

EDUARDO T. RODRIGUEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, BIENVENIDO O. MARQUEZ, JR., RESPONDENTS.

G.R. No. 120099. July 24, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Petitioner Eduardo T. Rodriguez and private respondent Bienvenido O. Marquez, Jr. (Rodriguez and Marquez, for brevity) were protagonists for the gubernatorial post of Quezon Province in the May 1992 elections. Rodriguez won and was proclaimed duly-elected governor.

Marquez challenged Rodriguez' victory via petition for quo warranto before the COMELEC (EPC No. 92-28). Marquez revealed that Rodriguez left the United States where a charge, filed on November 12, 1985, is pending against the latter before the Los Angeles Municipal Court for fraudulent insurance claims, grand theft and attempted grand theft of personal property. Rodriguez is therefore a "fugitive from justice" which is a ground for his disqualification/ineligibility under Section 40(e) of the Local Government Code (R.A. 7160), so argued Marquez.

The COMELEC dismissed Marquez' quo warranto petition (EPC No. 92-28) in a resolution of February 2, 1993, and likewise denied a reconsideration thereof.

Marquez challenged the COMELEC dismissal of EPC No. 92-28 before this Court via petition for certiorari, docketed as G.R. No. 112889. The crux of said petition is whether Rodriguez is a "fugitive from justice" as contemplated by Section 40(e) of the Local Government Code based on the alleged pendency of a criminal charge against him (as previously mentioned).

In resolving that Marquez petition (112889), the Court in "Marquez, Jr. vs. COMELEC" promulgated on April 18, 1995, now appearing in Volume 243, page 538 of the SCRA and hereinafter referred to as the MARQUEZ Decision, declared that:

"x x x, 'fugitive from justice' includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution. This definition truly finds support from jurisprudence (x x x), and it may be so conceded as expressing the general and ordinary connotation of the term." [1]

Whether or not Rodriguez is a "fugitive from justice" under the definition thus given was not passed upon by the Court. That task was to devolve on the COMELEC upon remand of the case to it, with the directive to proceed therewith with dispatch conformably with the MARQUEZ Decision. Rodriguez sought a reconsideration thereof. He also filed an "Urgent Motion to Admit Additional Argument in Support of the Motion for Reconsideration" to which was attached a certification from the Commission on Immigration showing that Rodriguez left the US on June 25, 1985 -- roughly five (5) months prior to the institution of the criminal complaint filed against him before the Los Angeles court. The Court however denied a reconsideration of the MARQUEZ Decision.

In the May 8, 1995 election, Rodriguez and Marquez renewed their rivalry for the same position of governor. This time, Marquez challenged Rodriguez' candidacy via petition for disqualification before the COMELEC, based principally on the same allegation that Rodriguez is a "fugitive from justice." This petition for disqualification (SPA No. 95-089) was filed by Marquez on April 11, 1995 when Rodriguez' petition for certiorari (112889) - from where the April 18, 1995 MARQUEZ Decision sprung - was still then pending before the Court.

On May 7, 1995 and after the promulgation of the MARQUEZ Decision, the COMELEC promulgated a Consolidated Resolution for EPC No. 92-28 (quo warranto case) and SPA No. 95-089 (disqualification case). In justifying a joint resolution of these two (2) cases, the COMELEC explained that:

1. EPC No. 92-28 and SPA No. 95-089 are inherently related cases;
2. the parties, facts and issue involved are identical in both cases
3. the same evidence is to be utilized in both cases in determining the common issue of whether Rodriguez is a "fugitive from justice"
4. on consultation with the Commission En Banc, the Commissioners unanimously agreed that a consolidated resolution of the two (2) cases is not procedurally flawed.

Going now into the meat of that Consolidated Resolution, the COMELEC, allegedly having kept in mind the MARQUEZ Decision definition of "fugitive from justice", found Rodriguez to be one. Such finding was essentially based on Marquez' documentary evidence consisting of

1. an authenticated copy of the November 12, 1995 warrant of arrest issued by the Los Angeles Municipal Court against Rodriguez, and
2. an authenticated copy of the felony complaint

which the COMELEC allowed to be presented ex-parte after Rodriguez walked-out of the hearing of the case on April 26, 1995 following the COMELEC's denial of Rodriguez' motion for postponement. With the walk-out, the COMELEC considered Rodriguez as having waived his right to disprove the authenticity of Marquez' aforementioned documentary evidence. The COMELEC thus made the following analysis:

"The authenticated documents submitted by petitioner (Marquez) to show the pendency of a criminal complaint against the respondent (Rodriguez) in the Municipal Court of Los Angeles, California, U.S.A., and the fact that there is an outstanding warrant against him amply proves petitioner's contention that the respondent is a fugitive from justice. The Commission cannot look with favor on respondent's defense that long before the felony complaint was allegedly filed, respondent was already in the Philippines and he did not know of the filing of the same nor was he aware that he was being proceeded against criminally. In a sense, thru this defense, respondent implicitly contends that he cannot be deemed a fugitive from justice, because to be so, one must be aware of the filing of the criminal complaint, and his disappearance in the place where the long arm of the law, thru the warrant of arrest, may reach him is predicated on a clear desire to avoid and evade the warrant. This allegation in the Answer, however, was not even fortified with any attached document to show when he left the United States and when he returned to this country, facts upon which the conclusion of absence of knowledge about the criminal complaint may be derived. On the contrary, the fact of arrest of respondent's wife on November 6, 1985 in the United States by the Fraud Bureau investigators in an apartment paid for respondent in that country can hardly rebut whatever presumption of knowledge there is against the respondent." [2]

And proceeding therefrom, the COMELEC, in the dispositive portion, declared:

"WHEREFORE, considering that respondent has been proven to be fugitive from justice, he is hereby ordered

disqualified or ineligible from assuming and performing the functions of Governor of Quezon Province. Respondent is ordered to immediately vacate said office. Further, he is hereby disqualified from running for Governor for Quezon Province in the May 8, 1995 elections. Lastly, his certificate of candidacy for the May 8, 1995 elections is hereby set aside."

At any rate, Rodriguez again emerged as the victorious candidate in the May 8, 1995 election for the position of governor.

On May 10 and 11, 1995, Marquez filed urgent motions to suspend Rodriguez' proclamation which the COMELEC granted on May 11, 1995. The Provincial Board of Canvassers nonetheless proclaimed Rodriguez on May 12, 1995.

The COMELEC Consolidated Resolution in EPC No. 92-28 and SPA No. 95-089 and the May 11, 1995 Resolution suspending Rodriguez' proclamation thus gave rise to the filing of the instant petition for certiorari (G.R. No. 120099) on May 16, 1995.

On May 22, 1995, Marquez filed an "Omnibus Motion To Annul The Proclamation Of Rodriguez To Proclaim Marquez And To Cite The Provincial Board of Canvassers in Contempt" before the COMELEC (in EPC No. 92-28 and SPA No. 95-089).

Acting on Marquez' omnibus motion, the COMELEC, in its Resolution of June 23, 1995, nullified Rodriguez' proclamation and ordered certain members of the Quezon Province Provincial Board of Canvassers to explain why they should not be cited in contempt for disobeying the poll body's May 11, 1995 Resolution suspending Rodriguez' proclamation. But with respect to Marquez' motion for his proclamation, the COMELEC deferred action until after this Court has resolved the instant petition (G.R. No. 120099).

Rodriguez filed a motion to admit supplemental petition to include the aforesaid COMELEC June 23, 1995 Resolution, apart from the May 7 and May 11, 1995 Resolutions (Consolidated Resolution and Order to suspend Rodriguez' proclamation, respectively).

As directed by the Court, oral arguments were had in relation to the instant petition (G.R. No. 120099) on July 13, 1995.

Marquez, on August 3, 1995, filed an "Urgent Motion For Temporary Restraining Order Or Preliminary Injunction" which sought to restrain and enjoin Rodriguez "from exercising the powers, functions and prerogatives of Governor of Quezon x x x." Acting favorably thereon, the Court in a Resolution dated August 8, 1995 issued a temporary restraining order. Rodriguez' "Urgent Motion To Lift Temporary Restraining Order And/Or For Reconsideration" was denied by the Court in an August 15, 1995 Resolution. Another similar urgent motion was later on filed by Rodriguez which the Court also denied.

In a Resolution dated October 24, 1995, the Court

"x x x RESOLVED to DIRECT the Chairman of the Commission on Elections ('COMELEC') to designate a Commissioner or a ranking official of the COMELEC to RECEIVE AND EVALUATE such legally admissible evidence as herein petitioner Eduardo Rodriguez may be minded to present by way of refuting the evidence heretofore submitted by private respondent Bienvenido Marquez, Sr., or that which can tend to establish petitioner's contention that he does not fall within the legal concept of a 'fugitive from justice.' Private respondent Marquez may likewise, if he so desires, introduce additional and admissible evidence in support of his own position. The provisions of Sections 3 to 10, Rule 33, of the Rules of Court may be applied in the reception of the evidence. The Chairman of the COMELEC shall have the proceedings completed and the corresponding report submitted to this Court within thirty (30) days from notice hereof."

The COMELEC complied therewith by filing before the Court, on December 26, 1995, a report entitled "EVIDENCE OF THE PARTIES and COMMISSION'S EVALUATION" wherein the COMELEC, after calibrating the parties' evidence, declared that Rodriguez is NOT a "fugitive from justice" as defined in the main opinion of the MARQUEZ Decision, thus making a 180-degree turnaround from its finding in the Consolidated Resolution. In arriving at this new conclusion, the COMELEC opined that intent to evade is a material element of the MARQUEZ Decision definition. Such intent to evade is absent in Rodriguez' case because evidence has established that Rodriguez arrived in the Philippines (June 25, 1985) long before the criminal charge was instituted in the Los Angeles Court (November 12, 1985).

