-0665 dated November 5, 2018, or **about four (4) years from when the complaint was filed**, the COMELEC ordered the filing of an Information against petitioner. Petitioner moved for reconsideration and this time, **it took the COMELEC another two (2) years** to issue Resolution No. 220-00121-33 dated December 9, 2020 to deny the motion. Indubitably, the COMELEC went beyond the prescribed period for the conduct of a preliminary investigation.

Third. In view of the COMELEC's failure to observe its own prescribed period for resolving petitioner's case, the burden of justifying the delay is shifted to it. Consequently, it must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay. The COMELEC, however, failed to establish these circumstances.

For one. Instead of proving compliance with its own prescribed procedure, the COMELEC merely attempted to justify the delay by citing the two (2) general elections which it had to administer during the pendency of the investigation, *i.e.* the 2016 and 2019 NLE.

But this hardly justifies the delay it took the COMELEC to conclude the preliminary investigation. On the contrary, a prolonged investigation should have been avoided at all cost *precisely* because of the looming elections at that time.

Consider. An adverse finding during preliminary investigation would give rise to a criminal charge for an election offense. If found guilty thereof, petitioner would have been disqualified from running for public office⁴² let alone sit as mayor of Digos City. Surely, the fact that petitioner was an incumbent elected official who was set to run for re-election if not higher office during the 2016 and 2019 NLEs should have prompted the COMELEC to conclude its investigation with utmost dispatch. Otherwise, those who intended to vote for petitioner could have ended up wasting their vote for a disqualified candidate.

For another. Petitioner's case did not at all involve complex or intricate issues which require voluminous records or evidence. The lone issue needed to be resolved was whether petitioner went beyond the prescribed campaign

⁴² Section 264 of the OEC, provides:

SECTION 264. Penalties. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

expenditure limit. To determine if there had indeed been an excess, a simple mathematical equation is all that is required: multiply the number of registered voters in Digos City by three pesos (P3.00). The product must then be parried with the amount *actually* spent by petitioner. If the amount spent was greater than the product, then there is probable cause to charge petitioner with election overspending, subject to any valid defense which petitioner may raise in his counter-affidavit.

Indeed, why the preliminary investigation lasted for an unreasonable period of time is clearly unfathomable considering the simplicity of the issue, that there is only one respondent charged in the complaint, and the evidence involved here was not at all voluminous. As the Court pronounced in *Alarilla v. Sandiganbayan*,⁴³ absent any extraordinary complication which the prosecution must adequately prove, such as the degree of difficulty of the questions involved in the case, or any event external thereto that effectively stymied the prosecution's normal work activity, any delay in the resolution of the preliminary investigation is not justified.⁴⁴

Yet another. The six (6)-year period it took to resolve the complaint grossly prejudiced petitioner. *Prejudice* is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.⁴⁵

The Court notes that the first criterion does not apply in this case because petitioner was never arrested or incarcerated. The second and third criteria, however, apply to petitioner.

The unjustified delay caused petitioner mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury,⁴⁶ which naturally attend every criminal prosecution. The pendency of the investigation unduly affected his reputation, an invaluable asset for an elected official like him. The ascription of an offense to him eroded the confidence reposed on him by the people of Digos City, all the more so because he was a "first time" mayor from whom much was expected by his constituents and adversaries. Too, the prolonged investigation impaired his defense in the event of a full-blown trial, for witnesses may no longer be available to testify for him, or documentary evidence such as receipts may have gotten lost along the way.

Clearly, the COMELEC failed to discharge its burden to justify the length of time it took for it to conclude the preliminary investigation in this case. There was no showing that the COMELEC followed its prescribed procedure to the letter in order to obviate any delay in the proceedings. Nor

⁴³ G.R. Nos. 236177-210, February 3, 2021.

⁴⁴ *Id.*

⁴⁵ *Ombudsman v. Jurado*, 583 Phil. 132, 148 (2008).

⁴⁶ *Rollo*, p. 16.

was it established that the issues were too complex and the evidence required voluminous, making delay inevitable. Indubitably, therefore, inordinate delay attended the COMELEC's conduct of the preliminary investigation of petitioner's case.

Finally. Petitioner cannot be deemed to have waived his right to a speedy disposition of his case and against inordinate delay.

*Javier v. Sandiganbayan*⁴⁷ (*Javier*) is *apropos*:

Here, the Court holds that Javier and Tumamao's acts, or their inaction, did not amount to acquiescence. While it is true that the records are bereft of any indication that Javier and/or Tumamao "followed-up" on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years.

