



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-13-CRM-0130**

Plaintiff, For: Violation of Section 3(e) of
RA 3019

Present

- versus -

CABOTAJE-TANG, P.J.,
Chairperson

MARTIRES, J. and
FERNANDEZ, J.

JESUS A. VERZOSA, ET AL.
Accused.

Promulgated:

FEBRUARY 19, 2016



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RESOLUTION

FERNANDEZ, J.

This resolves accused Jefferson P. Soriano's *Motion for Reconsideration*.¹

Accused Soriano prays that this Court reconsider and set aside its *Resolution* dated November 2, 2015,² and instead, grant his *Motion to Apply/Credit the Excess Suspension Days Served to Satisfy the Ordered Suspension Under Sec. 13 of R.A. 3019*.³ He argues:

1. This Court should apply or credit the excess 4-month period he was made to suffer the erroneous dismissal from the service imposed by the Ombudsman to the 90-day preventive suspension this Court imposed. Making him suffer suspension for another ninety (90)

¹ Dated November 20, 2015; pp. 125-138, Record, Vol. V

² pp. 106-114, Record, Vol. V

³ Dated July 30, 2015, pp. 766-797, Record, Vol. IV

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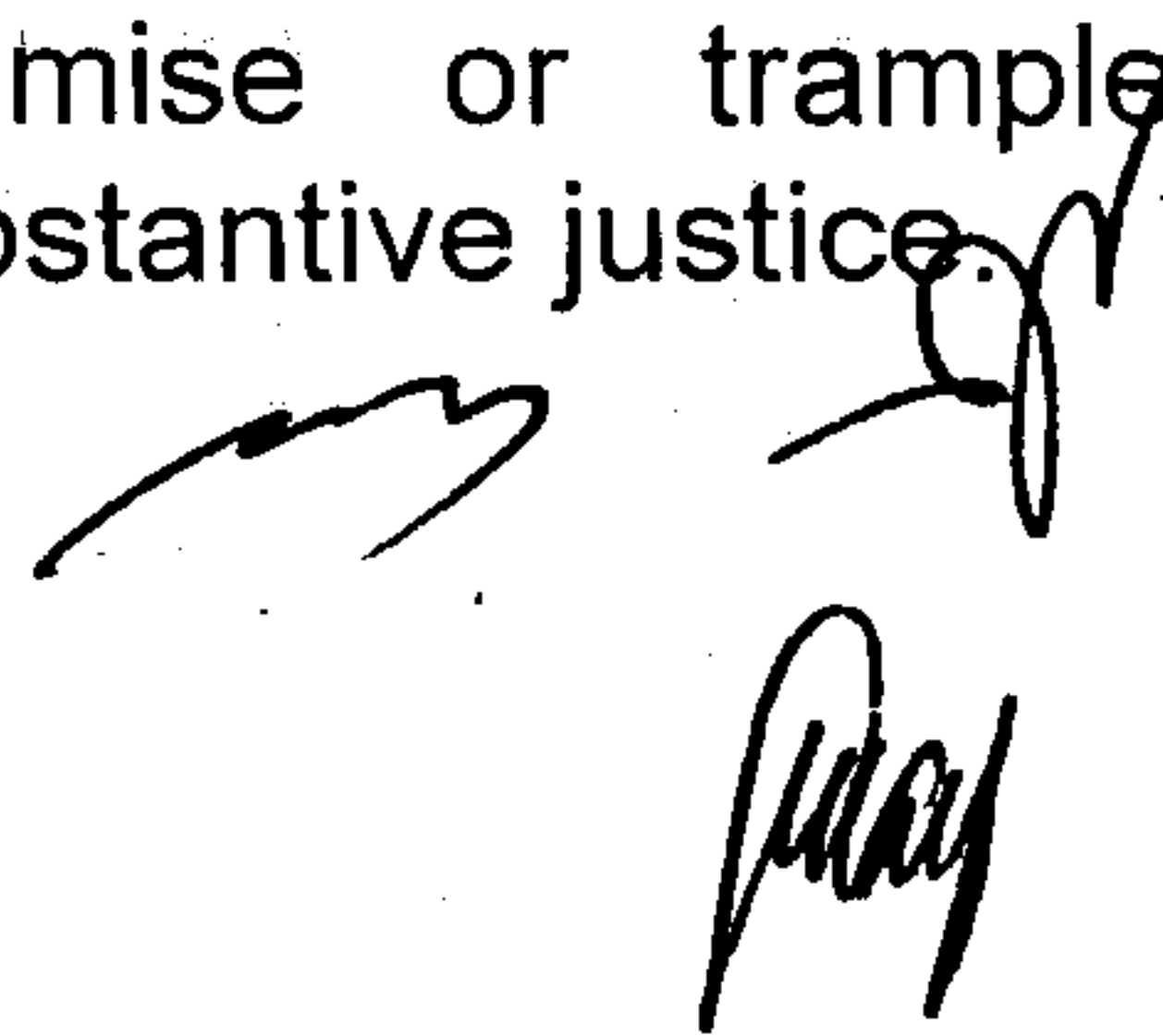
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days would perpetuate injustice. This Court has the discretion to apply Sec. 13 of Republic Act No. 3019 (R.A. No. 3019) in a way that its application would not perpetuate injustice.