But the COMELEC report did not end there. The poll body expressed what it describes as its "persistent discomfort" on whether it read and applied correctly the MARQUEZ Decision definition of "fugitive from justice". So as not to miss anything, we quote the COMELEC's observations in full:

"x x x. The main opinion's definition of a 'fugitive from justice' includes not only those who flee after conviction to avoid punishment but also those who, after being charged, flee to avoid prosecution.' It proceeded to state that:

This definition truly finds support from jurisprudence (Philippine Law Dictionary Third Edition, p. 399 by F.B. Moreno; Black's Law Dictionary, Sixth Edition, p. 671; King v. Noe, 244 SC 344; 137 SE 2d 102, 103; Hughes v. Pflanz, 138 Federal Reporter 980; Tobin v. Casaus, 275 Pacific Reporter 2d p. 792), and it may be so conceded as expressing the general and ordinary connotation of the term

But in the majority of the cases cited, the definition of the term 'fugitive from justice' contemplates other instances not explicitly mentioned in the main opinion. Black's Law Dictionary begins the definition of the term by referring to a 'fugitive from justice' as:

(A) person, who, having committed a crime, flees from jurisdiction of the court where crime was committed or departs from his usual place of abode and conceals himself within the district. x x x

Then, citing King v. Noe, the definition continues and conceptualizes a 'fugitive from justice' as:

x x x a person who, having committed or been charged with a crime in one state, has left its jurisdiction and is found within the territory of another when it is sought to subject him to the criminal process of the former state. (our emphasis)

In Hughes v. Pflanz, the term was defined as:

a person who, having committed within a state a crime, when sought for, to be subjected to criminal process, is found within the territory of another state.

Moreno's Philippine Law Dictionary, 5th Ed. considers the term as an:

expression which refers to one having committed, or being accused, of a crime in one jurisdiction and is absent for any reason from that jurisdiction.

Specifically, one who flees to avoid punishment x x x (Italics ours)

From the above rulings, it can be gleaned that the objective facts sufficient to constitute flight from justice are: (a) a person committed a 'crime' or has been charged for the commission thereof; and (b) thereafter, leaves the jurisdiction of the court where said crime was committed or his usual place of abode.

Filing of charges prior to flight is not always an antecedent requirement to label one a 'fugitive from justice.' Mere commission of a 'crime' without charges having been filed for the same and flight subsequent thereto sufficiently meet the definition. Attention is directed at the use of the word 'crime' which is not employed to

connote guilt or conviction for the commission thereof. Justice Davide's separate opinion in G.R. No. 112889 elucidates that the disqualification for being a fugitive does not involve the issue of the presumption of innocence, the reason for disqualification being that a person 'was not brought within the jurisdiction of the court because he had successfully evaded arrest; or if he was brought within the jurisdiction of the court and was tried and convicted, he has successfully evaded service of sentence because he had jumped bail or escaped. The disqualification then is based on his 'flight from justice.'

Other rulings of the United States Supreme Court further amplify the view that intent and purpose for departure is inconsequential to the inquiry. The texts, which are persuasive in our jurisdiction, are more unequivocal in their pronouncements. In *King v. US* (144 F. 2nd 729), citing *Roberts v. Reilly* (116 US 80) the United States Supreme Court held:

x x x it is not necessary that the party should have left the state or the judicial district where the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding an anticipated prosecution, but that, having committed a crime within a state or district, he has left and is found in another jurisdiction (*Italics supplied*)

Citing *State v. Richter* (37 Minn. 436), the Court further ruled in unmistakable language:

The simple fact that they (person who have committed crime within a state) are not within the state to answer its criminal process when required renders them, in legal intendment, fugitives from justice.

THEREFORE, IT APPEARS THAT GIVEN THE AUTHORITIES CITED IN G.R. NO. 112889, THE MERE FACT THAT THERE ARE PENDING CHARGES IN THE UNITED STATES AND THAT PETITIONER RODRIGUEZ IS IN THE PHILIPPINES MAKE PETITIONER A 'FUGITIVE FROM JUSTICE.'

From the foregoing discussions, the determination of whether or not Rodriguez is a fugitive from justice hinges on whether or not Rodriguez' evidence shall be measured against the two instances mentioned in the main opinion, or is to be expanded as to include other situations alluded to by the foreign jurisprudence cited by the Court. In fact, the spirited legal fray between the parties in this case focused on each camp's attempt to construe the Court's definition so as to fit or to exclude petitioner within the definition of a 'fugitive from justice'. Considering, therefore, the equally valid yet different interpretations resulting from the Supreme Court decision in G.R. No. 112889, the Commission deems it most conformable to said decision to evaluate the evidence in light of the varied constructions open to it and to respectfully submit the final determination of the case to the Honorable Supreme Court as the final interpreter of the law."

The instant petition dwells on that nagging issue of whether Rodriguez is a "fugitive from justice," the determination of which, as we have directed the COMELEC on two (2) occasions (in the MARQUEZ Decision and in the Court's October 24, 1995 Resolution), must conform to how such term has been defined by the Court in the MARQUEZ Decision. To reiterate, a "fugitive from justice":

"x x x includes not only those who flee after conviction to avoid punishment but likewise who, after being charged, flee to avoid prosecution."

The definition thus indicates that the intent to evade is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, there can only be an intent to evade prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.

Rodriguez' case just cannot fit in this concept. There is no dispute that his arrival in the Philippines from the US on June 25, 1985, as per certifications issued by the Bureau of Immigrations dated April 27[3] and June 26 of

1995,[4] preceded the filing of the felony complaint in the Los Angeles Court on November 12, 1985 and of the issuance on even date of the arrest warrant by that same foreign court, by almost five (5) months. It was clearly impossible for Rodriguez to have known about such felony complaint and arrest warrant at the time he left the US, as there was in fact no complaint and arrest warrant - much less conviction - to speak of yet at such time. What prosecution or punishment then was Rodriguez deliberately running away from with his departure from the US? The very essence of being a "fugitive from justice" under the MARQUEZ Decision definition, is just nowhere to be found in the circumstances of Rodriguez.

With that, the Court gives due credit to the COMELEC in having made the same analysis in its "x x x COMMISSION'S EVALUATION". There are, in fact, other observations consistent with such analysis made by the poll body that are equally formidable so as to merit their adoption as part of this decision, to wit:

"It is acknowledged that there was an attempt by private respondent to show Rodriguez' intent to evade the law. This was done by offering for admission a voluminous copy of an investigation report (Exhibits I to I-17 and J to J-87 inclusive) on the alleged crimes committed which led to the filing of the charges against petitioner. It was offered for the sole purpose of establishing the fact that it was impossible for petitioner not to have known of said investigation due to its magnitude. Unfortunately, such conclusion misleads because investigations of this nature, no matter how extensive or prolonged, are shrouded with utmost secrecy to afford law enforcers the advantage of surprise and effect the arrest of those who would be charged. Otherwise, the indiscreet conduct of the investigation would be nothing short of a well-publicized announcement to the perpetrators of the imminent filing of charges against them. And having been forewarned, every effort to sabotage the investigation may be resorted to by its intended objects. But if private respondent's attempt to show Rodriguez' intent to evade the law at the time he left the United States has any legal consequence at all, it will be nothing more than proof that even private respondent accepts that intent to evade the law is a material element in the definition of a fugitive.

"The circumstantial fact that it was seventeen (17) days after Rodriguez' departure that charges against him were filed cannot overturn the presumption of good faith in his favor. The same suggests nothing more than the sequence of events which transpired. A subjective fact as that of petitioner's purpose cannot be inferred from the objective data at hand in the absence of further proof to substantiate such claim. In fact, the evidence of petitioner Rodriguez sufficiently proves that his compulsion to return to the Philippines was due to his desire to join and participate vigorously in the political campaigns against former President Ferdinand E. Marcos. For indeed, not long after petitioner's arrival in the country, the upheaval wrought by the political forces and the avalanche of events which occurred resulted in one of the more colorful events in Philippine history. The EDSA Revolution led to the ouster of former Pres. Marcos and precipitated changes in the political climate. And being a figure in these developments, petitioner Rodriguez began serving his home province as OIC-Board Member of the Sangguniang Panlalawigan ng Quezon in 1986. Then, he was elected Governor in 1988 and continues to be involved in politics in the same capacity as re-elected Governor in 1992 and the disputed re-election in 1995. Altogether, these landmark dates hem in for petitioner a period of relentless, intensive and extensive activity of varied political campaigns — first against the Marcos government, then for the governorship. And serving the people of Quezon province as such, the position entails absolute dedication of one's time to the demands of the office.

"Having established petitioner's lack of knowledge of the charges to be filed against him at the time he left the United States, it becomes immaterial under such construction to determine the exact time when he was made aware thereof. While the law, as interpreted by the Supreme Court, does not countenance flight from justice in the instance that a person flees the jurisdiction of another state after charges against him or a warrant for his arrest was issued or even in view of the imminent filing and issuance of the same, petitioner's plight is altogether a different situation. When, in good faith, a person leaves the territory of a state not his own, homeward bound, and learns subsequently of charges filed against him while in the relative peace and service of his own country, the fact that he does not subject himself to the jurisdiction of the former state does not

qualify him outright as a fugitive from justice.

