

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-13-CRM-0563 to 0564

For: Malversation of Public Funds
through Falsification of Public
Document


Present:

HERNANDEZ, J., Chairperson,
QUIROZ, J., and
ECONG, J.

-versus-

TOMAS JOYCE MONTEVERDE IV
(SG 27)
Former City Councilor
Sangguniang Panglungsod
Davao City,
Accused.

Promulgated on:

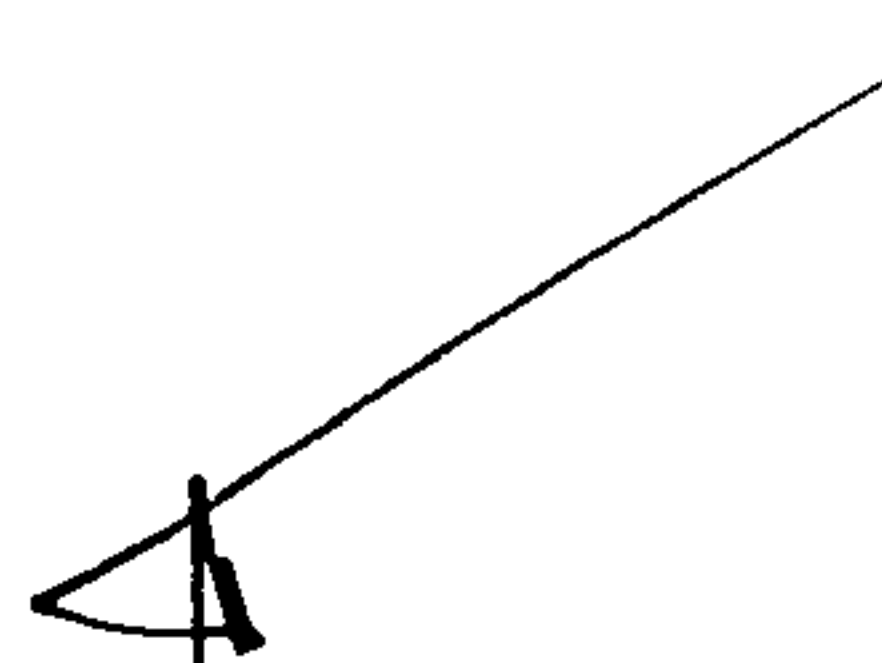
July 29 2016


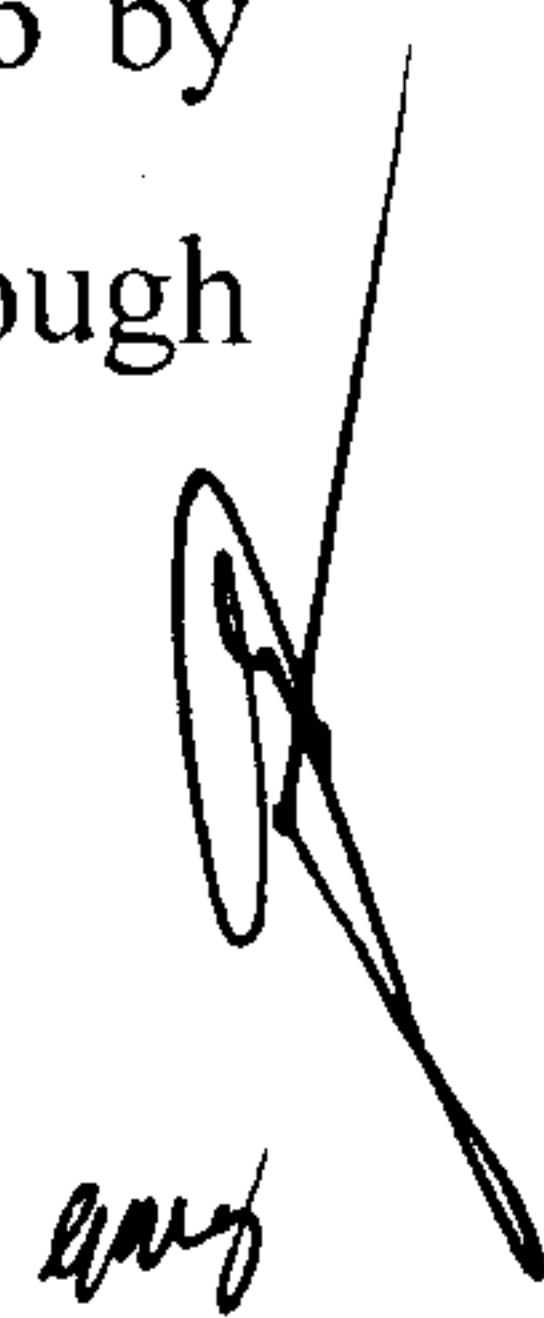
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RESOLUTION

Quiroz, J.:

This resolves the "Motion to Resolve Pending Incidents and Dismiss Cases on Grounds of Inordinate Delay" dated June 14, 2016 filed on June 15, 2016 by accused-movant Tomas Joyce Monteverde IV, then a city councilor, through counsel.