2. R.A. No. 3019 is a penal statute, and hence, its provisions, including Sec. 13, should be interpreted strictly against the State and liberally in his favor.
3. There is no valid governmental objective or purpose that will be achieved, nor any public interest served, in physically preventing him from holding office for 90 days. The present case involves acts allegedly committed when he was still an officer of the Philippine National Police (PNP). He had long retired from the PNP, and thus, it would be impossible for him to use his office to intimidate or influence potential witnesses or tamper with, or threaten the safety and integrity of the records that will be used against him. On the other hand, the possibility that he might commit further acts of malfeasance is exclusively based on a hypothetical situation or pure speculation.
4. The Supreme Court, in *Garcia v. Mojica*,⁴ made no categorical and conclusive pronouncement that the provision of the Local Government Code (LGC) on preventive suspension is limited to suspensions imposed by a mayor, governor or the President.
5. In *Rios v. Sandiganbayan*,⁵ the Supreme Court ruled that the Sandiganbayan erred in imposing a 90-day suspension upon therein petitioner because Sec. 63(b) of the LGC provides that a single preventive suspension of local elective officials shall not extend beyond sixty (60) days.
6. The distinction and separation of criminal and administrative proceedings is procedural in character, and cannot operate to compromise or trample underfoot the basic principles of substantive justice.

⁴ G.R. No. 139043, September 10, 1999

⁵ G.R. No. 129913, September 26, 1997



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7. The power and authority to impose suspension should be exercised judiciously, prudently and fairly, with the end of preventing the perpetuation of injustice.

In its *Opposition to accused Jefferson Soriano's Motion for Reconsideration*,⁶ the prosecution counters:


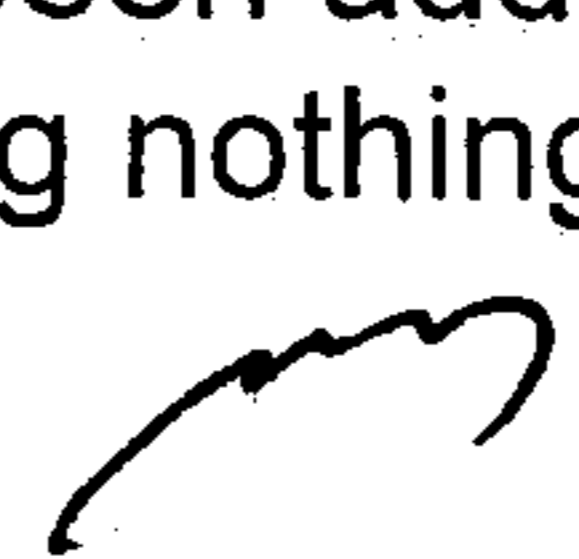
1. There is no valid reason to reconsider this Court's *Resolution* dated November 2, 2015. Criminal and administrative cases are separate and distinct. Criminal actions will not preclude administrative proceedings, and vice versa, insofar as the application of the law on preventive suspension is concerned.
2. This Court is not empowered to consider the ruling of the Court of Appeals in an unrelated administrative case.
3. The Court of Appeals already ordered that the salaries and benefits pertaining to the excess days served be paid to accused Soriano. Moreover, during the period of his suspension, the Vice-Mayor took over. Therefore, he cannot claim that his constituents were deprived of the services of a government official.

In his *Reply*,⁷ accused Soriano reiterates his arguments in his motion. He further contends that his suspension will prejudice the people of Tuguegarao City who elected him.

THE COURT'S RULING

Accused Soriano's motion for reconsideration is devoid of merit and should be denied.

Accused Soriano, despite his claim that he is not trying to do away with his suspension, continues to insist on the impropriety of the imposition thereof. His arguments, which had been addressed by this Court in the November 2, 2015 *Resolution*, bring nothing new.



⁶ Dated December 1, 2015; pp. 162-165, Record, Vol. V

⁷ Dated December 12, 2015, pp. 189-196, Record, Vol. V



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It bears reiterating that preventive suspension is mandatory. As the Supreme Court repeatedly said, there are no “ifs” and “buts” about it.⁸ Once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, it is bound to issue an order of preventive suspension of the accused public officer as a matter of course.⁹ The court has neither the discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.¹⁰

On the other hand, accused Soriano’s contention that the Supreme Court’s statement in *Garcia v. Mojica*¹¹ is far from being a clear cut, categorical and conclusive declaration that the shorter period of preventive suspension under the LGC is exclusive to suspensions imposed by a mayor, governor or the President, deserves scant consideration.

