Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LARRY SABUCO MANIBOG, Petitioner,	**G.R. No. 211214**
	Present:
-versus-	PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** March 20, 2019

x----------x

DECISION

LEONEN, *J.*:

For a "stop and frisk" search to be valid, the totality of suspicious circumstances, as personally observed by the arresting officer, must lead to a genuine reason to suspect that a person is committing an illicit act. Consequently, a warrantless arrest not based on this constitutes an infringement of a person's basic right to privacy.

This resolves a Petition for Review on Certiorari[1] filed by Larry Sabuco Manibog (Manibog) assailing the Court of Appeals July 31, 2013

---

* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

1 *Rollo,* pp. 3–26.

Decision[2] and January 29, 2014 Resolution[3] in CA-G.R. CR No. 34482. The Court of Appeals upheld the Regional Trial Court August 25, 2011 Judgment[4] finding him guilty of violating the Omnibus Election Code (Gun Ban).

On March 17, 2010, Manibog was charged with violation of Section 1 of Commission on Elections Resolution No. 8714, in relation to Section 32 of Republic Act No. 7166, and Sections 261(q) and 264 of Batas Pambansa Blg. 881 or the Omnibus Election Code (Gun Ban).[5] The accusatory portion of the Information read:

> That on or about 10:20 o'clock (*sic*) in the morning of March 17, 2010, at Brgy. Madamba, municipality of Dingras, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, **the above-named accused did then and there willfully, unlawfully and knowingly carry in a public place, and outside of his residence a caliber [.]45 pistol ARMSCOR Model 1911 bearing Serial Number 1167503 with one (1) magazine loaded with eight (8) ammunitions during the election period from Jan. 10, 2010 to June 9, 2010 without first securing the written authority or permit from the Commission on Elections, Manila, Philippines.**
>
> CONTRARY TO LAW.[6] (Emphasis in the original)

On arraignment, Manibog pleaded not guilty to the crime charged.[7]

During pre-trial, the parties stipulated that on March 17, 2010, police officers arrested Manibog and seized his firearm for not having a permit from the Commission on Elections to carry it. The issue was later narrowed down to whether an illegal search and seizure attended Manibog's apprehension and confiscation of his gun.[8]

In the morning of March 17, 2010, Police Chief Inspector Randolph Beniat (Chief Inspector Beniat) received information from a police asset that Manibog was standing outside the Municipal Tourism Office of Dingras, Ilocos Norte with a gun tucked in his waistband.[9]

---

2 Id. at 36–42. The Decision was penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Socorro B. Inting of the Ninth Division, Court of Appeals, Manila.

3 Id. at 27–30. The Resolution was penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Socorro B. Inting of the Former Ninth Division, Court of Appeals, Manila.

4 Id. at 51–60. The Judgment was written by Presiding Judge Francisco R.D. Quilala of Branch 14, Regional Trial Court, Laoag City, Ilocos Norte.

5 Id. at 37.

6 Id.

7 Id. at 51.

8 Id.

9 Id. at 80.

To verify this information, Chief Inspector Beniat immediately organized a team. Together, they proceeded to the Municipal Tourism Office located around 20 meters from the police station.[10]

About five (5) to eight (8) meters away from the Municipal Tourism Office, Chief Inspector Beniat saw Manibog standing outside the building. The team slowly approached him for fear that he might fight back. As he moved closer, Chief Inspector Beniat saw a bulge on Manibog's waist, which the police officer deduced to be a gun due to its distinct contour.[11]

Chief Inspector Beniat went up to Manibog, patted the bulging object on his waist, and confirmed that there was a gun tucked in Manibog's waistband. He disarmed Manibog of the .45 caliber handgun inside a holster, after which he arrested him for violating the election gun ban and brought him to the police station for an inquest proceeding.[12]

Police Officer Rodel 2 Caraballa (PO2 Caraballa) testified that he was part of the team organized by Chief Inspector Beniat to verify a tip they received concerning Manibog. He narrated that as he walked up to Manibog with the team during their operation, he noticed what appeared to be a gun-shaped bulge on Manibog's waist.[13]