ANTECEDENTS

Sometime in 1998, the Commission on Audit conducted a special audit on Davao City, and submitted SAO Report No. 99-15 to the Office of the Ombudsman-Mindanao wherein the audit team recommended the filing of charges against certain public officials, including accused-movant.¹

In its Resolution dated November 25, 2002, the Office of the Ombudsman-Mindanao found probable cause to believe that Marlene A. Librado, City Councilor, and accused-movant committed falsification.² It thus recommended the filing of Informations with this office.³

On May 27, 2003, accused-movant filed a Motion to Hold in Abeyance Filing of Information (with Motion for Re-investigation), praying that the Informations against him be held in abeyance; that the Office of the Special Prosecutor conduct a re-investigation; and that the case against him be dismissed.⁴ In its Order dated July 10, 2012, the Office of the Ombudsman denied accused-movant's Motion, and modified the charge against him from falsification to malversation through falsification of public documents.⁵

Accordingly, on July 10, 2012, two Informations were filed against accused-movant with this Court, charging him with the complex crime of malversation of public funds through falsification of public documents defined and penalized under Article 217 and paragraph 6 of Article 171 in relation to Article 48 of the Revised Penal Code, filed and docketed as SB-13-CRM-0562 to 0563.⁶

On May 16, 2013, accused-movant filed an Urgent Omnibus Motion for new preliminary investigation and/or judicial determination of probable cause with

¹ As per Affidavit of Adelaida B. Barcelona, Records, p. 72; and the Ombudsman Resolution dated November 25, 2002.

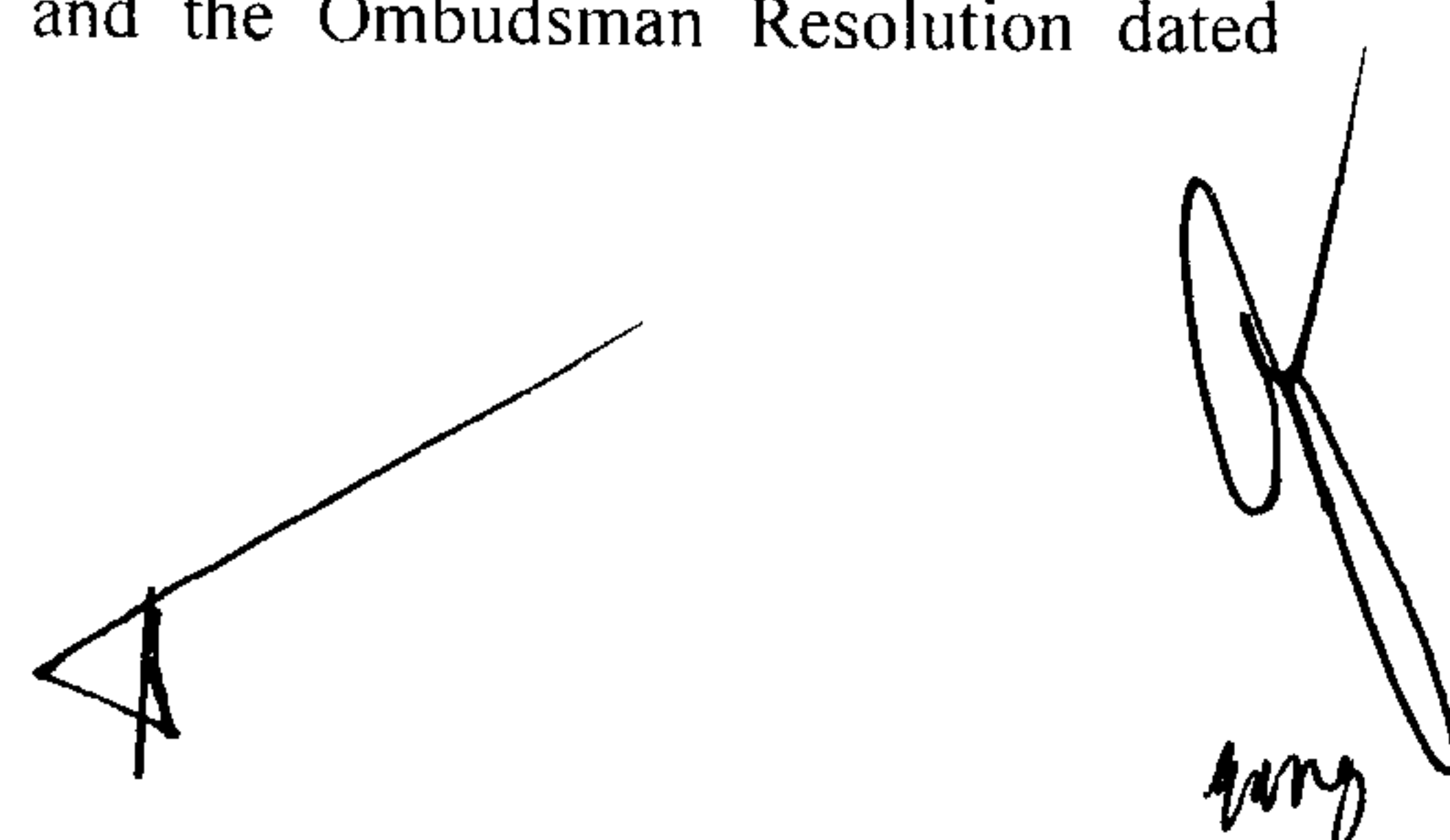
² Records, pp. 38-50.