It may be recalled that accused Soriano invoked Section 63 of the Local Government Code in his *Motion to Apply/Credit the Excess Suspension Days* when he argued that suspending him for another 90 days would be in clear opposition of the Local Government provisions on the suspension of local government officials.¹²

Sec. 63 of the LGC, which falls under Book I (General Provisions), Title II (Elective Officials), Chapter IV (Disciplinary Actions), provides:

Sec. 63. **Preventive Suspension.** – (a) Preventive suspension may be imposed:

- (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
- (2) By the governor, if the respondent is an elective official of a component city or municipal city; or

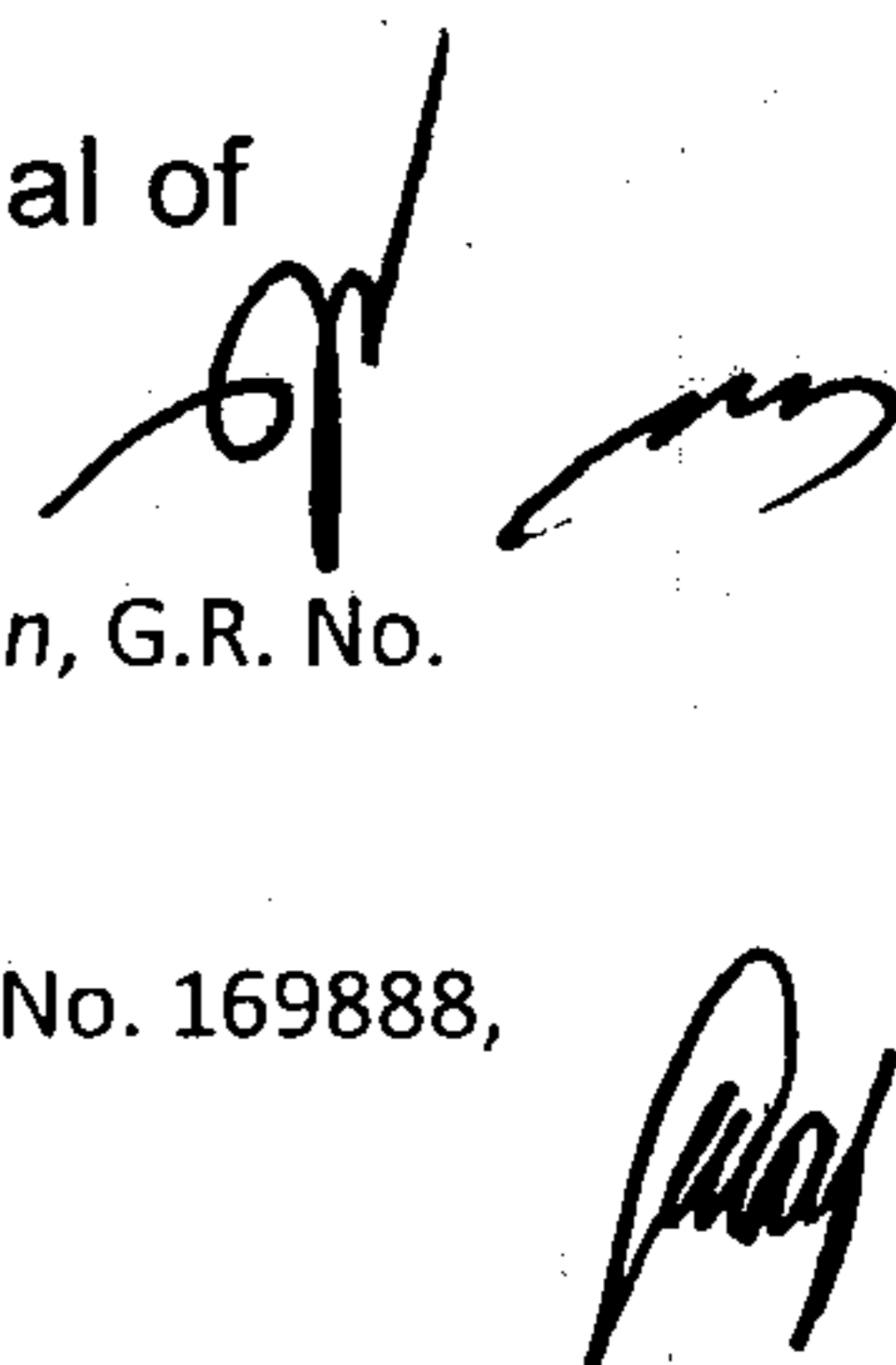
⁸ *Libanan v. Sandiganbayan*, G.R. No. 112386, June 14, 1994; *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008

⁹ *Flores v. Layosa*, G.R. No. 154714, August 12, 2004

¹⁰ *Barrera v. People*, G.R. Nos. 145233-52, May 28, 2004; *Talaga v. Sandiganbayan*, G.R. No. 169888, November 11, 2008

¹¹ *supra*. Note 4

¹² p. 772, Record, Vol. IV



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(3) By the mayor, if the respondent is an elective official of the barangay.