PO2 Caraballa testified that Chief Inspector Beniat handed him the gun after it had been confiscated from Manibog. Later at the police station, he marked the gun with his initials "RC."[14]

For the defense, Manibog did not deny that he was carrying a gun when the police officers arrested him. However, he claimed that while Chief Inspector Beniat was frisking him, the police officer whispered an apology, explaining that he had to do it or he would get in trouble with the police provincial director.[15]

Manibog further testified that at the police station, Chief Inspector Beniat asked him to relay his apologies to Dingras Mayor Marinette Gamboa[16] (Mayor Gamboa) since Manibog had worked closely with her. He also stated that he did not hold a grudge against Chief Inspector Beniat.[17]

---

10 Id. at 80.
11 Id. at 82–83.
12 Id. at 83–84.
13 Id. at 104–105.
14 Id. at 106–107.
15 Id. at 52.
16 Id. at 82.
17 Id. at 52 and 86–87.

In its August 25, 2011 Judgment,[18] the Regional Trial Court found Manibog guilty beyond reasonable doubt of the election offense with which he was charged. It ruled that the warrantless search on Manibog was incidental to a lawful arrest because there was probable cause for the police officers to frisk and arrest him.[19]

The Regional Trial Court also noted that *People v. Tudtud*,[20] which reversed *People v. Ayangao*,[21] instructed that to justify a warrantless arrest, it was not enough that the police officers were armed with reliable information. Such reliable information must be combined with an accused's overt act indicating that he or she has committed, is committing, or is about to commit a crime.[22] Here, the trial court found that the police officers arrested Manibog not only because of "a very specific"[23] tip, but also because they personally observed a distinct bulge on his waistline, which they suspected to be a gun due to its contour and their experience as police officers.[24]

The Regional Trial Court likewise brushed off the defense's assertions that the police officers' failure to obtain a warrant invalidated Manibog's search and arrest. It declared that the police officers merely acted befitting the urgency of the situation; they would have been remiss in their duty if they did not immediately act on the information they had received.[25]

The dispositive portion of the Regional Trial Court Judgment read:

> WHEREFORE, the accused LARRY MANIBOG y SABUCO is found GUILTY beyond reasonable doubt of the election offense of violation of Section 32 of Republic Act No. 7166 in relation to Comelec Resolution No. 8714 and is hereby sentenced to an indeterminate penalty of imprisonment ranging from one (1) year and six (6) months as minimum to two (2) years as maximum. He shall also suffer DISQUALIFICATION to hold public office and DEPRIVATION of the right to suffrage. The subject firearm is CONFISCATED and FORFEITED in favor of the Government.
>
> SO ORDERED.[26]

Manibog appealed[27] the Judgment, but it was denied by the Court of Appeals in its July 31, 2013 Decision.[28]

---

18 Id. at 51–60.
19 Id. at 54–55.
20 458 Phil. 752 (2003) [Per J. Tinga, Second Division].
21 471 Phil. 379 (2004) [Per J. Corona, Third Division].
22 *Rollo*, p. 55.
23 Id.
24 Id. at 55–56.
25 Id. at 57.
26 Id. at 60.
27 Id. at 38–39.

The Court of Appeals upheld the trial court's finding that the warrantless search made on Manibog was incidental to a lawful arrest, since the police officers had probable cause to believe that he was committing a crime when he was arrested. It noted that Manibog had been caught *in flagrante delicto* and failed to show a permit allowing him to carry his firearm.[29]

The dispositive portion of the Court of Appeals July 31, 2013 Decision read:

> **FOR THE STATED REASONS,** the appeal is **DENIED.**
>
> **SO ORDERED.**[30] (Emphasis in the original)

Manibog moved for reconsideration, but his Motion was denied in the Court of Appeals January 29, 2014 Resolution.[31]

In his Petition for Review on Certiorari,[32] Manibog urges this Court to reverse the Court of Appeals Decision validating the police officers' warrantless search and arrest.[33]