"The severity of the law construed in the manner as to require of a person that he subject himself to the jurisdiction of another state while already in his country or else be disqualified from office, is more apparent when applied in petitioner's case. The criminal process of the United States extends only within its territorial jurisdiction. That petitioner has already left said country when the latter sought to subject him to its criminal process is hardly petitioner's fault. In the absence of an intent to evade the laws of the United States, petitioner had every right to depart therefrom at the precise time that he did and to return to the Philippines. No justifiable reason existed to curtail or fetter petitioner's exercise of his right to leave the United State and return home. Hence, sustaining the contrary proposition would be to unduly burden and punish petitioner for exercising a right as he cannot be faulted for the circumstances that brought him within Philippine territory at the time he was sought to be placed under arrest and to answer for charges filed against him.

"Granting, as the evidence warrants, that petitioner Rodriguez came to know of the charges only later, and under his circumstances, is there a law that requires petitioner to travel to the United States and subject himself to the monetary burden and tedious process of defending himself before the country's courts?

"It must be noted that moral uprightness is not a standard too far-reaching as to demand of political candidate the performance of duties and obligations that are supererogatory in nature. We do not dispute that an alleged 'fugitive from justice' must perform acts in order not to be so categorized. Clearly, a person who is aware of the imminent filing of charges against him or of the same already filed in connection with acts he committed in the jurisdiction of a particular state, is under an obligation not to flee said place of commission. However, as in petitioner's case, his departure from the United States may not place him under a similar obligation. His subsequent knowledge while in the Philippines and non-submission to the jurisdiction of the former country does not operate to label petitioner automatically a fugitive from justice. As he was a public officer appointed and elected immediately after his return to the country, petitioner Rodriguez had every reason to devote utmost priority to the service of his office. He could not have gone back to the United States in the middle of his term nor could he have traveled intermittently thereto without jeopardizing the interest of the public he serves. To require that of petitioner would be to put him in a paradoxical quandary where he is compelled to violate the very functions of his office."

However, Marquez and the COMELEC (in its "COMMISSION'S EVALUATION" as earlier quoted) seem to urge the Court to re-define "fugitive from justice." They espouse the broader concept of the term as culled from foreign authorities (mainly of U.S. vintage) cited in the MARQUEZ Decision itself, i.e., that one becomes a "fugitive from justice" by the mere fact that he leaves the jurisdiction where a charge is pending against him, regardless of whether or not the charge has already been filed at the time of his flight.

Suffice it to say that the "law of the case" doctrine forbids the Court to craft an expanded re-definition of "fugitive from justice" (which is at variance with the MARQUEZ Decision) and proceed therefrom in resolving the instant petition. The various definitions of that doctrine have been laid down in *People v. Pinuila*, 103 Phil. 992, 999, to wit:

"'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." (21 C.J.S. 330)

"It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or readjudicated therein." (5 C.J.S. 1267)

"In accordance with the general rule stated in Section 1821, where, after a definite determination, the court has remanded the cause for further action below, it will refuse to examine question other than those arising subsequently to such determination and remand, or other than the propriety of the compliance with its mandate; and if the court below has proceeded in substantial conformity to the directions of the appellate court, its action will not be questioned on a second appeal.

"As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing." (5 C.J.S. 1276-77).

"Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion." (5 C.J.S. 1286-87).

To elaborate, the same parties (Rodriguez and Marquez) and issue (whether or not Rodriguez is a "fugitive from justice") are involved in the MARQUEZ Decision and the instant petition. The MARQUEZ Decision was an appeal from EPC No. 92-28 (the Marquez' quo warranto petition before the COMELEC). The instant petition is also an appeal from EPC No. 92-28 although the COMELEC resolved the latter jointly with SPA No. 95-089 (Marquez' petition for the disqualification of Rodriguez). Therefore, what was irrevocably established as the controlling legal rule in the MARQUEZ Decision must govern the instant petition. And we specifically refer to the concept of "fugitive from justice" as defined in the main opinion in the MARQUEZ Decision which highlights the significance of an intent to evade but which Marquez and the COMELEC, with their proposed expanded definition, seem to trivialize.

Besides, to re-define "fugitive from justice" would only foment instability in our jurisprudence when hardly has the ink dried in the MARQUEZ Decision.

To summarize, the term "fugitive from justice" as a ground for the disqualification or ineligibility of a person seeking to run for any elective local position under Section 40(e) of the Local Government Code, should be understood according to the definition given in the MARQUEZ Decision, to wit:

"A 'fugitive from justice' includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution." (Italics ours.)"

Intent to evade on the part of a candidate must therefore be established by proof that there has already been a conviction or at least, a charge has already been filed, at the time of flight. Not being a "fugitive from justice" under this definition, Rodriguez cannot be denied the Quezon Province gubernatorial post.

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED and the assailed Resolutions of the COMELEC dated May 7, 1995 (Consolidated Resolution), May 11, 1995 (Resolution suspending Rodriguez' proclamation) and June 23, 1995 (Resolution nullifying Rodriguez' proclamation and ordering the Quezon Province Provincial Board of Canvassers to explain why they should not be cited in contempt) are SET ASIDE.

SO ORDERED.

Romero, Melo, Puno, Kapunan, Hermosisima, Jr., and Panganiban, JJ., concur.

Torres, Jr., J., concurs in a separate opinion.

Vitug, J., dissents.

Bellosillo, J., on leave.

[1] 243 SCRA 538, 542.

[2] COMELEC Consolidated Resolution, Rollo, pp. 95-96.

[3] Rollo, p. 164.

[4] Rollo, p. 476.

SEPARATE OPINION**TORRES, JR., J.,**

Although I entertain no illusion of absolute certainty, as to whether or not the petitioner in the above-entitled case is a "fugitive from justice" within the purview of Section 40 paragraph (e) of Republic Act No. 7160 of the Local Government Code of 1991, and which would result to a disqualification for any elective local position, I, however, share the view of my distinguished colleague, Mr. Justice Ricardo J. Francisco, that petitioner Eduardo T. Rodriguez, is not a "fugitive from justice."

Petitioner should not be considered disqualified or ineligible from assuming and performing the functions of Governor of Quezon Province.

Petitioner returned to the Philippines from the United States on June 25, 1985 while the criminal complaint against him for fraudulent insurance claims, grand theft and attempted grand theft of personal property before the Municipal Court of Los Angeles, California was filed almost 5 months later, or on November 12, 1985. Verily, it cannot be said that he fled to avoid prosecution for at the time he left the United States, there was yet no case or prosecution to avoid. It would not be reasonable to assume that he returned to the Philippines aware that he has committed some transgressions of law or that he was anticipating the filing of the complaint. To assume that he was not unaware of his own prior misdeeds is tantamount to presuming his guilt.

That petitioner did not know of the imminent filing of charges against him and that he did not flee to avoid prosecution are bolstered by the facts that: 1.) he returned to the United States twice: on August 14 and October 7 of the same year but arrived in the Philippines on October 26 likewise in the same year; 2.) he left his wife in the United States; and 3.) his wife was later on arrested for the same charges. Had petitioner been aware of the imminent filing of charges against him, he would never have returned to the United States and he would not have left his wife in there.

Petitioner is a citizen of this country. Why should he not come home? Coming home to the Philippines was the most natural act of the petitioner, who happens to maintain his residence in the country. The fact that he remains here even after he was formally accused cannot be construed as an indication of an intent to flee, there being no compelling reason for him to go to the United States and face his accusers. On the contrary, it is his official duty, as an incumbent Governor of Quezon, to remain in the country and perform his duties as the duly elected public official.

In her report entitled "Evidence of the Parties and Commission's Evaluation," Commissioner Teresita Dy-Liacco Flores aptly pointed out:

"x x x When, in good faith, a person leaves the territory of a state not his own, homeward bound, and learns subsequently of charges filed against him while in the relative peace and service of his own country, the fact that he does not subject himself to the jurisdiction of the former state does not qualify him outright as a fugitive from justice.

"The severity of the law construed in the manner as to require of a person that he subject himself to the

jurisdiction of another state while already in his country or else be disqualified from office, is more apparent when applied in petitioner's case. The criminal process of the United States extends only within its territorial jurisdiction. That petitioner has already left said country when the latter sought to subject him to its criminal process is hardly petitioner's fault. In the absence of an intent to evade the laws of the United States, petitioner had every right to depart therefrom at the precise time that he did and to return to the Philippines. No justifiable reason existed to curtail or fetter petitioner's exercise of his right to leave the United States and return home. Hence, sustaining the contrary proposition would be to unduly burden and punish petitioner for exercising a right as he cannot be faulted for the circumstances that brought him within Philippine territory at the time he was sought to be placed under arrest and to answer for charges against him.

Granting, as the evidence warrants, that petitioner Rodriguez came to know of the charges only later, and under his circumstances, is there a law that requires petitioner to travel to the United States and subject himself to the monetary burden and tedious process of defending himself before the country's courts?"[1]

This Court cannot be oblivious of the fact that the provision disqualifying fugitives from justice in criminal or non-political cases here or abroad was allegedly tailored to affect petitioner. The provision is short of saying that Eduardo Rodriguez is disqualified. As I trace the legislative history of the subject provision, I find that the principal sponsor of the Local Government Code, Aquilino O. Pimentel, Jr., then a Senator and Chairman of the Senate Committee on Local Government commented on this, in his book "The Local Government Code of 1991," thus:

"5. Fugitives Disqualified. Persons fleeing from local or foreign justice in criminal or non-political cases are likewise disqualified from local government elective positions. This particular disqualification was a House of Representatives innovation. This was a 'camaraderie' provision proposed by the House because a congressman of a southern Tagalog province had intended to run for governor against an incumbent who had reportedly fled from U.S. justice".[2] (Italics supplied)

To borrow the language of former Chief Justice Moran in his dissent in *Torres vs. Tan Chim*, 69 Phil. 518, 535:

"x x x when this Court continues to uphold a ruling known to be erroneous, with no plausible excuse therefor but public acquiescence therein, it may soon find itself compelled to make more mistakes in an effort to justify the previous ones. We may thus be building one error upon another until, by their accumulation, we shall come to a point when going further would be perilous and turning backward impossible."