(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; *Provided*, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days; *Provided, further*, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

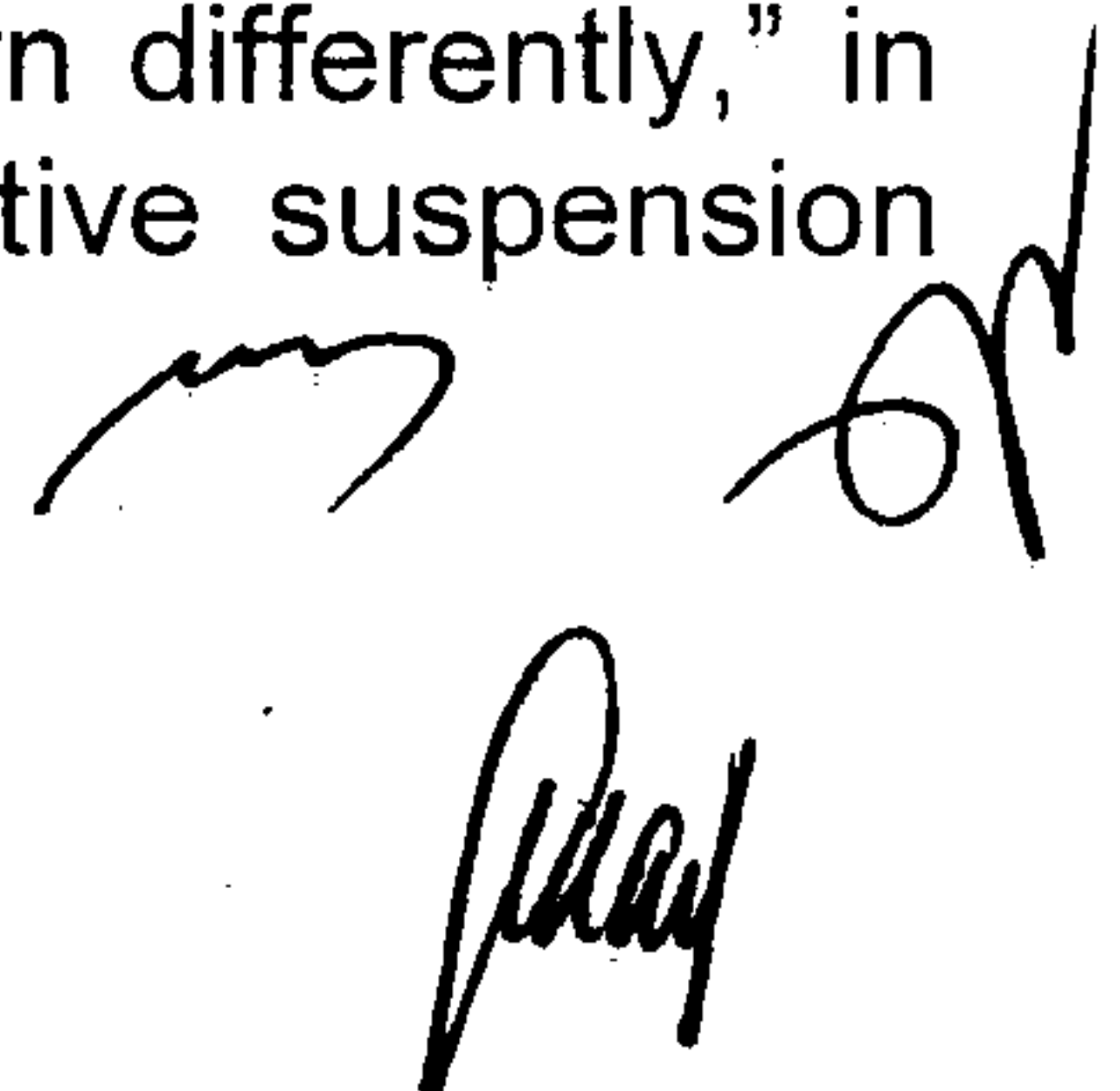
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Sec. 63(b), which limits the period of preventive suspension, must be read in conjunction with subsection (a), as well as in the greater context of Title II, Chapter IV – Disciplinary Actions. Chapter IV, taken as a whole, pertains to the grounds and procedure for administrative disciplinary cases against local elective officials. Sec. 63, being part of Chapter IV, pertains to preventive suspension imposed in administrative disciplinary cases thereunder. Furthermore, that the said Section applies only to administrative cases is made evident by the last two sentences of Sec.63(b).

Accused Soriano is not being charged under any of the grounds provided in Book I, Title II, Chapter IV of the LGC, but with violation of Sec. 3(e) of R.A. No. 3019. More importantly, the present case is criminal, not administrative in nature. Therefore, Sec. 63 of the LGC does not apply.

In Garcia, the Supreme Court agreed with the contention of respondent Deputy Ombudsman for the Visayas that “administrative complaints commenced under the Ombudsman Law are distinct from those initiated under the Local Government Code.” In the same case, the Supreme Court also cited *Hagad v. Gozo-Dadole*¹³ where the Supreme Court held that the two provisions, i.e., the Local Government Code and the Ombudsman Law, “govern differently,” in addressing the argument that the six-month preventive suspension

¹³ G.R. No. 108072, December 12, 1995



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under the Ombudsman Law is "much too repugnant" to the 60-day period that may be imposed under the Local Government Code.

