IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSEPH M. PALACIOS,
REPRESENTATIVE OF THE 17TH COMMONWEALTH LEGISLATURE,
Petitioner,

v.

RAY N. YUMUL,
REPRESENTATIVE OF THE 17TH COMMONWEALTH LEGISLATURE,
Respondent.

SUPREME COURT NO. 2012-SCC-0001-CQU

ORDER DENYING PETITION FOR REHEARING

Cite as: 2012 MP 14

Decided November 21, 2012

Joseph M. Palacios, Saipan, MP, Pro Se
Ray N. Yumul, Saipan, MP, Pro Se

BEFORE: JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem.[1]

PER CURIAM:

¶ 1 Petitioner Joseph M. Palacios ("Palacios") requests a rehearing of our decision in *Palacios v. Yumul*, 2012 MP 12. To succeed, he must demonstrate how "the Court ignore[d] or incorrectly construe[d] legal issues or factual matters" in the resolution of that case. *Commonwealth Ports Authority v. Tinian Shipping Co.*, 2008 MP 2 ¶ 3 (quoting *In re Estate of Deleon Guerrero*, 1 NMI 324, 326 (1990)). Our Supreme Court Rules mandate that a petitioner "must state with particularity each point of law or fact" the Court has "overlooked or misapprehended." NMI Sup. Ct. R. 40(a)(2). We conclude that the four arguments contained in Palacios's petition for rehearing do not offer a "point of law or fact" we "overlooked or misapprehended." *Id*. Consequently, we hold that our opinion properly addressed all of his contentions. We decline to reopen a settled matter and, therefore, DENY the petition for rehearing.

I.

¶ 2 The facts of this case are contained in *Palacios v. Yumul*, 2012 MP 12 ¶ 2.

II.

¶ 3 In light of its infirmities, Palacios's petition constitutes an abuse of judicial process. Palacios submits his petition on the grounds that we: (1) failed to follow our own order accepting the certified question; (2) arbitrarily relied upon an "invalid" transcript of the Constitutional Convention ("Second ConCon"), Petition at 5; (3) misinterpreted *Island Amusement Corp. v. Western Investors, Inc.*, Civ. No. 94-166 (NMI Super. Ct. Dec. 15, 1994) (*"Island Amusement Corp."*); and (4) should have relied upon the First Constitutional Convention Analysis. As detailed below, Palacios has not arrived within a reasonable distance of the applicable standard of review regarding any of these contentions.

¶ 4 Palacios first alleges that "the Court decided on its own to step outside the boundaries [demarcated by] . . . the Separation of Powers and draft its own legislative question surrounding only Article XXI to possibly fit an agenda to answer the critics of gambling on Saipan." Petition at 4. Perhaps in a moment of haste, he does not address the authority counseling us to limit the certified question. *Palacios*, 2012 MP 12 ¶ 1. Among other things, he does not explain why we should ignore the "well-established principle of constitutional avoidance," *Beer v. United States*, 696 F.3d 1174, 1194 (Fed. Cir. 2012) (en banc), despite the practice "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *United States v. Raines*, 362 U.S. 17, 21 (1960) (quoting *Liverpool, New York & Philadelphia S. S. Co. v. Comm'rs of Emigration*, 113 U.S. 33, 39 (1885)).

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[1] The Honorable Herbert. D. Soll, Justice Pro Tem, did not participate in deciding this petition.

¶ 5 This argument is especially strange because, as our opinion notes, *Palacios*, 2012 MP 12 ¶ 1, the discussion explaining the revision of the certified question came in the very first paragraph of our opinion. That has left us wondering why Palacios used valuable space in his petition to question the Court's integrity in lieu of the articulated reasons supporting our decision.[2] Because Petitioner neither addresses the substantive legal issues underlying our opinion nor the Court's standard governing a petition for rehearing, his argument lacks merit.

¶ 6 Palacios's second contention questions our reliance on a transcript from the Second ConCon. *Palacios*, 2012 MP 12 ¶ 9-14. He argues that "the Court limits its view through a constitutional lens that is limited by the singular and narrow interpretation of the murky history of Article XXI." Petition at 4.