For one, the case of *Coscolluela v. Sandiganbayan* (*Coscolluela*) provides that **respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case.** The Court categorically stated:

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.

The Court in *Cagang* did not explicitly abandon *Coscolluela* — considering that it explicitly abandoned *People v. Sandiganbayan* in the said case — and even cited it in one of its discussions. Thus, the pronouncements in *Coscolluela* remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked.

Moreover, the Court is not unreasonable in its requirements. The Ombudsman's own Rules of Procedure provides that **motions to dismiss, except on the ground of lack of jurisdiction, are prohibited. Thus, respondents like Javier and Tumamao have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level.** It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never

⁴⁷ G.R. No. 237997, June 10, 2020.

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followed-up or asserted their right in a motion duly filed.

Lastly, the Court holds that Javier and Tumamao timely asserted their rights because **they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases.** To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay. (Emphases added)

As in *Javier*,⁴⁸ the Court cannot fault petitioner herein for only invoking his right to a speedy disposition of his case in the present petition. As held, a respondent in a criminal prosecution or investigation is not duty bound to follow up on his or her case; it is the governing agency that is tasked to promptly resolve it. As held in *Cervantes v. Sandiganbayan*,⁴⁹ “[i]t is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, **regardless of whether the petitioner did not object to the delay** or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.”

Further, the Court observes that similar to the Rules of Procedure before the Ombudsman, the COMELEC Rules of Procedure likewise prohibits the filing of motions to dismiss. Section 1(a), Rule 13 pertinently reads:

Section 1. What Pleadings are not Allowed. - The following pleadings are not allowed:

- a) motion to dismiss;

x x x x

In other words, there is also no legitimate avenue to invoke ones right to a speedy disposition of his case before the COMELEC. Petitioner’s failure to do so should not therefore be taken against him.

At any rate, petitioner timely asserted his right to a speedy disposition of his case since he filed this petition immediately after the COMELEC directed the filing of an information against him. As held in *Javier*, it is sufficient that the right is asserted before entering a plea during arraignment.

All told, given the inordinate delay of about six (6) years in the conduct of the preliminary investigation and COMELEC’s utter failure to provide sufficient justification therefor, the rulings of the COMELEC should be reversed and the criminal action filed against petitioner, if any, abated and

⁴⁸ *Id.*

⁴⁹ 366 Phil. 602, 609 (1999).

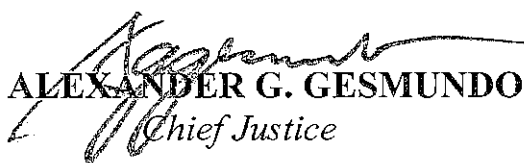
dismissed.⁵⁰ On this score, we deem it unnecessary to further discuss the other issues raised herein.

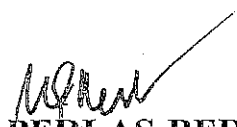
ACCORDINGLY, the petition is **GRANTED**. Resolution No. 18-0665 dated November 5, 2018 and Resolution No. 20-00121-33 dated December 9, 2020 are **NULLIFIED** for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. The formal complaint against petitioner, Joseph Roble Peñas for alleged violation of Section 100 in relation to Section 262 of the OEC, as amended by RA 7166, for election overspending is **DISMISSED**.


SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

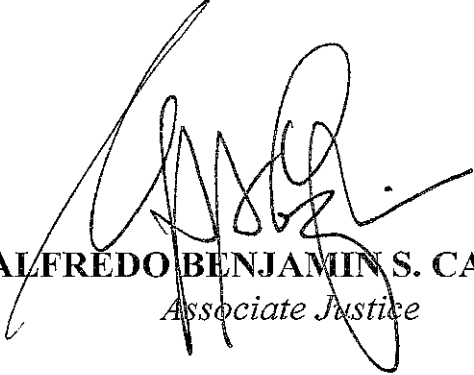
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

⁵⁰ *Id.* note 42.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



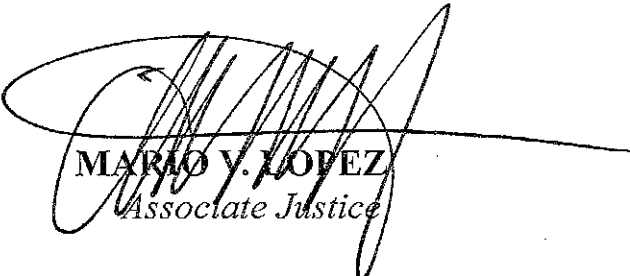
RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice




RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice





CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice

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