In any event, the ruling in *Miranda v. Sandiganbayan*¹⁴ should dispel any lingering doubts that Sec. 63 is limited to suspension imposed by executive officials enumerated in Sec. 63(a). In that case, therein accused allegedly discharged the functions of his office while he was under preventive suspension imposed by the Ombudsman. The dissenting opinion contended that the Ombudsman's authority to preventively suspend local elective officials for 6 months is limited by Section 63(b) of the LGC, and concluded that therein accused could not have usurped authority because he reassumed office after 60 days. The majority opinion refuted the dissent as follows:

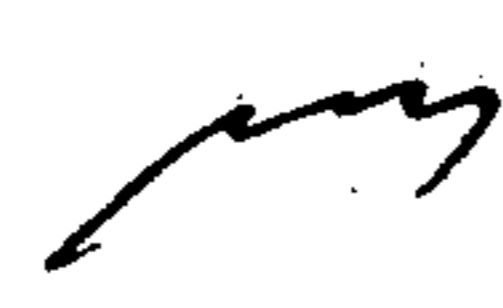
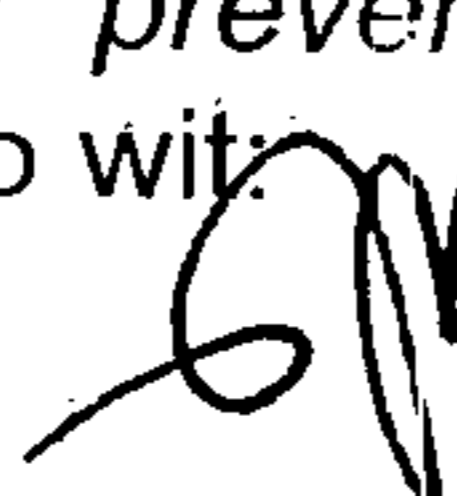
Nowhere in *Garcia* is it stated that the limits provided in the Local Government Code apply to the Ombudsman. In fact, the Court expressly stated that its decision was rendered without subscribing to the petitioner's claim that the Local Government Code had been violated. x x x

x x x

It is plain that the provision was only meant as a cap on the discretionary power of the President, governor and mayor to impose excessively long preventive suspensions. The Ombudsman is not mentioned in the said provision and was not meant to be governed thereby. Indeed, the reason is not hard to distill. The President, governor and mayor are political personages. As such, the possibility of extraneous factors influencing their decision to impose preventive suspensions is not remote. The Ombudsman, on the other hand, is not subject to political pressure given the independence of the office which is protected by no less than the Constitution. x x x

x x x

There is no reason to reverse this ruling.¹⁵ Our ruling is in accord with the intent of the law. It bears emphasis that Senator Pimentel explained during the Senate deliberations that the purpose of Section 63 of the Code is *to prevent the abuse of the power of preventive suspension by members of the executive branch, to wit:*



¹⁴ G.R. No. 154098, July 27, 2005

¹⁵ Referring to the ruling in *Garcia v. Mojica*

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The President. I recall that in the case of Iloilo Mayor Ganzon, he challenged the right of the President, acting through the Secretary of Local Government, I think, Luis Santos, to suspend him —

Senator Pimentel. That is true, Mr. President.

The President.— contending that under the new Constitution, even the President does not have that right.

Senator Pimentel. Now, as far as we are concerned, the Senate Committee is ready to adopt a more stringent rule regarding the power of removal and suspension by the Office of the President over local government officials, Mr. President. We would only wish to point out that in a subsequent section, we have provided for the power of suspension of local government officials to be limited only to 60 days and not more than 90 days in any one year, regardless of the number of administrative charges that may be filed against a local government official. We, in fact, had in mind the case of Mayor Ganzon of Iloilo where the Secretary of Local Government sort of serialized the filing of charges against him so that he can be continuously suspended when one case is filed right after the other, Mr. President.

The President. Can that be done under this new Code?

Senator Pimentel. Under our proposal, that can no longer be done, Mr. President.

Verily, Section 63 of the Local Government Code does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government. x x x