To rule in favor of private respondent is to license a wrongdoing to succeed and injustice to prevail in applying a law, the facts and circumstances obtaining in the particular case must be taken into consideration. In the case at bar, the following circumstances must be taken into consideration: that petitioner was not aware of the imminent filing of charges against him; the same was filed after he has returned home; it is impractical and unjust to require petitioner to subject himself to the jurisdiction of the United States while already in this country or else be disqualified from office; and that the subject provision appears to have been a 'camaraderie provision' proposed by the House for the sake of private respondent who was then a Congressman.

In *Marquez vs. COMELEC* (243 SCRA 538), this court held that: Art. 73 of the Rules and Regulations Implementing the Local Government Code of 1991 is an inordinate and undue circumscription of the law, to the extent that it confines the term "fugitive from justice" to refer only to a person (the fugitive) "who has been convicted by final judgment." Said ruling notwithstanding, the court must not insist that petitioner is still a fugitive by the mere fact that there are pending charges against the petitioner in the United States and that petitioner Rodriguez is in the Philippines.

It was Justice Oliver Wendel Holmes who said that -

"A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in

color and content according to the circumstances and the time in which it is used." [3]

"Fugitive from justice" must be given a meaning in the instant case having regard to "the circumstances and the time it is used." Philosophers and jurists have tried unsuccessfully at an exact definition of such an abstruse term as justice. Unfortunately, whether in the metaphysical sense or otherwise, the question of justice is still unanswered as it ever was albeit characterized by secular skepticism. If the question is asked: What standard of justice should we enforce? The American sense of justice or the Philippine sense of justice? Undoubtedly, the forum in which it is raised should be controlling. By way only of hypothesis, if an American flees to escape from Philippine Laws to the United States, may we enforce in the United States our standard of justice based on Philippine Laws? I am tempted to ask these questions considering our zealousness to solve legal problems in the light of laws obtaining in the United States.

At any rate, an accused charged with a crime in the Philippines cannot be a candidate and at the same time flee from prosecution. Once he goes campaigning his opponent would have him arrested. For this and the reasons above discussed, the provision on disqualification of fugitive from justice, being unnecessary and serving only to undermine one's constitutional right to equal access to opportunities for public service, [4] should even be scantily considered.

Finally, petitioner appears to have garnered 285,202 votes. According to the election results, petitioner won over private respondent by a majority of 140, 000 votes more or less. As it is, to disqualify petitioner on the shaky ground of being a "fugitive from justice" would amount to disenfranchising the electorate in whom sovereignty resides. [5]

Learned Hand, had this to say:

"Hand preached that the security of liberty was too important to be left entirely to the judges: '(I)t is the voters, speaking through their delegates, who have the final word and the final responsibility; and . . . in the end it is they and they alone who can and will preserve our liberties, if preserved they are to be.'" [6]

This is a populist judicial response.

Thus, where a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility, for to rule otherwise is to defeat the will of the people. [7] Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred. [8]

I vote to grant the petition.

[1] Report of the Commission, p. 12.

[2] Commissioner Maambong's Concurring Opinion that petitioner is not a fugitive from justice, p. 9.

[3] *Towne vs. Eismer*, 245 U.S. 418.

[4] Art. II, Sec. 26 (State Policies) of the 1987 Constitution provides: "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law."

[5] *Labo vs. Commission on Elections*, G.R. No. 105384, July 3, 1992.

[6] Learned Hand, *A Plea for the Open Mind and Free Discussion*, in *True Spirit of Liberty*, 274.

[7] *Avelino vs. Rosales*, CA-G.R. No. 88-R, September 5, 1952, 48, O.G. 5308; *The Law on Elections* by Jaime Opinion and Ruben Agpalo, 1987 ed., p. 57.).

[8] Mentang vs. Commission on Elections, G.R. No. 110347, February 4, 1994.

DISSENTING OPINION

VITUG, J.,

Let me not, in writing this dissenting opinion, be so misunderstood as stating that I am opposed to the doctrine of stare decisis et non quieta movere or to the consequences of the rule on the "law of the case," let alone to create, to borrow the phrase used by the majority, "instability in our jurisprudence." But what I would really dread is when I might, wittingly or unwittingly, misconceive the pronouncements made by the Court or, worse, be completely out of context therefrom. I should also like to point out that the dissent in no way necessarily implies an acceptance on the sapience of the law here in question; I realize that the Court has no prerogative to either sustain or reject a law on that basis alone.

I find it helpful to first narrate the antecedents of the case now before us.

For some time now, Eduardo Rodriguez and Bienvenido Marquez, Jr., have been at loggerheads on the issue of whether or not Rodriguez is a "fugitive from justice" and thereby disqualified under the law to run for, or to hold on to, an elective local office. The contenders have for the fourth time^[1] pleaded for the intervention of this Court.

This time, in a special civil action for certiorari, with a prayer for the issuance of a writ of preliminary mandatory/prohibitory injunction, Rodriguez seeks the annulment of the 07th and 11th May 1995 resolutions (infra) of the Commission on Elections ("COMELEC"). There being other matters that have come up during the pendency of this petition, Rodriguez has now also moved for the admission of his supplemental petition and a second supplemental petition to call attention to certain developments, including a 23rd June 1995 resolution of the COMELEC which he now likewise assails.

The various settings that led to the promulgation by the COMELEC of its assailed resolutions might be condensed thusly:

Rodriguez, the proclaimed Governor of Quezon Province after the May 1992 elections, was named respondent by Marquez, a defeated candidate for the same post, in a quo warranto petition, docketed EPC No. 92-28 (hereinafter so referred to as the quo warranto case), instituted before the COMELEC. Rodriguez was said to be a fugitive from justice and thereby disqualified under Section 40(e) of the Local Government Code from holding on to the elective local office. The COMELEC dismissed the petition for quo warranto on the ground that petitioner had not been convicted by final judgment. Private respondent thereupon filed a petition for certiorari with this Court (docketed G.R. No. 112889).^[2]

On 15 March 1995 (while G.R. No. 112889 was still then pending consideration by the Court), Marquez and Rodriguez filed their respective certificates of candidacy, this time for the May 1995 elections, for the governorship of Quezon. Upon learning of the re-election bid of Rodriguez, Marquez lost no time in filing (on 11 April 1995) with the COMELEC a petition to disqualify Rodriguez and for the cancellation of the latter's certificate of candidacy. Docketed SPA No. 95-089 (hereinafter so referred to as the disqualification case), the petition was assigned to the Second Division of the COMELEC. Marquez disclosed to the COMELEC the pendency of G.R. No. 112889 but explained that the two cases were different in that G.R. No. 112889 had sought to oust petitioner from office for the term 1992-1995 while SPA No. 95-089 was aimed at disqualifying petitioner from running for a new term (1995-1998). Rodriguez was summoned by the Second Division of the COMELEC and required to file his answer to the petition. The disqualification case was set for hearing on 25 April 1995.

Meanwhile, on 18 April 1995, this Court rendered a decision in G.R. No. 112889 reversing and setting aside the resolution of the COMELEC which dismissed the petition for quo warranto and directed the COMELEC "to proceed and resolve the case with dispatch." On even date, Rodriguez filed with this Court in G.R. No. 112889 an "Urgent Manifestation and Motion" for the dismissal G.R. No. 112889 asseverating that the filing of SPA No. 95-089 meant forum-shopping on the part of Marquez.

Unaware (presumably) of the 18th April 1995 decision of this Court, Rodriguez filed, on 21 April 1995, with the COMELEC (Second Division) in the disqualification case (SPA No. 95-089) a "Motion to Nullify Summons and to Reconsider Notice of Hearing" praying for the dismissal of the case in view of the pendency with this Court of G.R. No. 112889. He filed an "Answer Ex-Abundante Cautela" claiming, among other things, that he was already in the Philippines at the time the complaint was filed against him in Los Angeles, California. In three separate pleadings, Rodriguez insisted on the nullification of the summons, the reconsideration of the notice of hearing and the dismissal of SPA No. 95-089.

The scheduled 25th April 1995 hearing on the disqualification case was re-set to 26 April 1995. Still claiming to be in cognizant of this Court's decision in G.R. No. 112889, Rodriguez filed, on 25 April 1995, an urgent motion for the issuance of a writ of preliminary injunction to restrain the COMELEC from hearing SPA No. 95-089, arguing that, since SPA No. 95-089 was also based on the facts as those that related to G.R. No. 112889, its filing constituted forum-shopping and could pre-empt G.R. No. 112889.

