



Republic of the Philippines

**Sandiganbayan**

Quezon City

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**SEVENTH DIVISION**

*MINUTES of the proceedings held on 01 August 2022.*

*Present:*

*Justice ZALDY V. TRESPESES ----- Acting Chairperson*

*Presiding Justice AMPARO M. CABOTAJE-TANG\* ----- Member*

*Justice KEVIN NARCE B. VIVERO\*\* ----- Member*

*The following resolution was adopted:*

***Crim. Case No. SB-22-CRM-0117 - People vs. MARC RED ARCADIO MARINÑAS, et al.***

This resolves the following:

1. Accused Anthony Lopez, Francis Dennis Robles, and Erwin Ortañez's "MOTION FOR RECONSIDERATION" dated July 21, 2022;<sup>1</sup>
2. Prosecution's "COMMENT/OPPOSITION (on accused Lopez, Robles and Ortañez Motion to Quash)" dated and electronically filed on July 27, 2022.<sup>2</sup>

**REMARKS:** *Kindly note that while item no. 2 is entitled as a Comment/Opposition to accused Lopez et al.'s motion to quash, paragraph 2 of the filing indicates that it is instead a comment/opposition to item no. 1.*

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**TRESPESES, J.**

This resolves the Motion for Reconsideration filed by the accused Anthony D. Lopez, Francis Dennis T. Robles, and Erwin S. Ortañez and the Prosecution's Comment/Opposition thereto.

**ACCUSED'S MOTION**

Accused Anthony D. Lopez, Francis Dennis T. Robles, and Erwin S. Ortañez (collectively, "accused") move for the reconsideration of this

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\* Sitting as Special Member per Administrative Order No. 138-2022 dated 20 June 2022 in view of the inhibition of Justice Ma. Theresa Dolores C. Gomez-Estoesta.

\*\*Sitting as Special Member per Administrative Order No. 0166-2022 dated 26 July 2022 in lieu of Justice Georgina D. Hidalgo, who is on leave.

<sup>1</sup> Records, Vol. 6, pp. 263-286

<sup>2</sup> Id. at Vol 6, pp. 327-335

*[Handwritten signatures]*



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Court's Resolution dated 14 July 2022 with the following assignment of error:

**THIS HONORABLE COURT ERRED IN RULING THAT IT HAS JURISDICTION OVER THE CASE AND OVER THE PERSONS OF THE ACCUSED UNDER PRESIDENTIAL DECREE (P.D.) NO. 1606, AS AMENDED BY REPUBLIC ACT (R.A.) NO. 10660 BECAUSE ACCUSED MARC RED MARIÑAS, WHO WAS MERELY DESIGNATED AS AN "OFFICER-IN-CHARGE OF THE OFFICE OF THE DEPUTY COMMISSIONER," NEVER OCCUPIED THE POSITION OF DEPUTY COMMISSIONER OF THE BUREAU OF IMMIGRATION OR ANY POSITION CLASSIFIED AS SALARY GRADE 27 OR HIGHER.**

Accused claim that this Court erred in ruling that it has jurisdiction over this case and over the persons of the accused because accused Marc Red Mariñas ("Mariñas") was merely designated as an "Officer-in-Charge," he never occupied the position, whether in an acting or interim capacity.

Accused cite Civil Service Commission Resolution No. 000778, series of 2000, with the subject "Nomenclature Distinction between Acting and OIC," in differentiating the designation in an acting capacity and as an officer-in-charge, the pertinent part is quoted below:

It must be noted that a designation under acting capacity may be differentiated from a designation as Officer-in-Charge "OIC" in such a manner that an OIC enjoys limited powers which are confined to function of administration and ensuring that the office continues to its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of the OIC. On the other hand, as aptly rules by the Commission in the case of Amado S. Day, a designation in an acting capacity entails not only the exercise of discretion. This is considering that the person designated is deemed to be the incumbent of the position.

xxx xxx xxx

The power to appoint resides exclusive (sic) in the appointing authority and is not deemed delegated to one who is merely an Officer-in-Charge. The designation of an OIC is nothing more than a temporary and convenient arrangement intended to avert paralyzation [sic] of the day-to-day operations of an office in the meantime the chief or head of office is temporarily absent... "Moreover, in the case of Aytona v. Castillo., (G.R. No. L-19313. January 19, 1962) it was ruled that a designated Officer-in-Charge is considered merely as a caretaker of the office while the regular incumbent is on leave of absence... An Officer-in-Charge does not exercise powers involving discretion of the regular incumbent. The rights and privileges of the latter do not normally descend upon the former unless specifically indicated or stated in the designation.



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Accused explain that Mariñas as an “Officer-in-Charge” is a mere “caretaker” of the office, and was not designated in an “acting capacity” who “is deemed to be the incumbent of the position.”