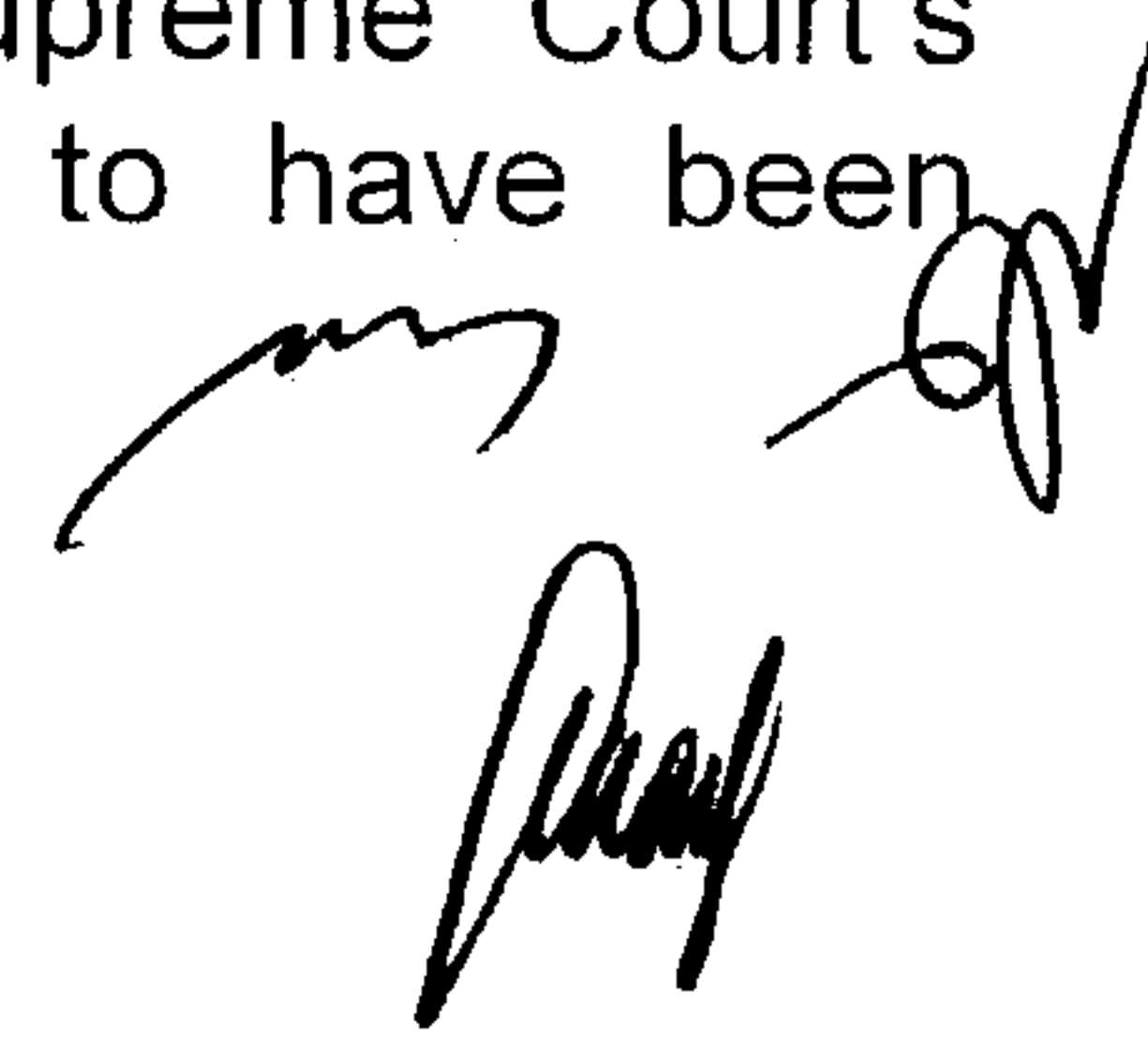
(emphasis and underscoring supplied)

Following the Supreme Court's line of reasoning in the aforecited case, it can be concluded that Section 63, likewise, does not apply to preventive suspension under Sec. 13 of R.A. No. 3019, which is imposed by courts.

Sec. 63 of the LGC makes no mention of the courts. Preventive suspension under the said section is imposed by the President, the governor or the mayor. It is meant to govern preventive suspension under that chapter in the LGC, and not preventive suspension pursuant to Sec. 13 of R.A. No. 3019. Lastly, courts, being part of the judicial branch of government, and not being elected officers, are not subject to political pressure.

Neither can accused Soriano rely on the Supreme Court's ruling in *Rios v. Sandiganbayan*,¹⁶ which appears to have been

¹⁶ *supra*. Note 5



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abandoned as early as 1999, in *Layus v. Sandiganbayan*.¹⁷ The accused, in *Layus*, citing *Rios*, questioned the 90-day suspension *pendente lite* imposed by the Sandiganbayan. The Supreme Court held that the Sandiganbayan did not abuse its discretion in imposing the 90-day suspension *pendente lite*. To wit:

In the instant case, the records show that LAYUS was given adequate opportunity to challenge the validity of the criminal proceedings against her. Since the required pre-suspension hearing was complied with and the information was deemed valid, it then becomes the ministerial duty of the Sandiganbayan to forthwith issue the order of preventive suspension which, however, may not be for an indefinite duration or an unreasonable length of time. Thus, in *Segovia v. Sandiganbayan*, we ruled that preventive suspension may not exceed 90 days in consonance with Presidential Decree No. 807 (the Civil Service Decree), now Section 52 of the Administrative Code of 1987.

Considering that the imposed 90-day suspension *pendente lite* of LAYUS does not exceed the maximum period thus fixed, the Sandiganbayan did not abuse its discretion in granting the prosecution's motion to suspend petitioner.