³ *Id.*

⁴ *Id.*, pp. 51-71.

⁵ *Id.*, pp. 104-109.

⁶ *Id.*, pp. 1-3.

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prayer for suspension of issuance of warrant of arrest,⁷ which this Court, in its Order dated May 23, 2013, held in abeyance.⁸

On June 7, 2013, the Office of the Special Prosecutor filed its Opposition to the Motion for Re-investigation filed by accused-movant,⁹ to which the latter filed a Reply on July 4, 2013.¹⁰

In its Minute Resolution dated June 11, 2014, this Court granted accused-movant's Motion for the conduct of another preliminary investigation.¹¹

In its Compliance/Motion filed on February 24, 2015, the Office of the Special Prosecutor averred that it had already submitted its Joint Order on November 26, 2014 denying the motion for re-investigation.¹²

On March 2, 2015, accused-movant filed a Motion to Defer/Suspend Issuance of Warrant of Arrest¹³ which the prosecution duly opposed on March 3, 2015.¹⁴

In its Minute Resolution dated March 18, 2015, this Court found probable cause existing for the issuance of a warrant of arrest against accused-movant.¹⁵

On March 20, 2015, accused-movant filed a judicial determination of probable cause with re-investigation or bail.¹⁶

On April 8, 2015, accused-movant filed a Motion for Reconsideration of the March 18, 2015 Resolution with prayer to conduct another re-investigation, with dismissal of charges against him.¹⁷

⁷ *Id.*, pp. 121-154.

⁸ *Id.*, pp. 239-240.

⁹ *Id.*, pp. 317-320.

¹⁰ *Id.*, pp. 321-325.

¹¹ *Id.*, pp. 329-330.