Petitioner claims that he was not arrested *in flagrante delicto* because he was only standing in front of the Municipal Tourism Office when the police officers descended upon and searched him. He maintains that the search came prior to his arrest, rendering any evidence obtained from him tainted and inadmissible.[34]

Petitioner asserts that at the time of his arrest, the police officers could not have seen the contour or bulge of his gun, as it was tucked in his waistband below his navel and could not be seen from a distance. He emphasizes that the police officer who frisked him first patted his back before finding the gun in his waist. This indicates that the police officer was unsure if he actually had a gun on him.[35]

Petitioner also imputes malice on the police officers, who had earlier received orders to dismantle Mayor Gamboa's private army. As part of her

---

28 Id. at 36–42.
29 Id. at 40–41.
30 Id. at 42.
31 Id. at 27–30.
32 Id. at 3–26.
33 Id. at 7–9.
34 Id. at 8–11.
35 Id. at 12–13.

security, he claims that he was singled out and illegally searched and arrested despite merely standing outside a building at that time.[36]

In its Comment,[37] respondent People of the Philippines, through the Office of the Solicitor General, insists that the Court of Appeals did not err in affirming petitioner's conviction.[38] It posits that the warrantless search was done incidental to a lawful arrest as petitioner was arrested while he was committing a crime.[39]

Respondent maintains that the police officers had probable cause to arrest petitioner. It explains that aside from the tip that petitioner was carrying a gun outside the Municipal Tourism Office, the police officers' simple visual inspection confirmed that he had a gun tucked in his waist, which suitably fell under the plain view doctrine.[40]

In his Comment and Opposition,[41] petitioner insists that there was no probable cause for his warrantless arrest, as he was not committing a crime at that time.[42] He also refutes respondent's assertion that the gun seized from him fell under the plain view doctrine.[43]

The lone issue for this Court's resolution is whether or not the warrantless search made upon petitioner Larry Sabuco Manibog was unlawful, and, consequently, whether the gun confiscated from him is inadmissible in evidence.

The Petition must fail.

Article III, Section 2 of the Constitution provides for the inviolability of a person's right against unreasonable searches and seizures:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

---

36 Id. at 19–20.
37 Id. at 136–147.
38 Id. at 138.
39 Id. at 140.
40 Id. at 141.
41 Id. at 150–159.
42 Id. at 151–152.
43 Id. at 152–153.

The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and seizure violates the Constitution. Any evidence resulting from it "shall be inadmissible for any purpose in any proceeding."[44]

However, the constitutional proscription only covers *unreasonable* searches and seizures. Jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are:

> 1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
> 2. Seizure of evidence in "plain view," the elements of which are:
>   (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
>   (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
>   (c) the evidence must be immediately apparent, and
>   (d) "plain view" justified mere seizure of evidence without further search;
> 3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
> 4. *Consented* warrantless search;
> 5. Customs search;
> 6. *Stop and Frisk*; and
> 7. *Exigent and Emergency Circumstances*.[45] (Emphasis in the original, citations omitted)

Two (2) of these exceptions to a search warrant—a warrantless search incidental to a lawful arrest and "stop and frisk"—are often confused with each other. *Malacat v. Court of Appeals*[46] explained that they "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope."[47]

For an arrest to be lawful, a warrant of arrest must have been judicially issued or there was a lawful warrantless arrest as provided for in Rule 113, Section 5 of the Rules of Court:

> SECTION 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

---

44 CONST., art. III, sec. 3(2).
45 *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division].
46 347 Phil. 462 (1997) [Per J. Davide, Jr., En Banc].
47 Id. at 479–480.

> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

For valid warrantless arrests under Section 5(a) and (b), the arresting officer must have personal knowledge of the offense. The difference is that under Section 5(a), the arresting officer must have personally witnessed the crime; meanwhile, under Section 5(b), the arresting officer must have had probable cause to believe that the person to be arrested committed an offense.[48] Nonetheless, whether under Section 5(a) or (b), the lawful arrest generally precedes,[49] or is substantially contemporaneous,[50] with the search.