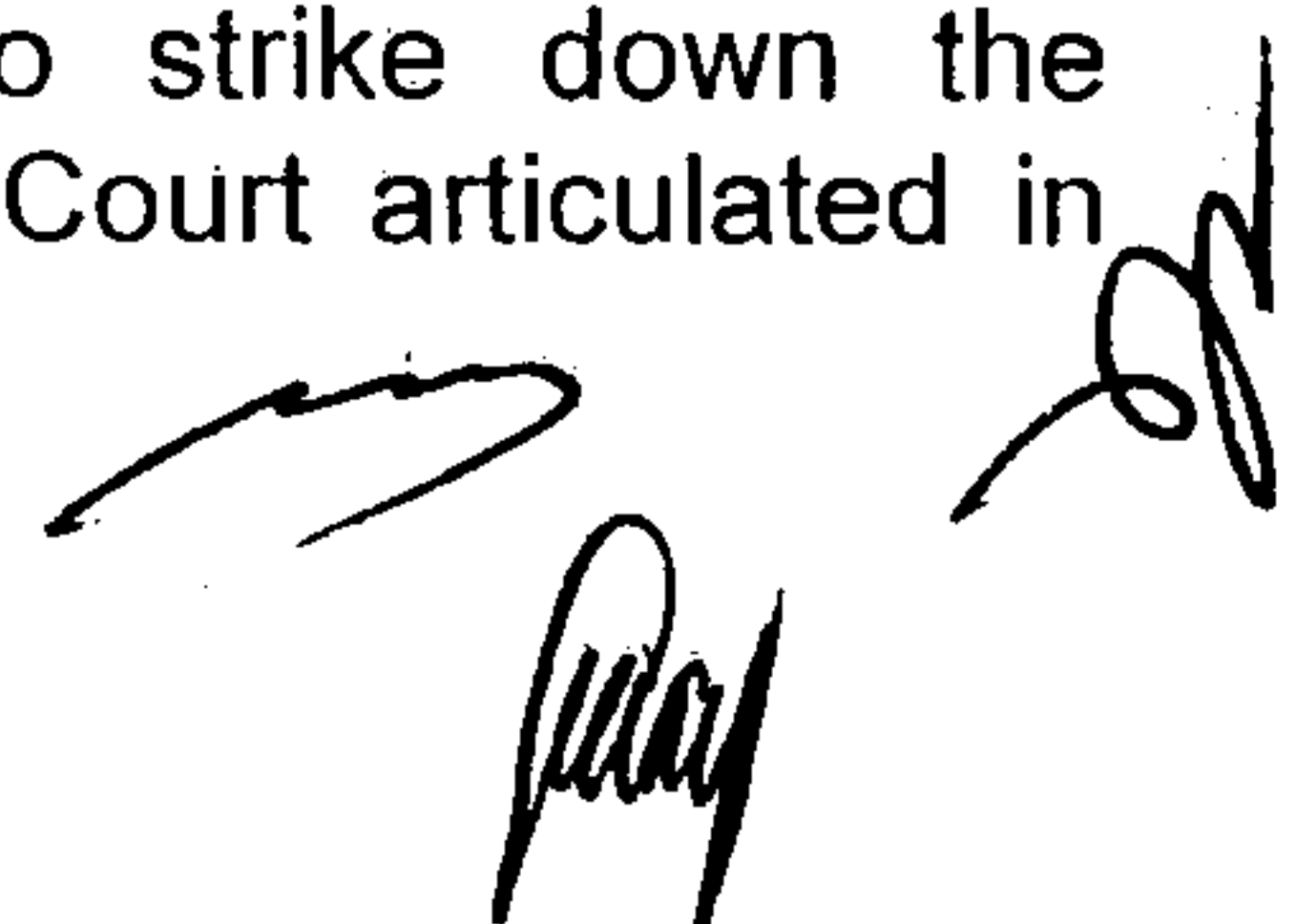
(underscoring supplied)

In a later case, *Nicart v. Sandiganbayan*,¹⁸ the Supreme Court declared moot and academic the issue of the propriety of the suspension of therein petitioner because he had already served the same. The High Court, nevertheless, took time to discuss that the imposition by the Sandiganbayan of a 90-day suspension, instead of the 60-day period under the LGC, was not improper. To wit:

This is not to say, however, that the assailed suspension resolution of the Sandiganbayan, insofar as it imposed a 90-day preventive suspension instead of the maximum 60 days prescribed by Section 63 of the Local Government Code of 1991 (R.A. No. 7160), is flawed. Far from it. As may be noted, the anti-graft court ordered the petitioner's suspension on the basis of Section 13 of R.A. No. 3019, malversation of public funds being an offense involving fraud against government funds and is clearly included among the crimes contemplated under said section. Be that as it may and given the presumptive validity of the information in question, petitioner's urging for the Court to strike down the suspension order cannot be granted. As the Court articulated in

¹⁷ G.R. No. 134272, December 8, 1999

¹⁸ G.R. No. 147272, July 14, 2006



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Segovia v. Sandiganbayan, citing what then Chief Justice Andres R. Narvasa referred to therein as the "mass of jurisprudence":

The Anti-Graft and Corrupt Practices Act implicitly recognizes that the power of preventive suspension lies in the court in which the criminal charge is filed; ...

The provision of suspension *pendente lite* applies to all persons indicted upon a valid information under the Act, whether they be appointive or elective officials ... It applies to a ... Municipal Mayor, a Governor, a Congressman ...

It is mandatory for the court to place under preventive suspension a public officer accused before it. ...

xxx xxx xxx

However, the preventive suspension may not be of indefinite period ... The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days in consonance with [PD] No. 807, ... now Section 52 of the Administrative Code of 1987. (Citations omitted; word in bracket added.)