The hearing on the disqualification case (SPA No. 95-089), re-scheduled for 26 April 1995 by the Second Division of the COMELEC,[3] went through. Rodriguez moved to suspend the proceedings so citing, as the ground therefor, his urgent motion for preliminary injunction in G.R. No. 112889. The COMELEC (Second Division), however, denied his motion, as well as his subsequent motion for time to file a motion for reconsideration, because of the proximity of the elections. Failing to have the proceedings held in abeyance, Rodriguez walked out of the hearing. Marquez then submitted and offered in evidence the authenticated copies of the felony complaint and warrant of arrest against Rodriguez issued on 12 November 1985, by the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, U.S.A., and some other records of said court.

On 27 April 1995, it might be mentioned parenthetically, Rodriguez moved for the reconsideration of this Court's decision of 18 April 1995 in G.R. No. 112889.

It was now the turn of Rodriguez to file with this Court a petition for certiorari, prohibition, and mandamus. The petition, entitled "Eduardo T. Rodriguez vs. Commission on Elections, et al.," and docketed G.R. No. 119807, asked the Court to enjoin the COMELEC from proceeding with SPA No. 95-089. The petition was dismissed by the Court, in its 04 May 1995 minute resolution, since it found no grave abuse of discretion on the part of the COMELEC.

Meanwhile, in G.R. No. 112889, Rodriguez filed an "Urgent Motion to Admit Additional Argument in Support of the Motion for Reconsideration" attaching thereto a certification from the Commission on Immigration purporting to show that he had left the United States on 25 June 1985 before the felony complaint against him was instituted before the Los Angeles court. The following day, or on 03 May 1995, he also filed with the COMELEC (Second Division), a "Motion to Admit Position Paper Ex Abundante Cautela Showing that Respondent is Not a Fugitive from justice As Defined in the Supreme Court Decision of April 18, 1995 in G.R. No. 112889," arguing that the decision in G.R. No. 112889 would not apply to him because he arrived in the Philippines five (5) months before the filing of the felony charges against him. The COMELEC (Second Division), in its 06 May 1995 resolution, denied the motion.

On 07 May 1995, or one day before the scheduled 1995 elections, the COMELEC promulgated its first assailed consolidated resolution in EPC No. 92-28 and SPA No. 95-089 which read:

"WHEREFORE, considering that respondent (Eduardo Rodriguez) has been proven to be fugitive from justice, he is hereby ordered disqualified or ineligible from assuming and performing the functions of Governor of Quezon Province. Respondent is ordered to immediately vacate said office. Further, he is hereby disqualified from running for Governor for Quezon Province in the May 8, 1995 elections. Lastly, his certificate of candidacy for the May 8, 1995 elections is hereby set aside." [4] (*Italics supplied*)

On 10 and 11 May 1995, Marquez filed urgent motions to suspend the proclamation of Rodriguez. The COMELEC favorably acted on the motions as it so issued, on 11 May 1995, a resolution where it ruled to suspend, among other candidates, the proclamation of Rodriguez who was ordered disqualified in SPA No. 95-089. Notwithstanding the 11th May 1995 resolution, however, Rodriguez, who would appear to have garnered 285,202 votes, was proclaimed winner on 12 May 1995 by the Provincial Board of Canvassers of Quezon. On 22 May 1995, Marquez went to the COMELEC and filed in SPA No. 95-089 and EPC No. 92-28 an "Omnibus Motion to Annul the Proclamation of Rodriguez, to Proclaim Marquez and to cite the Provincial Board of Canvassers in Contempt."

On 16 May 1995, Rodriguez filed the present petition for certiorari captioned: "For: REVIEW OF EPC No. 92-28 and SPA No. 95-089 of the Commission on Elections and for NULLIFICATION OF COMELEC Resolution dated 11 May 1995 with a prayer for the issuance of a WRIT OF PRELIMINARY MANDATORY/PROHIBITORY INJUNCTION." an urgent motion to admit a supplemental petition was filed on 18 May 1995 by petitioner stating that he had been furnished with a copy of a certificate of canvass of votes and of his proclamation by the Provincial Board of Canvassers. On 29 May 1995, Rodriguez thereupon renewed his prayer, through a motion, for the issuance of a temporary restraining order and to declare the COMELEC and Marquez in contempt of court.

Back to the omnibus motion of Marquez in SPA No. 95-089 and EPC No. 92-28, the COMELEC, in its 23rd June 1995 resolution, annulled and set aside the proclamation of Rodriguez for being null and void ab initio. It also gave the Vice-Chairman and Member-Secretary of the Provincial Board of Canvassers of Quezon Province ten (10) days within which to explain why they should not be cited in contempt for disobedience or resistance to the lawful order of the COMELEC particularly its "order to suspend proclamation." On the motion seeking the proclamation of Marquez, the COMELEC chose to have the matter considered by it only "once the Supreme Court (would have) resolved the case of Eduardo T. Rodriguez v. COMELEC (in), G.R. No. 120099" (the instant petition). This action by the COMELEC prompted Rodriguez to file his motion to admit a second supplemental petition in order to include the 23rd June 1995 resolution, in addition to the 07th and 11th May resolutions, of the COMELEC, among the disputed issuances.

Petitioner submits several reasons for the allowance and grant of his petition.

Rodriguez contends that the COMELEC should not have entertained the disqualification case

(SPA No. 95-089) for being an act of 'forum-shopping' on the part of Marquez. Clearly, there is no merit in this submission. The general statement of the prohibition against forum-shopping is that a party should not be allowed to pursue on the same subject matter simultaneous remedies in two or more different fora [5] that can tend to degrade the administration of justice by thusly trifling with the courts and abusing their processes. [6] Forum-shopping exists where the actions are of the same nature and involve identical transactions, circumstances, and issues between the same parties. [7] While there is identity in many respects between SPA No. 95-089 and

EPC No. 92-28, the two cases, however, greatly differ in their main aspects. EPC No. 92-28 (subject case of G.R. No. 112889) is a quo warranto case and involves petitioner's gubernatorial incumbency for the term 1992-1995 while SPA No. 95-089 is a disqualification case involving his candidacy for the 1995 local elections.

Rodriguez argues that should Section 40(e) of the Local Government Code of 1991 be applied to him, it would partake the nature of an *ex post facto*[8] law or a bill of attainder.[9] These terms have settled meanings in criminal law jurisprudence that clearly have no relevance to the case before us. Besides, the Local Government Code took effect on 01 January 1992, and thus its application to Rodriguez in his gubernatorial incumbency that started in mid-1992 and his candidacy for the 1995 elections cannot be deemed to be retrospective in character.

Petitioner claims that the COMELEC did not have jurisdiction to issue the questioned resolution on the eve of the election because the Omnibus Election Code requires that final decisions in disqualification cases should be rendered not later than seven (7) days before the election. Section 72 of the Omnibus Election Code, that petitioner refers to, provides:

"SEC. 72. Effects of disqualification cases and priority. - The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought." (Italics supplied).

The instant case calls for the governance not of the Omnibus Election Code but of the Local Government Code (specifically Section 40[e] thereof). In any case, the "seven days" stated in the law, being evidently intended for administrative feasibility, should be construed as a mere directory, rather than as a mandatory, provision of the Omnibus Election Code. A provision should be deemed to be directory only when to have it enforced strictly may cause more harm than by disregarding it.[10]

The next question posed was whether or not the COMELEC gravely abused its discretion when, in the scheduled hearing of 26 April 1995, it refused to grant the motion of Rodriguez for a suspension of hearing. Far from it, the denial by COMELEC would appear to have been both prudent and legally warranted. The motion was grounded on the pendency of G.R. No. 112889 (the quo warranto case), whereas, the 26th April 1995 hearing related to the disqualification case (SPA 95-089) for the 1995 election that undoubtedly had to be resolved quickly. The COMELEC hardly had any choice but to proceed with the hearing and, when Rodriguez thereupon walked out, Marquez was naturally allowed to present his evidence *ex-parte*. Perhaps realizing that the COMELEC had acted correctly, petitioner would question the holding of the 26th April 1995 hearing by only one member (Commissioner Teresita Flores) of the Second Division.[11] Not only was this matter not timely brought up before the COMELEC, but that there would appear to be no problem in the delegation by the COMELEC of the mere reception of evidence to any one of its members. All the assailed resolutions of COMELEC would indicate that the required concurrence of the Commissioners was given.

The subsequent consolidation of the quo warranto case with that of the disqualification case (following our 18th April 1995 decision remanding the case to COMELEC), and the promulgation of the 07th May 1995 consolidated resolution, would also seem to be in conformity with Rule 3, Section 9, of the COMELEC Rules of Procedure, which reads:

"Sec. 9. Consolidation of cases. - When an action or proceeding involves a question of law and fact which is similar to or common with that of another action or proceeding, the same may be consolidated with the action or proceeding bearing the lower docket number."

Moreover, a further hearing on the quo warranto case so involving, as it does, petitioner's now expired incumbency, would be unnecessary and a futile effort.

The pivotal issue then is whether or not petitioner falls under the term "fugitive from justice" but, unlike its precursor case in G.R. No. 112889 which has been confined to the question of whether or not a conviction by final judgment of a person at large is essential before he can be considered a "fugitive from justice,"[12] this time, however, the Court is asked to pass upon petitioner's assertion that he cannot be considered a "fugitive from justice" since he already has been in the Philippines months prior to the filing of the charges against him before the United States court in November 1985. He cites a certification from the Commission of Immigration of his arrival in the country on 25 June 1985.