In direct contrast with warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to deter crime.[51] *People v. Cogaed*[52] underscored that they are necessary for law enforcement, though never at the expense of violating a citizen's right to privacy:

> "Stop and frisk" searches (sometimes referred to as Terry searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.
>
> The balance lies in the concept of "suspiciousness" present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.[53]

Posadas v. Court of Appeals[54] saw this Court uphold the warrantless search and seizure done as a valid stop and frisk search. There, the

---

48 *See Sindac v. People*, 794 Phil. 421 (2016) [Per J. Perlas-Bernabe, First Division].
49 *Malacat v. Court of Appeals*, 347 Phil. 462, 480 (1997) [Per J. Davide, Jr., En Banc]; *People v. Racho*, 640 Phil. 669, 676 (2010) [Per J. Nachura, Second Division]; and *Sanchez v. People*, 747 Phil. 552, 569 (2014) [Per J. Mendoza, Second Division].
50 *People v. Tudtud*, 458 Phil. 752, 773 (2003) [Per J. Tinga, Second Division].
51 *People v. Cogaed*, 740 Phil. 212, 229 (2014) [Per J. Leonen, Second Division].
52 740 Phil. 212 (2014) [Per J. Leonen, Second Division].
53 Id. at 229–230.
54 266 Phil. 306 (1990) [Per J. Gancayco, First Division].

accused's suspicious actions, coupled with his attempt to flee when the police officers introduced themselves to him, amounted to a reasonable suspicion that he was concealing something illegal in his buri bag.[55] However, *Posadas* failed to elaborate on or describe what the police officers observed as the suspicious act that led them to search the accused's buri bag.

In comparison, the police officers in *Manalili v. Court of Appeals*[56] responded to a report that drug addicts were roaming in front of the Kalookan City Cemetery. There, they saw a man with bloodshot eyes who had trouble walking straight.[57] This Court upheld the validity of the warrantless arrest as a stop and frisk search, since the police officers' observation and assessment led them to believe that the man was high on drugs and compelled them to investigate and search him.

Similarly, in *People v. Solayao*,[58] police officers were investigating reports that a group of armed men was roaming the barangay at night. As they patrolled the streets, they saw seemingly drunk men, among them Solayao in a camouflage uniform. The men fled upon seeing the police, but Solayao was caught and found with an unlicensed firearm.[59] This Court upheld the validity of the warrantless search and seizure conducted as a stop and frisk search, since the unfolding events did not leave the police officers enough time to procure a search warrant.[60]

Manalili and *Solayao* upheld the warrantless searches conducted because "the police officers[,] using their senses[,] observed facts that led to the suspicion."[61] Furthermore, the totality of the circumstances in each case provided sufficient and genuine reason for them to suspect that something illicit was afoot.

For a valid stop and frisk search, the arresting officer must have had personal knowledge of facts, which would engender a reasonable degree of suspicion of an illicit act. *Cogaed* emphasized that anything less than the arresting officer's personal observation of a suspicious circumstance as basis for the search is an infringement of the "basic right to security of one's person and effects."[62]

Malacat instructed that for a stop and frisk search to be valid, mere suspicion is not enough; there should be a genuine reason, as determined by the police officer, to warrant a belief that the person searched was carrying a

---

55 Id. at 312.
56 345 Phil. 632 (1997) [Per J. Panganiban, Third Division].
57 *Manalili v. Court of Appeals*, 345 Phil. 632, 638 (1997) [Per J. Panganiban, Third Division].
58 330 Phil. 811 (1996) [Per J. Romero, Second Division].
59 Id. at 815.
60 *People v. Cogaed*, 740 Phil. 212, 231 (2014) [Per J. Leonen, Second Division].
61 Id.
62 Id. at 232.

weapon. In short, the totality of circumstances should result in a genuine reason to justify a stop and frisk search.