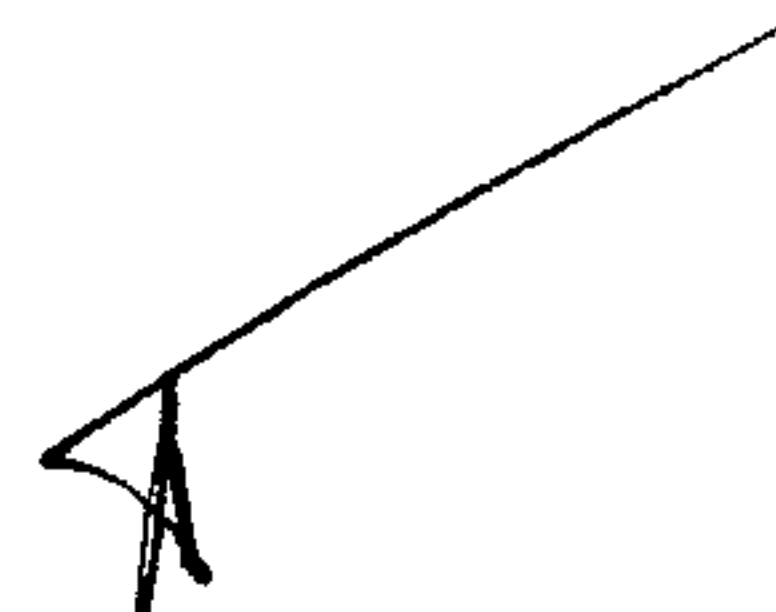
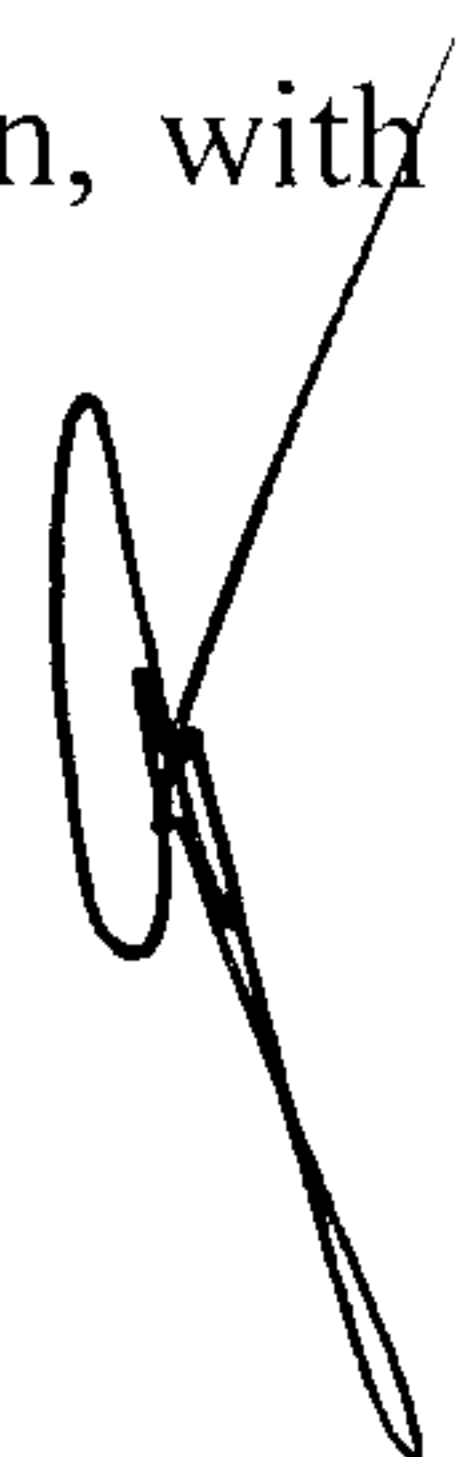
¹² *Id.*, pp. 338-341.

¹³ *Id.*, pp. 365-368.

¹⁴ *Id.*, pp. 387-390.

¹⁵ *Id.*, pp. 413-414.

¹⁶ *Id.*, pp. 415-419.



On August 25, 2015, accused-movant filed a Motion to Resolve Pending Incidents and Dismiss Cases on Grounds of Inordinate Delay,¹⁸ to which on September 4, 2015, the prosecution filed its Comment/Opposition.¹⁹

On March 9, 2016, accused-movant filed a Motion to Resolve his Motion for Reconsideration of this Court's March 18, 2015 Resolution dated April 8, 2015; and his Motion to Resolve Pending Incidents dated August 25, 2015.²⁰

In its Resolution dated March 10, 2016, this Court disposed of accused-movant's pending incidents as follows:

1. DENYING his Motion for Reconsideration of this Court's Resolution dated March 18, 2015;
2. RENDERING MOOT and ACADEMIC the Motion for Judicial Determination;
3. GRANTING the suspension of service or implementation of the Warrant of Arrest dated March 23, 2015 and, instead ISSUING an *alias* warrant of arrest; and
4. HOLDING IN ABEYANCE his Motion to Dismiss until after the law has acquired physical custody over accused-movant.²¹

In its Minute Resolution dated March 14 2016, this Court considered accused-movant's Motion to Resolve as moot.²²

Considering that the pending incidents involving accused-movant have already been resolved by this Court, what is left for consideration is the Motion to Dismiss alleging there has been inordinate delay in the resolution of the cases.

¹⁷ *Id.*, pp. 431-434.

¹⁸ *Id.*, pp. 451-457.

¹⁹ *Id.*, pp. 460-465.

²⁰ *Id.*, pp. 466-469.

²¹ *Id.*, pp. 473-474.

²² *Id.*, p. 475.