The Solicitor-General, on his part, maintains that the evidence presented by Marquez is still wanting. He states that the evidence thus far submitted would only show -

"(1) that ten (10) charges of presenting fraudulent insurance claims, grand theft of personal property, and attempted grand theft of personal property were filed against petitioner before the Municipal Court of the County of Los Angeles, State of California, U.S.A., in November, 1985;

"(2) that on November 12, 1985, a warrant of arrest was issued against petitioner; and

"(3) that petitioner's wife, Imelda Gener Rodriguez, was arrested for the same charges on November 6, 1985." [13]

which, collectively, would appear to be "too insubstantial" and inadequate to establish that Rodriguez has, in fact, fled to avoid prosecution. He opines that -

"x x x The COMELEC can not simply ignore the fact that the then Bureau of Immigration had issued a certification that on June 25, 1985, petitioner returned to the Philippines from the United States. This certification is already on record, having been submitted by petitioner ex abundante cautela following COMELEC's refusal to consider the same because of petitioner's walkout from the hearing on April 26, 1995. According to the election results, petitioner won over private respondent by a majority of 140,000 votes more or less. This manifestation of the People's will can not just be ignored without conducting a thorough hearing to determine whether the person they had overwhelmingly voted for is really disqualified from presenting himself to them for election." [14]

I thus perceive the Solicitor General as now also saying that an intention to evade punishment or prosecution is an element of the term "fugitive from justice."

Verily, there is a dearth of authorities on the proper and legal connotation of the phrase "fugitive from justice." Neither the law (Republic Act No. 7160, also known as the Local Government Code)[15] here in question nor the deliberations in Congress give much clue to the legislative intent. The phrase has been used in various contexts although it is in extradition cases where it appears to have acquired a prevalent usage. One leading situation was that of *Roberts vs. Reilly*, [16] decided by the United States Supreme Court, which involved the application of Article 4, Section 2, of the United States Constitution [17] and Section 5278 [18] of the Revised Statutes of the United States implementing the Constitutional provision. William Roberts was indicted for grand larceny in the first degree in the State of New York. He was subsequently held in the State of Georgia by Philip Reilly, who claimed to be an agent of the State of New York and acting by virtue of an executive warrant issued by the Governor of Georgia on a requisition from the Governor of New York, reciting that Roberts had been indicted in the State of New York and was a fugitive from justice of the latter State. In considering the specific question on whether or not the person demanded was a fugitive from justice, the tribunal held:

"To be (regarded) a fugitive from justice, x x x, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its

laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another."

The ruling was repeated in *Appleyard v. Massachusetts*,^[19] itself to be later reiterated in a number of other cases,^[20] where Arthur Appleyard was indicted for the crime of grand larceny, first degree, alleged to have been committed in the county of Erie, New York. Although a warrant for his arrest was issued, Appleyard was not apprehended because he had moved out from that State. He was eventually arrested by virtue of a warrant issued by the Governor of Massachusetts. Appleyard then applied for a writ of habeas corpus to the supreme judicial council of Massachusetts which, after hearing, denied the application. He, again, applied to the Circuit Court of the United States for a writ of habeas corpus which effort likewise proved futile. Appleyard interposed an appeal to the U.S. Supreme Court. He restated his previous contention before the lower courts that he could not be deemed to be a fugitive from justice because he was unaware when leaving New York that he had at any time violated its criminal laws. That Court held:

"x x x This contention cannot be sustained; indeed, it could not be sustained without materially impairing the efficacy of the constitutional and statutory provisions relating to fugitives from justice. An alleged fugitive may believe that he has not committed any crime against the laws of the state in which he is indicted, and yet, according to the laws of such state, as administered by its judicial tribunals, he may have done so, and his belief or want of belief may be without foundation in law. It is the province of the courts of New York to declare what its laws are, and to determine whether particular acts on the part of an alleged offender constitute a crime under such laws. The constitutional provision that a person charged with crime against the laws of a state, and who flees from its justice, must be delivered up on proper demand, is sufficiently comprehensive to embrace any offense, whatever its nature, which the state, consistently with the Constitution and laws of the United States, may have made a crime against its laws. *Kentucky v. Dennison*, 24 How. 66, 69, 16 L. ed. 717; *Ex parte Reggel*, 114 U.S. 642, 650, 29 L. ed. 250, 252, 5 Sup. Ct. Rep. 1148. So that the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he consciously fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding state. A person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the state, - no matter for what purpose or with what motive, nor under what belief, - becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, x x x"

Most U.S. State courts would appear to be similarly minded.^[21]

The rulings heretofore cited cannot be here controlling, of course, and divergent views can still be expressed on the precise import of the phrase "fugitive from justice." It is evident enough though, in my view, that Congress, not having provided otherwise, must have intended the ordinary connotation of the term to prevail. So taken, it might be understood as referring to one who, having committed or being accused of having committed a crime in one jurisdiction, cannot be found therein^[22] or is absent for any reason from that jurisdiction^[23] that thereby forestalls criminal justice from taking its due course. The issue is largely a factual matter and in that determination, the motive or reason for his plight need not be inquired into. *Animus fugere* may be significant but it is not essential and what matters is not why he leaves but the fact that he leaves, for it should not be unreasonable to assume that he was not unaware of his own prior deeds or misdeeds. As so conceptualized, the import of the term is more congruent than variant with what has heretofore been essayed to be, in fact, its common usage. Indeed, unlike the U.S. courts which are yet detained by the conditions expressed in both their fundamental and statutory laws, the pertinent provision of our own Local Government Code contains no further circumscription other than by its bare and simple mandate that a "fugitive from justice in criminal or non-political cases here or abroad" shall be "disqualified from running for any elective local position."^[24] The law has

provided no further provisos and no saving clauses. When there is no obscurity or ambiguity in an enabling law, it must, we have said in the related case of *Marquez vs. Comelec*,^[25] be merely made to apply as it is so written. This Court is not at liberty either to question the wisdom of the law, let alone to detract from it, or to itself legislate material parameters when there are none that statutorily exist.

I now come to the final question of whether or not substantial evidence has been adduced to support the factual findings of the COMELEC and, corollarily, whether or not petitioner has been duly accorded full opportunity to present before the COMELEC his own evidence to disprove the assertions of private respondent.

It may be recalled that, following the denial of the motion of Rodriguez to postpone the scheduled 26th April 1995 hearing, the COMELEC continued, because of the proximity of the May 1995 elections, with its reception of the evidence (despite the walk-out thereupon staged by Rodriguez and his counsel). Duly received in evidence included an authenticated copy of the warrant of arrest, dated 12 November 1985, on respondent (Exh. A-2) issued by the Municipal Court of the County of Los Angeles, State of California, U.S.A., in connection with a criminal complaint filed against him in Criminal Case No. A774567, entitled "*People of the State vs. Imelda O. Rodriguez and Eduardo T. Rodriguez for the crimes of presenting Fraudulent Insurance Claims, Grand Theft of Personal Property and Attempted Grand Theft of Personal Property*," and an authenticated copy of the felony complaint (Exh. A-10 to A-15 inclusive), showing that the respondent was charged criminally on ten (10) counts. Concluding on the documentary evidence adduced before it, the COMELEC said:

"The authenticated documents submitted by petitioner to show the pendency of a criminal complaint against the respondent in the Municipal Court of Los Angeles, California, U.S.A., and the fact that there is an outstanding warrant against him amply proves petitioner's contention that the respondent is a fugitive from justice."^[26]

The petitioner and his counsel walked out from the proceedings. Certainly, the thesis that petitioner was denied due process would be totally unacceptable; he himself brushed it aside. But while there might be no sympathy for his action that ordinarily should have prevented him from any further opportunity, the Court, nevertheless, aptly recognized that the controversy was solely not between the private parties herein, but one imbued with public interest, involving no less than the highest office in the province of Quezon and so, inevitably, a concern also of its people. Accordingly, the Court, besides having set the case for the reception of oral argument on 13 July 1995, likewise passed, on 24 October 1995, the following resolution; thus-

"Deliberating on the special civil action for certiorari with prayer for preliminary injunction and restraining order, along with the comment thereon filed by the Solicitor General, as well as the other subsequent pleadings submitted by the parties in support of their respective submissions, and considering, further, the oral arguments of the parties during the 13th July 1995 hearing of this case, the Court RESOLVED to DIRECT the Chairman of the Commission on Elections ('COMELEC') to designate a Commissioner or a ranking official of the COMELEC to RECEIVE AND EVALUATE such legally admissible evidence as herein petitioner Eduardo Rodriguez may be minded to present by way of refuting the evidence heretofore submitted by private respondent Bienvenido Marquez, Sr., or that which can tend to establish petitioner's contention that he does not fall within the legal concept of a 'fugitive from justice.' Private respondent Marquez may likewise, if he so desires, introduce additional and admissible evidence in support of his own position. The provisions of Sections 3 to 10, Rule 33, of the Rules of Court may be applied in the reception of the evidence. The Chairman of the COMELEC shall have the proceedings completed and the corresponding report submitted to this Court within thirty (30) days from notice hereof."^[27]

While it may generally be said that the possible outcome or truth of an indictment need not necessarily be an issue in ascertaining whether or not one is a fugitive from justice, when, however, the accusation is lodged with and an arrest is ordered by a foreign court or agency we might also assure ourselves as a matter of principle that, in the

process of sanctioning in effect an act of a foreign government, we do not thereby abandon our own basic sense of equity and fair play. There cannot thus be any serious doubt that, when assailed or in doubt, the courts are free to look into, and receive evidence on, the legitimacy and regularity of the proceedings in that foreign jurisdiction.