(underscoring supplied)

Lastly, the rest of accused Soriano's arguments are a reiteration and rehash of his arguments in his *Motion to Apply/Credit the Excess Suspension Days Served to Satisfy the Ordered Suspension Under Sec. 13 of R.A. 3019*¹⁹ and *Reply*,²⁰ which had already been judiciously considered by the Court in the assailed resolution. Hence, there is no more need to discuss the same anew.

In *Komatsu Industries (Phils.) Inc. v. Court of Appeals*,²¹ the Supreme Court held:

In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioner's postulates the corresponding thorough and objective review but, on the *real and proper issues* so completely and competently discussed and

¹⁹ *supra*. Note 3

²⁰ Dated August 21, 2015, pp. 24-28, Record, Vol. V

²¹ G.R. No. 127682, April 24, 1998

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resolved by respondent court, petitioner's obvious convolutions of the same arguments are evidently unavailing. x x x

At any rate, a thoughtful assessment of the records of the case and of the assailed resolution fails to convince this Court that accused Soriano's motion for reconsideration is impressed with merit, and that the reversal of the Court's *Resolution* dated November 2, 2015 is warranted.

WHEREFORE, accused Soriano's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

Pursuant to this Court's resolutions dated February 28, 2014, October 2, 2014 and November 2, 2015, the Court hereby orders the suspension *pendente lite* of accused **JEFFERSON P. SORIANO** as Mayor of Tuguegarao City, Cagayan, and from any other public positions he may now or hereafter hold for a period of **NINETY (90) DAYS** from receipt of this resolution.

Let a copy of this Resolution be furnished Provincial Governor of Cagayan, Atty. Alvaro T. Antonio, for the immediate implementation of this order of suspension. The said official or his duly authorized representative is requested to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

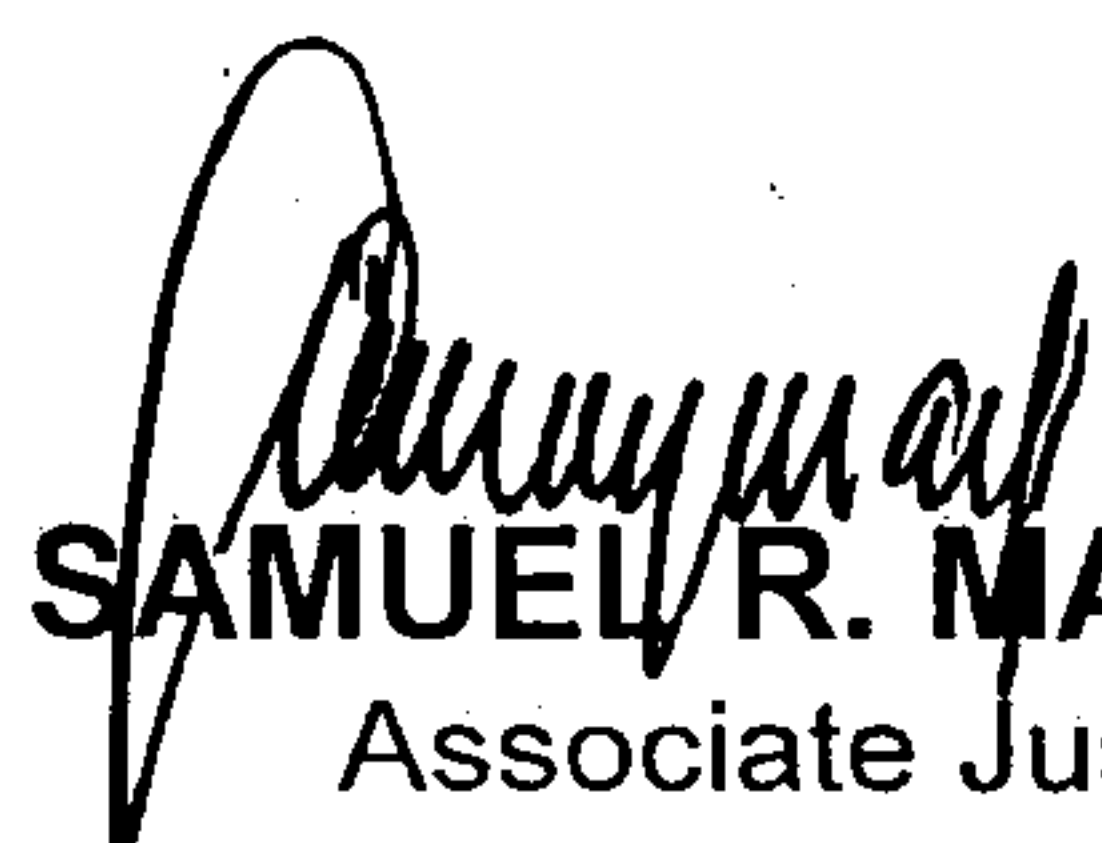
The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. GABOTAJE-TANG
Presiding Justice
Chairperson


SAMUEL R. MARTIRES
Associate Justice