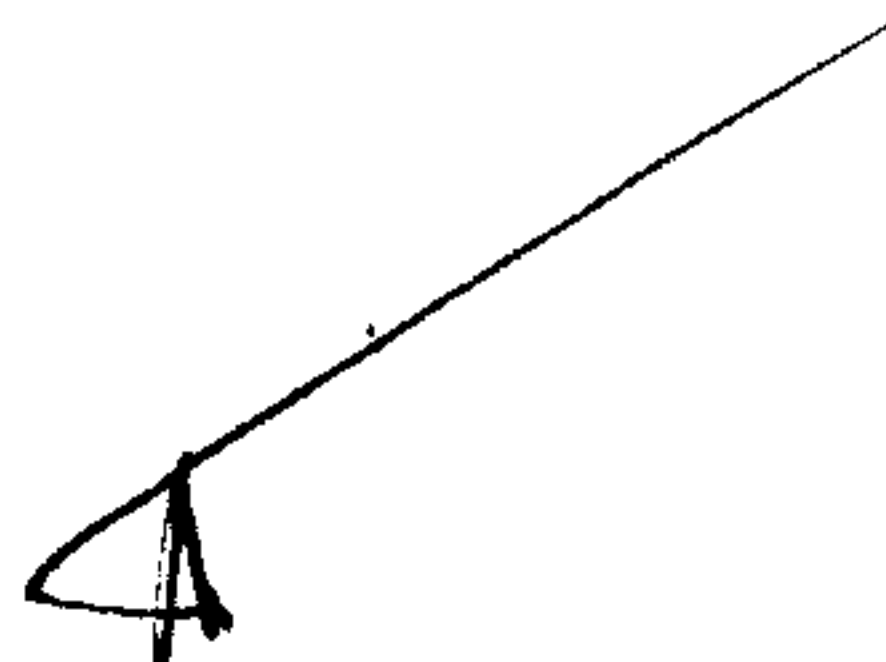
ANALYSIS AND DISCUSSION

In the present Motion, accused-movant invokes his right to speedy disposition of his cases as guaranteed under Section 16, Article III of the 1987 Constitution. He also cites the Resolution dated February 7, 2014 which this Court issued in the case of *People v. Cardino*,²³ wherein it granted the Motion to Dismiss on the ground of inordinate delay. In the said case, it took the prosecution eight (8) years and eleven (11) days to resolve the preliminary investigation of the charges against therein accused. Accused-movant alleges that in his case, it took the prosecution almost ten (10) years – from May 7, 2003 when he sought a re-investigation, to February 12, 2013, when the Ombudsman denied his re-investigation and upgraded his indictment from simple falsification to malversation through falsification.

On the other hand, in its Comment/Opposition, the prosecution argues that accused-movant belatedly raised the issue of inordinate delay. It maintains that accused-movant, instead of seeking dismissal of his cases on the ground of inordinate delay, sought two reinvestigations of the cases against him. It denies that the conduct of preliminary investigation and reinvestigations was attended by vexatious delays or caused prejudice to accused-movant. It also avers that, applying the *balancing test* approach, there was no violation of accused-movant's right to speedy disposition because: the cause of delay was attributable to accused-movant; he had the opportunity to invoke the right but did not do so for reasons known only to him; and there was no prejudice caused to accused-movant as he allowed the delay by filing *pro forma* reinvestigations.

In determining whether or not the accused has been deprived of the right to a speedy disposition of his or her case, the Supreme Court held in *Mendoza-Ong v. Sandiganbayan* that:

²³ SB-11-CRM-0363, promulgated on February 7, 2014.



The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. A mere mathematical reckoning of time involved would not be sufficient.²⁴

The Supreme Court has consistently held that the Office of the Ombudsman, particularly the special prosecutor, has the constitutional duty to act promptly on complaints filed before it.²⁵ In *Coscolluela v. Sandiganbayan*, the Supreme Court elucidated that:

Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the “protector of the people” and as such, required to “act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.” This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of a case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity – any of which have not been adequately proven by the prosecution in the case at bar – there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the petitioners.²⁶

In the present cases, accused-movant maintains that the resolution of his re-investigation took almost ten years. This Court observes that the Order issued by the Ombudsman resolving accused-movant’s Motion for Re-investigation does not show when it was received by the parties. Although it is dated July 10, 2012, the signature of Ombudsman Conchita Carpio Morales approving the said Order is dated February 12, 2013, the same date alleged by accused-movant as the date of denial of his re-investigation. This is an unusually long period of time for the

²⁴ G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

²⁵ *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988, 159 SCRA 70, 82; *Angchangco, Jr. v. Ombudsman*, G.R. No. 122728, February 13, 1997, 268 SCRA 301, 306; *Cervantes v. Sandiganbayan*, G.R. No. 108595, May 18, 1999, 307 SCRA 149, 155; *Rafael L. Coscolluela v. Sandiganbayan (First Division) and People of the Philippines*, G.R. No. 191411, July 15, 2013.