Accused further allege that Mariñas cannot be considered to have occupied the position of Deputy Commissioner in an interim capacity for purposes of conferring jurisdiction to this Court. Accused’s arguments are quoted below:

15. ... xxx ... In *General v. Urro*,<sup>3</sup> the Supreme Court defined an interim appointment as an appointment issued while the Congress is in recess:

Under the first classification, appointments can either be permanent or temporary (acting). A basic distinction is that a permanent appointee can only be removed from office for cause; whereas a temporary appointee can be removed even without hearing or cause. Under the second classification, an appointment can either be regular or ad interim. A regular appointment is one made while Congress is in session, while an ad interim appointment is one issued during the recess of Congress. In strict terms, presidential appointments that require no confirmation from the Commission on Appointments cannot be properly characterized as either a regular or an ad interim appointment.

16. Moreover, in *Summers v. Ozaeta*,<sup>4</sup> the Supreme Court held that an interim appointment is permanent in character unless disapproved by the confirming authority, to wit:

It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An ad interim appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an “acting” appointment which is merely temporary, good until another permanent appointment is issued.

In sum, accused posit that Mariñas’s designation as an “Officer-in-Charge” cannot be considered an interim appointment because his position does not need the approval by the Commission on Appointments as the confirming authority, and cannot be made permanent.

Accused question the jurisdiction of this Court over this case and over the persons of the accused, even if only one of the twin requirements under Section 4(a)(1) of P.D. No. 1606, as amended by R.A. No. 10660, is present arguing, to wit:

<sup>3</sup> G.R. No. 191560, 29 March 2011

<sup>4</sup> G.R. No. L-1534, 25 October 1948



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22. A Deputy Commissioner of the Bureau does not fall within the specific enumeration of officials under Section 4(1)(a) to (g) of P.D. No. 1606, as amended. Thus, for this Honorable Court to acquire jurisdiction over this case and the persons of the accused, one of the accused should occupy the position of a Deputy Commissioner and receive compensation pertaining thereto of Salary Grade 27 or higher.

23. However, as above-shown, even accused Mariñas cannot be considered to have occupied the position of a Deputy Commissioner of the Bureau at the time material to this case. To reiterate, he was merely an OIC of the Office of the Deputy Commissioner. There is also nothing on record which even shows that he received compensation amounting to Salary Grade 27 or higher at any time during his employment in the Bureau. There is clearly no basis for this Honorable Court to exercise jurisdiction over this case.

Hence, accused pray that this Court reverse and set aside its assailed Resolution; and quash the Information in this case for lack of jurisdiction.

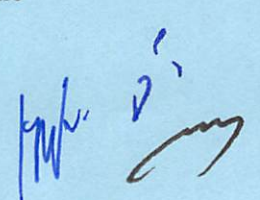
**THE PROSECUTION'S OPPOSITION**

The prosecution rebuts the accused's arguments in their Comment/Opposition dated 27 July 2022, as follows:

1. Accused Lopez, Robles and Ortanes moved for the reconsideration of the Court's Resolution upholding jurisdiction in the instant case. It is the contention of accused that Mariñas designation as Officer-in-Charge Deputy Commissioner cannot be considered as having occupied the position in an acting or interim capacity. Cited as basis are Civil Service Commission's resolutions and issuances defining and differentiating designations in an "Officer-in Charge capacity" and "acting capacity".

2. Accused reliance on the interpretations by the Civil Service is erroneous as such interpretations referred to the extent of duties, functions and powers of the designated person but does NOT extend as to define or confer court jurisdiction. As the central personnel agency of the government, the Civil Service interpretations and issuances refer to personnel management such as morale, integrity, and merit system in the service.

3. Jurisdiction is conferred by law. Under R.A. No. 10660, the jurisdiction of the Sandiganbayan does not distinguish the nature of the designation of the position, as it covers permanent, acting or interim capacity. Applying the principle of ejusdem generis, the designation of an "Officer-in-Charge" is covered within the enumeration. The basic statutory construction principle of ejusdem generis states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include - or to be restricted to - things akin to or resembling, or of the same kind or class as, those specifically mentioned.





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The prosecution concludes that the arguments of the accused are unmeritorious, thus, the motion for reconsideration must be denied.

**OUR RULING**

We **deny** the motion for reconsideration.

Accused's argument that a designation of "Officer-in-Charge" cannot be in an acting or interim capacity is bereft of merit.

It is elementary that under the principles of statutory construction, if a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.<sup>5</sup>

While this Court acknowledges the Civil Service Commission's resolution differentiating the designation of "acting" and "officer-in-charge," we hold the same inapplicable in determining the jurisdiction of the Sandiganbayan. As jurisdiction of this Court is conferred by law, the statute itself should be the basis of this resolution.

Further, in defining "interim," the accused cite cases which defined "ad interim" appointments. "Ad interim" is a technical term used in categorizing appointments and not designations as in this case. There is a great difference between an appointment and designation. While an appointment is the selection by the proper authority of an individual who is to exercise the powers and functions of a given office, designation merely connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment.<sup>6</sup>

Should the legislators require that technical definitions of the words used, the law itself would have stated so. Thus, in this construction, the term "acting" and "interim" should include the term "officer-in-charge."

As aptly pointed out by the prosecution, applying the principle of *ejusdem generis*<sup>7</sup> would lead to the same conclusion. There is no denying that the term "officer-in-charge" is in the same class as "acting" and "interim" when referring to the permanency of holding a public office.