In *Esquillo v. People*,[63] the police officer approached and searched the accused after seeing her put a clear plastic sachet in her cigarette case and try to flee from him.[64] This Court upheld the validity of the stop and frisk search conducted, since the police officer's experience led him to reasonably suspect that the plastic sachet with white crystalline substance in the cigarette case was a dangerous drug.[65]

In his dissent in *Esquillo*, however, then Associate Justice, now Chief Justice Lucas Bersamin (Chief Justice Bersamin) pointed out how the police officer admitted that only his curiosity upon seeing the accused put a plastic sachet in her cigarette case prompted him to approach her. This was despite not seeing what was in it, as he was standing three (3) meters away from her at that time.[66] The dissent read:

> For purposes of a valid Terry stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer. Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to engender any reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to any belief that she had any weapon concealed about her, or that she was probably committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent.[67] (Citation omitted)

Chief Justice Bersamin cautioned against warrantless searches based on just one (1) suspicious circumstance. There should have been "more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity"[68] to uphold the validity of a stop and frisk search.

Accordingly, to sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious

---

63 643 Phil. 577 (2010) [Per J. Carpio Morales, Third Division].
64 Id. at 589.
65 Id. at 594.
66 C.J. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577, 606–611 (2010) [Per J. Carpio Morales, Third Division].
67 Id. at 609.
68 Id. at 606.

circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.

Here, while the Court of Appeals correctly ruled that a reasonable search was conducted on petitioner, the facts on record do not point to a warrantless search incidental to a lawful arrest. Rather, what transpired was a stop and frisk search.

Chief Inspector Beniat received information that petitioner, whom he knew as a kagawad and security aide of Mayor Gamboa, was carrying a gun outside the Municipal Tourism Office during an election gun ban. With a few other police officers, he went there and spotted petitioner right in front of the building with a suspicious-looking bulge protruding under his shirt, around his waist. The police officer deduced this to be a firearm based on the object's size and contour. He testified:

> Court
> Q The question is, how far was the accused from you when you first saw him at the vicinity of Municipal Tourism Office?
> A About 5 to 8 meters, your Honor.
>
> [Prosecutor] Felipe
> Q And when you saw Brgy. Kagawad Larry Manibog, what did you do?
> A I usually checked the subject, sir while still approaching and I saw that his waist is bulging in a manner that suggested he is carrying that getting (*sic*) firearm, sir.
>
> Q How far were you actually to accused (*sic*) Larry Manibog when you said you noticed something that is bulging presumptive to you to be a firearm?
> A About two to three meters, sir.
>
> Q What made you say that what was bulging on his waistline, what was your word again? In a manner suggested that is a firearm?
> A There is a distinct peculiar of a contour firearm when tucked on his waist.
>
> Q What gave you the idea of determining contour of the firearm at a certain distance?
> A Based on my experience I saw my colleagues and other agents that [tuck] their gun on their waist so that now I know that is a gun I can distinguish a firearm or other items that are [tucked] on the waist, sir.[69]

Even on cross-examination, Chief Inspector Beniat did not waver from his testimony that petitioner had a gun tucked in his waistband.[70] His

---

[69] *Rollo*, pp. 82–83.
[70] Id. at 89–91.

testimony was corroborated by PO2 Caraballa, who was part of the team that investigated the report on petitioner:

> [Prosecutor Garcia]
> Q And what did you find out when you went to verify the report in front of the Dingras Tourism Office?
> A Upon the description by our Chief of Police, we saw Larry Manibog that there is something bulging on his waistline, sir.
>
> Q And so when you saw Brgy. [K]agawad Larry Manibog having a bulging waistline . . .
>
> Court –
> Q What did you mean bulging [waistline]?
> A We observe, your Honor, that there was as if a gun bulging on the waistline of Brgy. Kagawad Larry Manibog, we could determine, as a police that it is a gun, your Honor.
>
> [Prosecutor] Garcia –
> May we make it of record that the witness has been tapping his waistline while testifying that there was something bulging on his waistline, your Honor.[71]

The tip on petitioner, coupled with the police officers' visual confirmation that petitioner had a gun-shaped object tucked in his waistband, led to a reasonable suspicion that he was carrying a gun during an election gun ban. However, a reasonable suspicion is not synonymous with the personal knowledge required under Section 5(a) and (b) to effect a valid warrantless arrest. Thus, the Court of Appeals erred in ruling that the search conducted on petitioner fell under the established exception of a warrantless search incidental to a lawful arrest.