In the report submitted by the Commission on Elections,[28] entitled "Evidence of the Parties and Commission's Evaluation," received by the Court on 26 December 1995, the matters adduced by petitioner focused on what had already been asseverated in his petition, i.e., that he was already in the Philippines prior to the filing of the charges against him before the United States court in November of 1985 and that his return to the country was not intended to avoid prosecution. Neither party brought up any question on the legitimacy and regularity of the proceedings before the foreign court that led to the issuance of the warrants of arrest. I quote the pertinent portions of the report:

"EVIDENCE

"Petitioner Rodriguez presented the following witnesses:

"1. Atty. Cipriano Farrales

Legal Officer of the Bureau of Immigration and Deportation

"2. Menardo Manglo

"3. Former Supreme Court Justice Abraham Sarmiento

"4. Ex-Senator Aquilino Pimentel, Jr.

"5. Ex-Senator Agapito Aquino

"6. Atty. Geronimo Reyes, Jr.

"7. Atty. Roberto Avio

"8. Mr. Heberto Buenafe

"9. Former Senate President Jovito Salonga

"10. Former Secretary of the Department of Labor and Employment Augusto Sanchez

"11. Mr. Euclides Abcede

and

"12. Eduardo Rodriguez.

"The testimonies of Former Supreme Court Justice Abraham Sarmiento, former Senator Aquilino Pimentel, Jr., former Senator Agapito Aquino, Former Labor Secretary Augusto Sanchez and former Senator Jovito Salonga collectively emphasized that petitioner Eduardo Rodriguez was one of the active participants in the political movement against the late President Ferdinand E. Marcos. They went to Hongkong on August 9, 1985 as a group, together with petitioner Eduardo Rodriguez, in order to meet a political exile, Raul Daza, who had then a pending warrant of arrest issued by a Regional Trial Court of Quezon City. The purpose of the trip was to provide Mr. Raul Daza, another prominent opposition figure during the Marcos regime, some form of protective company during his return to the country on August 12, 1985. To the political opposition then, it was a big event that enjoyed media bash particularly in the August 12, 1985 issue of the Bulletin Today and in the August 19, 1985 issue of the Mr. and Ms. Magazine.

"Mr. Geronimo Reyes testified that he knows petitioner Rodriguez as a co-exile from the Marcos regime in

Los Angeles, USA. Reyes was the organizer and president of Wilshire Walking Corp. composed of Filipino residents in Los Angeles. Petitioner Rodriguez became a member thereof. Rodriguez returned to the Philippines about July 1985 and returned to Los Angeles in August of the same year. That was the last time they saw each other in the US. Either on November 11 or 12, 1985, a certain Johnny Reveche, brother-in-law of petitioner Rodriguez, called him to the former's home at Beard Ave., Northridge, California to discuss the matter of the arrest and detention of Mrs. Imelda Rodriguez, wife of petitioner Rodriguez, who had just been bailed out. His assistance was requested because he had been practicing law in California. While Mr. Reyes, Imelda Rodriguez and Mr. Reveche were discussing the case, Mr. Reveche called Mr. Reyes to the phone where the latter found out that Rodriguez was on the other end calling him from the Philippines. The caller requested Mr. Reyes to render all the necessary assistance to Mrs. Rodriguez because petitioner was unable to be with her as he was then in the Philippines and deep in the political campaign.

"Atty. Roberto Avio, resident of Macalelon, Quezon and former chairman of the United Nationalists Democratic Organization (UNIDO), Macalelon Chapter, testified that sometime in May 1985, former Mayor Eduardo T. Rodriguez returned from the United States and sent his personal driver to witness' residence to inform the latter that Rodriguez would be meeting him in the first week of June 1985 at Macalelon, Quezon. In the meeting held as scheduled, Rodriguez intimated that he (Rodriguez) was tasked by Ex-Senator Salonga to reactivate and reorganize the Liberal Party in the Bondoc Peninsula area. However, Atty. Avio declined Rodriguez's invitation to join the reorganization as he was then already committed to the UNIDO as the local chairman. Rodriguez requested another meeting after consulting with other former Liberal Party stalwarts. Said meeting transpired on the last week of July 1985 where Rodriguez, made aware of the improbability of reactivating the Liberal Party due to the affiliation of most of the party's former members with the UNIDO, expressed willingness to join the UNIDO. Rodriguez took his oath of allegiance on October 1985. Thereafter, he actively participated in the political campaigns of the UNIDO candidates in the presidential snap elections and congressional elections resulting in his appointment as OIC-Board Member of the Sangguniang Panlalawigan ng Quezon in 1986 and his election as Provincial Governor of Quezon in 1988.

"Heberto Buenafe's testimony corroborated these allegations, specifically stating that sometime in July and August of 1985, Buenafe had occasion to meet Rodriguez and that in matters of party dispute regarding the leadership of the UNIDO in Lucena City, the latter was often consulted as he (Rodriguez) was then designated as party representative of the Liberal Party by Senator Salonga immediately after his arrival in the Philippines in May 1985. Likewise, Mr. Euclides Abcede's testimony attested to the fact that in line with his activities as an active opposition campaigner, Abcede met Rodriguez in Macalelon, Quezon sometime in June 1985.

"Mr. Menardo Manglo is the arrival and departure verifier of the Bureau of Immigration. He certified the authenticity of the Bureau of Immigration Arrival and Departure Reports of June 1985, August 1985, August 1986, September 1986, July 1987, June 1988, July 1989 and August 1990 (Exhibits 5 to 5-G, inclusive) wherein the name Eduardo T. Rodriguez appears. On cross-examination, witness testified that said exhibits were computer print-outs supplied to the Bureau of Immigration by the PAL Computer Center.

"Atty. Cipriano Farrales, legal officer of the Bureau of Immigration, testified that the certification issued by the Bureau relative to the departure and arrival of Rodriguez in the Philippines issued by Commissioner Lopez was genuine and authentic (Exhibits 1 and 2).

"Herein petitioner Rodriguez' testimony denied the allegation that he falls within the Supreme Court's definition of a 'fugitive from justice' which includes 'those who, after being charged, flee to avoid prosecution.' Specifically, Rodriguez averred:

"b) I arrived in the Philippines from the United States of America on June 25, 1985, 5 months prior the filing of the alleged charges against me on November 12, 1985. Obviously, I did not flee from the United States of America to avoid prosecution. At the time that I left the United States, there were no charges against me. No warrant of arrest has been issued against my person. Under the facts, it could not be said that I fled from the

United States to avoid prosecution x x x .

"On the query as to whether or not he returned to the United States between June 25, 1985 and November 12, 1985, petitioner Rodriguez responded that he went back twice, viz, on August 14, 1985 and October 7, 1985 (see also passport, Exhibit 14). He testified that he left Los Angeles on October 26, 1985 and, as per certification issued by the Bureau of Immigration (Exhibit 2), arrived in the Philippines on the same date. From that time, Rodriguez never returned to Los Angeles. After the conclusion of the oral testimonies, the following documentary evidence were offered by petitioner Rodriguez and were admitted.

"1. Civil Service Commission Form No. 1, Job Description of Cipriano Farrales (Exhibit 1)

"2. Certification from the Bureau of Immigration (Exhibit 2)

"3. Affidavit of Abraham Sarmiento (Exhibit 3 with Annexes A and B, Bulletin Today and Mr. and Ms. Magazine news reports)

"4. Affidavit of Aquilino Pimentel, Jr. (Exhibit 4 with Annexes A and B, Bulletin Today and Mr. and Ms. Magazine news reports)

"5. Arrival and Departure Report of the Bureau of Immigration (Exhibit 5 to 5-D, inclusive)

"6. Affidavit of Agapito Aquino (Exhibit 6 with Annexes A and B, Bulletin Today and Mr. and Ms. Magazine news reports)

"7. Affidavit of Geronimo Reyes, Jr. (Exhibit 7)

"8. Affidavit of Roberto Avio (Exhibit 8)

"9. Affidavit of Heberto Buenafe (Exhibit 9)

"10. Affidavit of Jovito Salonga (Exhibit 10)

"11. Affidavit of Augusto Sanchez (Exhibit 11)

"12. Affidavit of Euclides Abcede (Exhibit 12)

"13. Affidavit of Eduardo T. Rodriguez (Exhibit 13)

"14. Xerox copy of Rodriguez's passport (Exhibit 14 with submarkings, 14-A to 14-D, inclusive)

"Respondent Marquez submitted the following documentary evidence:

"1. Affidavit of Bienvenido Marquez (Exhibit E)

"2. Affidavit of Mr. Casiano Pasumbal (Exhibit F)

"3. Certificate of Death of Gloria Magayanes Gener, mother-in-law of petitioner (Exhibit G) with the alleged signature of Rodriguez as informant (Exhibit G-1)

"4. Certificate of Death of Imelda Gener Rodriguez, spouse of petitioner (Exhibit H) with the alleged signature of Rodriguez as informant (Exhibit H-1)

"As regards other documentary evidence offered, the investigation report consisting of Exhibits I to I-17 and J to J-87 which was sought admission by respondent Marquez, was excluded by the presiding Commissioner because of irrelevancy to the purpose for which it was offered. The undersigned so ruled due to respondent's failure to identify the nexus between the documents sought to be admitted and the inference that in view of the same, petitioner would have known of the imminent filing of charges against him." [29]

From the "Discussion" portion of its report, it would appear to me that the COMELEC, like the majority of my colleagues, proceeded under the impression that the Court in G.R. No. 112889 had considered intent to evade the law to be a material element in the definition of "fugitive from justice." The COMELEC understandably thereby felt compelled to conclude that petitioner, there being no clear evidence of any intention on his part to evade the law at the time he left the United States, was not a fugitive from justice. However, as heretofore so pointed out, the sole and basic issue in G.R. No. 112889 was whether or not a conviction by final judgment of the person at large was essential before he could be considered a fugitive from justice. That question clearly arose when the Oversight Committee which was convened by the President, conformably with Section 533 of Republic Act 7160, to formulate the appropriate rules and regulations necessary for the efficient and effective implementation of the provisions of the Local Government Code, came out with its Article 73 that provided:

"Art. 73. Disqualifications. -- The following persons shall be disqualified from running for any elective local position;

"(a) x x x x x x x x

"(e) Fugitives from justice in criminal or non-political cases here or abroad. Fugitive from justice refers to a person who has been convicted by final judgment." (Italics supplied.)