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<sup>5</sup> *Versosa v. People*, G.R. No. 184535 (Resolution), September 3, 2019

<sup>6</sup> *People v. Pallasigue*, G.R. Nos. 248653-54, July 14, 2021

<sup>7</sup> The basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include — or to be restricted to — things akin to or resembling, or of the same kind or class as, those specifically mentioned. - *Liwag vs Happy Glen*, G.R. No. 189755, July 4, 2012

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This Court maintains that there is no distinction among the terms “acting,” “interim,” and “officer-in-charge” in the exercise of its jurisdiction.

Additionally, the argument that for this Court to acquire jurisdiction, Mariñas should occupy the position of a Deputy Commissioner and receive compensation pertaining to Salary Grade 27 or higher is erroneous.

This Court would like to reiterate its rationale in its Minute Resolution dated 14 July 2022, to wit:

In *Ampongan v. Sandiganbayan, et al.*,<sup>8</sup> also cited by accused, the Supreme Court ruled that the two above requisites need not concur, to wit:

The specific inclusion of the foregoing officials constitutes an exception to the general qualification relating to officials of the executive branch as “occupying the positions of regional director and higher, otherwise classified as grade 27 and higher, of the Compensation and Position Classification Act of 1989.” In other words, violation of Rep. Act No. 3019 committed by officials in the executive branch with SG 27 or higher, and the officials specifically enumerated in (a) to (g) of Section 4 a. (1) of P.D. No. 1606, as amended by Section 2 of Rep. Act No. 7975, regardless of their salary grades, likewise fall within the original jurisdiction of the Sandiganbayan. (Underscoring supplied)

As Senator Raul Roco points out in his sponsorship speech for the bill that would eventually become R.A. 8249, the bill “... divested the Sandiganbayan of jurisdiction over public officials whose salary grades were at Grade “26” or lower, devolving thereby these cases to the lower courts, and retaining the jurisdiction of the Sandiganbayan only over public officials whose salary grades were at Grade “27” or higher and over other specific public officials holding important positions in government regardless of salary grade.”<sup>9</sup>

From the above, there is no twin requirement as the accused insist. There are two categories of public officials over which this Court has jurisdiction: (1) Public officials whose salary grades are 27 or higher; and (2) Public officials whose positions are expressly enumerated in R.A. 8249, as amended, regardless of salary grades.

There is no question that the position of Deputy Commissioner is Salary Grade 27.<sup>10</sup> As Mariñas occupied the position of Deputy

<sup>8</sup> G.R. No. 234670-71, August 14, 2019

<sup>9</sup> *Ampongan v. Sandiganbayan*, G.R. No. 234670-71, August 14, 2019

<sup>10</sup> Department of Budget and Management Index of Occupational Services, Occupational Groups, Classes and Salary Grade, access here: <https://www.dbm.gov.ph/index.php/27publications/160-index-of-occupational-services-occupational-groups-classes-and-salary-grade>



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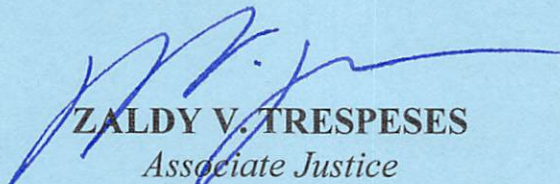
Commissioner, he falls under the first category and within the jurisdiction of this Court.

It is irrelevant that Mariñas did not receive compensation equivalent to that of Salary Grade 27. Receipt of compensation is not one of the requisites to confer jurisdiction to this Court. What remains important is the accused's position and the discharge of functions pertinent thereto.

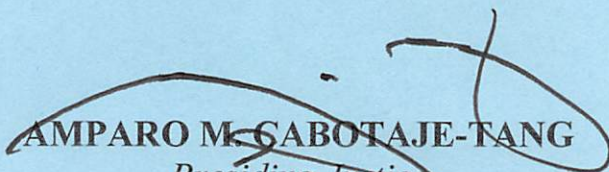
**WHEREFORE**, premises considered, accused Anthony D. Lopez, Francis Dennis T. Robles, and Erwin S. Ortañez's Motion for Reconsideration dated 21 July 2022 is **DENIED** for lack of merit and this Court's Resolution dated 14 July 2022 is **AFFIRMED**.

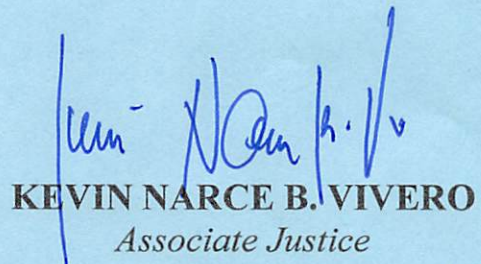
**SO ORDERED.**

Quezon City, Philippines

  
**ZALDY V. TRESPESSES**  
*Associate Justice*  
*Acting Chairperson*

WE CONCUR:

  
**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*

  
**KEVIN NARCE B. VIVERO**  
*Associate Justice*

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