Nonetheless, the combination of the police asset's tip and the arresting officers' observation of a gun-shaped object under petitioner's shirt already suffices as a genuine reason for the arresting officers to conduct a stop and frisk search on petitioner. Hence, the trial court correctly upheld the reasonableness of the warrantless search on petitioner:

> In the present case, the Dingras policemen searched the accused not only because of a tip – a very specific one – that he was at that moment standing in front of the nearby Municipal Tourism Office with a gun on his waist. More importantly, PCI Beniat testified that at a distance of about two to three meters from the accused, he saw the latter's bulging waistline indicating the "distinct peculiar contour" of a firearm tucked on his waist. Citing his experience as a police officer, PCI Beniat testified that he could distinguish a firearm from any other object tucked on the waist of a person. In the language of Justice Panganiban's separate opinion in *People v. Montilla*, the Court finds that the bulging waistline of

[71] Id. at 104–105.

herein accused constituted "an outward indication" that clearly suggested he was then carrying a firearm.

It should be noted that the firearm recovered from the accused was an ARMSCOR full-size 1911 pistol (GI series) with an overall length of 8.5 inches and a barrel length of 5 inches. Not being a compact pistol, its size made it difficult to conceal. Conceivably, it could be concealed under appropriate clothes like a jacket or an additional piece of clothing. In this case, however, PO1 Caravalla (*sic*) testified that the accused was at the time of his apprehension merely wearing a white shirt depicted in his photograph at the police station. In other words, the accused was not wearing a jacket or any additional garment that could have masked the contour of a full-sized pistol. Under these circumstances, the Court finds that the size of the pistol and the absence of any other clothing worn by the accused during his apprehension support the testimony of PCI Beniat that his (the accused Larry Manibog's) waistline was then bulging in a manner suggestive of the presence of a firearm.[72] (Emphasis in the original, citations omitted)

Finally, the Regional Trial Court, as affirmed by the Court of Appeals, correctly found petitioner guilty of committing an election offense. It imposed the indeterminate penalty of imprisonment of one (1) year and six (6) months as minimum, and two (2) years as maximum, which finds basis in Section 264 of the Omnibus Election Code:

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

In case of prisoner or prisoners illegally released from any penitentiary or jail during the prohibited period as provided in Section 261, paragraph (n) of this Code, the director of prisons, provincial warden, keeper of the jail or prison, or persons who are required by law to keep said prisoner in their custody shall, if convicted by a competent court, be sentenced to suffer the penalty of *prision mayor* in its maximum period if the prisoner or prisoners so illegally released commit any act of intimidation, terrorism of interference in the election. . . .

Any person found guilty of the offense of failure to register or failure to vote shall, upon conviction, be fined one hundred pesos. In addition, he shall suffer disqualification to run for public office in the next succeeding election following his conviction or be appointed to a public office for a period of one year following his conviction. (Emphasis supplied)

---

[72] Id. at 55–56.

Nonetheless, as petitioner is legally disqualified to apply for probation under Section 264 of the Omnibus Election Code, the penalty should be modified to reflect this.

WHEREFORE, the Petition is **DENIED** for lack of merit. Petitioner Larry Sabuco Manibog is sentenced to an indeterminate penalty of imprisonment from one (1) year and six (6) months as minimum to two (2) years as maximum, and is **DISQUALIFIED** from applying for probation. He is further **DISQUALIFIED** from holding public office and **DEPRIVED** of the right to suffrage. The subject firearm is **CONFISCATED** and **FORFEITED** in favor of the government.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 01 2019