The court in G.R. No. 112889 naturally opined that the above provision "to the extent that it confine(d) the term fugitive from justice to refer only to a person (the fugitive) x x x convicted by final judgment (was) an inordinate and undue circumscription of the law." The Court had to likewise concede to the Solicitor General when he then said that the term "includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution" for, certainly, the statement was not incorrect. But what indeed, could be perplexing was how it could be possible for the Court's ruling in G.R. No. 112889 to be so misconstrued as to supposedly convey any idea of exclusivity or preclusivity that, to begin with, was not even considered at the time.

There should be nothing erroneous, in my view, when COMELEC did ultimately come up with its own concluding observation that "the mere fact that there are pending charges in the United States and that petitioner Rodriguez is in the Philippines make petitioner a fugitive from justice."

And so I hold, in resume, as follows: That --

1. The filing with the COMELEC of the disqualification case in SPA No. 95-089 was not an act of forum shopping on the part of herein private respondent Marquez.
2. Section 40(e) of the Local Government Code of 1991 did not partake of an ex post facto law or a bill of attainder.
3. Section 40(e) of the Local Government Code, not Section 72 of the Omnibus Election Code, should govern.
4. The COMELEC did not abuse its discretion in denying herein petitioner's motion for a suspension of hearing in SPA Case No. 95-089 and in allowing herein private respondent to present his evidence ex-parte, considering its close proximity to the 1995 elections.
5. In consolidating EPC No. 92-28 (the quo warranto case) and SPA No. 95-089 (the disqualification case), the COMELEC acted in conformity with its Rules of Procedure.
6. Given the factual settings and the circumstances, I must conclude that petitioner is a "fugitive from justice" within the intent and meaning of Section 40(e) of the Local Government Code of 1991.

WHEREFORE, I vote for the DISMISSAL of the petition.

[1] The first case was G.R. No. 105310, entitled, "Bienvenido Marquez, Jr. vs. Eduardo Rodriguez," the second case was G.R. No. 112889 entitled, "Bienvenido Marquez, Jr. v. Eduardo Rodriguez," the third case was G.R. No. 119807 entitled, "Eduardo Rodriguez v. COMELEC, et al.," and now, the case at bench, G.R. No. 120099.

[2] In its decision, dated 18 April 1995, the Court sustained Marquez in contending that conviction was not a requirement of the disqualifying law and thereby remanded the case for further proceedings.

[3] Rodriguez alleged that when SPA No. 95-089 was called for hearing by the Second Division of the respondent Commission on 26 April 1995 at two o'clock in the afternoon, there was no quorum. Only Commissioner Teresita D.L. Flores was present. He alleged that since Presiding Commissioner of the Second Division, Remedios Salazar-Fernando and Manolo Gorospe were not present, how was it possible for a single Commissioner to constitute a quorum for the transaction of the business of the Second Division.

[4] Rollo, p. 97.

[5] People vs. Court of Appeals, 101 SCRA 450.

[6] Victronics Computers, Inc. vs. Regional Trial Court, Branch 63, Makati, 217 SCRA 517.

[7] R. Transport Corporation vs. Laguesma, 227 SCRA 826.

[8] To be ex post facto, the law must: (1) refer to criminal matters; (2) be retroactive in its application; and (3) to the prejudice of the accused. (Isagani A. Cruz, Constitutional Law, 1989 ed., p. 244)

[9] A bill of attainder is a legislative fiat that inflicts punishment without trial (People vs. Carlos, 78 Phil. 535), its essence being the substitution of legislative fiat for a judicial determination of guilt (Cruz, supra, pp. 246-247).

[10] See Marcelino vs. Cruz, 121 SCRA 51.

[11] The two other members were Commissioners Remedios Fernando and Manolo Gorospe.

[12] The Court, in response, said in its decision of 18 April 1995 that conviction was not indispensable, albeit some reservations expressed by the ponente.

[13] Rollo, p. 413.

[14] Rollo, p. 466.

[15] Sec. 40. Disqualifications. The following persons are disqualified from running for any elective local position:

xxx xxx xxx

(e) Fugitive from justice in criminal or non-political cases here or abroad(.)

[16] 116 U.S. 80, 29 Led. 544.

[17] A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime (Art. 4, Sec. 2).

[18] Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate

of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. (See U.S. Comp. St. 1901, P. 3597).

[19] 203 U.S. 222, 51 Led. 161.

[20] Illinois ex rel. McNichols v. Pease, 207 U.S. 100, 52, L. ed. 121; Biddinger v. Police Commissioners, 245 U.S. 128, 62, L ed. 193; Hogan v. O'Neill, 255 U.S. 52, 65 L ed. 497.

[21] The U.S. Supreme Court in Appleyard went cursorily through a number of such cases (hereunder re-arranged for convenience) thusly:

"In Kingsbury's Case, 106 Mass. 223, 227, 228, the contention of the fugitive from justice was that, as she went into the demanding state and returned to her home in the other state before the alleged crime was known, she could not be deemed to have fled from justice. But the court said: 'The material facts are, that the prisoner is charged with a crime in the manner prescribed, and has gone beyond the jurisdiction of the state, so that there has been no reasonable opportunity to prosecute him after the facts were known. The fact in this case, that she returned to her permanent home, cannot be material . . . It is sufficient that the crime of larceny has been properly charged, and that the prisoner is a fugitive, and a requisition has been properly made.'

"In State ex. rel. Burner v. Richter, 37 Minn. 436, 438, 35 N.W. 9, the contention was that to constitute a fugitive from justice a person must have left the state where the crime was committed for the purpose of escaping the legal consequences of his crime. Referring to Roberts v. Reilly, abovecited, as authoritative and binding, and as in accordance with its own views, the Supreme Court of Minnesota well said: 'The sole purpose of this statute, and of the constitutional provision which it was designed to carry into effect, was to secure the return of persons who had committed crime within one state, and had left it before answering the demands of justice. The important thing is not their purpose in leaving, but the fact that they had left, and hence were beyond the reach of the process of the state where the crime was committed. Whether the motive for leaving was to escape prosecution or something else, their return to answer the charges against them is equally within the spirit and purpose of the statute; and the simple fact that they are not within the state to answer its criminal process, when required, renders them, in legal intentment, fugitive from justice, regardless of their purpose in leaving.'

"In re: Voorhees, 32 N.J.L. 141, 150, the Court said: 'A person who commits a crime within a state, and withdraws himself from such jurisdiction without waiting to abide the consequences of such act, must be regarded as a fugitive from the justice of the state whose laws he has infringed. Any other construction would not only be inconsistent with good sense and with the obvious import of the word to be interpreted in the context in which it stands, but would likewise destroy, for most practical purposes, the efficacy of the entire constitutional provision.'

"In ex-parte Swearingen, 13 S.C. 74, 80, the court held that the terms 'fugitive from justice' were intended to embrace not only a case where a party, after committing a crime, actually flees, in the literal sense of that term, from the state where such crime was committed, but also a case where a citizen of one state, who, within the territorial limits of another state, commits a crime, and then simply returns to his own home. The object of the Constitution was to enable a state whose laws had been violated, to secure the arrest of the person charged with such violation, even though such person might be beyond the reach of the ordinary process of such state.

"In Re: Mohr, 73 Ala. 503, 512, 49 Am. Rep. 63, the court, referring to the words in the Constitution, 'who shall

flee from justice and be found in another state,' said: 'There is a difference of opinion as to what must be the exact nature of this flight on the part of the criminal, but the better view, perhaps, is that any person is a fugitive within the purview of the constitution, 'who goes into a state, commits a crime, and then returns home.'

"In *Hibler v. State*, 43 Tex. 197, 201, the court said: 'The words fugitive from justice' as used in this connection, must not be understood in a literal sense, but in reference to the subject-matter, considering the general object of the Constitution and laws of the United States in relation thereto. A person who commits a crime in one state, for which he is indicted and departs therefrom, and is found in another state, may well be regarded as a fugitive from justice in the sense in which it is here used."

[22] See Black's Law Dictionary.

[23] See Webster's Third New International Dictionary.

[24] Sec. 40(e), R.A. No. 7160.

[25] G.R. No. 112889, 18 April 1995.

[26] Rollo, pp. 95-96.

[27] Rollo, pp. 536-537.

[28] Signed by Hon. Teresita Dy-Liacco Flores, writing for the Commission, concurred in by Hon. Bernardo P. Pardo, Chairman. Hon. Julio F. Desamito, Commissioner, Hon. Graduacion A. Reyes-Claravall, Commissioner, Hon. Manolo B. Gorospe, Commissioner, and separately concurred in by Hon. Regalado E. Maambong, Commissioner, and Hon. Remedios A. Salazar-Fernando, Commissioner.

[29] Evidence of the Parties and Commission's Evaluation, pp. 4-9.

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