¶ 7 If, as Palacios posits, we misread history, he should have used this opportunity to explain why. Palacios, instead, chose to contend that our opinion was "subject to bias." Petition at 5. Merely pointing to a missing signature, *id.*, a mere formality in some cases, does not represent an adequate explanation. Moreover, given the compelling textual evidence, *Palacios*, 2012 MP 12 ¶ 4-8, which Palacios cursorily dismisses, Petition at 3, we are once again left with nothing that details how we "overlooked or misapprehended" any facts. NMI Sup. Ct. R. 40(a)(2). As a result, this argument also fails.

¶ 8 Palacios makes two additional assertions concerning our interpretation of a case and a historical document.

¶ 9 First, Palacios claims that we "diluted" the importance of *Island Amusement Corp.*, which, he asserts, has particular salience to the certified question. Petition at 5. Palacios is mistaken, however, as our opinion explained. *Palacios*, 2012 MP 12 ¶ 15-16. His analogy to "Roman law" conflates a broad label with a term's technical legal meaning. Petition at 5. Palacios's assertion that "the Court needs to expand its own definition of our Commonwealth law to follow historical precedent, not dwell within legal myopia," *id.*, is curious given his decision not to address (in any detail) our explanation of *Island Amusement Corp*. *Palacios*, 2012 MP 12 ¶ 15-16. And in doing so, he ignores the standard we apply to a petition for rehearing. Thus, we find that because he did not "state with particularity each point of law or fact . . . overlooked or misapprehended" by the Court, this contention lacks merit. NMI Sup. Ct. R. 40(a)(2).

¶ 10 Lastly, Palacios implies that we "dismissed as being useless" the *Analysis of the Constitution of Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976) ("Analysis"). Petition at 6. Once again, Palacios indicates that he filed his petition "first and asked questions later." *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 17. Our opinion did not dismiss the Analysis in such a fashion, but rather pointed out that it

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[2] Palacios would be wise not to proffer suggestions of judicial misconduct, which is precisely what his use of the term "agenda" implies, Petition at 4, without even a scintilla of evidence. The judiciary faces institutional damage every time an elected representative suggests that mere bias explains a particular result. The troubling message to the citizens of the Commonwealth is that your courts cannot be trusted with upholding the rule of law.

did not "assist" us in answering the certified question. *Palacios*, 2012 MP 12 ¶ 17. The Analysis, like other legal authorities, will not always provide guidance to the Court in every case. Consequently, far from pointing out "overlooked or misapprehended" legal authority, Palacios's contention actually resembles an empty vessel carrying nothing in the way of substantive legal argument.

¶ 11 Unfortunately, Palacios uses much of his petition to express his frustration over the Court's ultimate conclusion. As documented above, he did not address the legal rationale underlying our opinion in any detail. Consequently, this petition lacked any persuasive legal argument, which raises the issue of sanctions. Generally, sanctions are appropriate when an appeal consists only of frivolous claims. *Pacific Amusement, Inc. v. Villaneva*, 2005 MP 14 ¶ 7 (citing *Commonwealth v. Kawai*, 1 NMI 66 (1990) (requiring a party's appeal to present "no justiciable question" and have "little prospect" of success)). Because of the *Kawai* Court's narrow definition of "frivolous," Palacios, despite his ostensible pro se status,[3] narrowly escapes sanctions because he raises, though in a conclusory manner, one colorable argument about transcripts from the Second ConCon. Petition at 4. Nevertheless, "[a]t some point[] litigation must come to an end. That point has now been reached." *Facebook, Inc. v. Pac. Nw. Software, Inc.*, 640 F.3d 1034, 1042 (9th Cir. 2011).

III.

¶ 12 For the foregoing reasons, we conclude that our opinion fully addressed the issues raised by Palacios. This Court did not ignore or incorrectly construe any legal issues or factual matters alleged by Palacios. Accordingly, the petition for rehearing is DENIED.

SO ORDERED this 21st day of November, 2012.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Justice Pro Tem

[3] The writing style utilized by Palacios gives us pause, as it appears to indicate the handicraft of a lawyer. We note that ghostwriting may violate the rules of ethics governing lawyers, particularly if that attorney provides all the usual services regarding a legal issue, save revealing their identity to a court. ABA Comm. on Ethics and Prof'l Responsibility, Formal Opinion 07-446 (2007) (discussing impermissible, undisclosed legal assistance to pro se litigants). And given a case of this magnitude, Palacios would have surely helped his cause by enlisting an unconcealed attorney to petition the Court.