²⁶ *Rafael L. Coscolluela v. Sandiganbayan (First Division) and People of the Philippines*, G.R. No. 191411, July 15, 2013.

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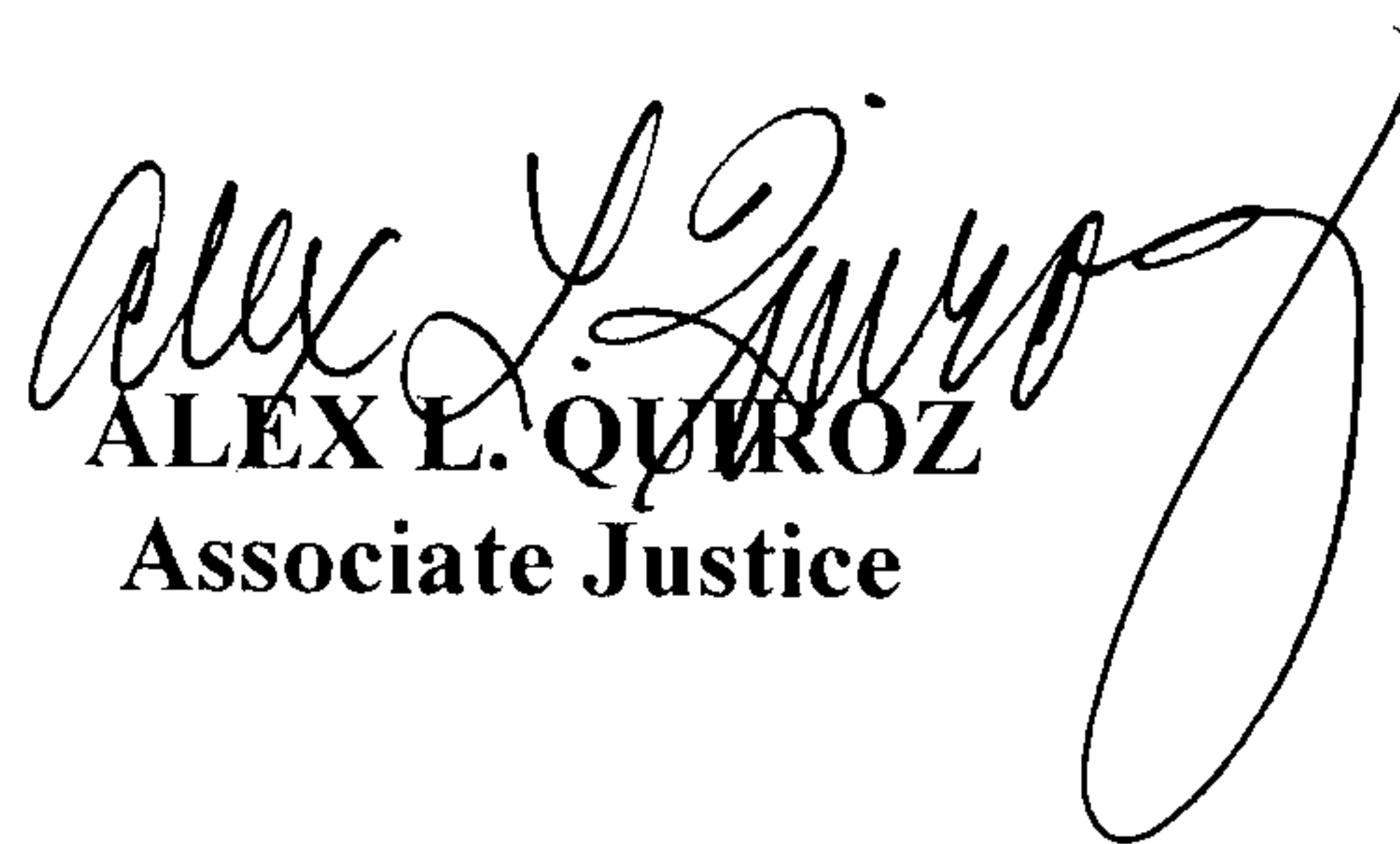
Office of the Ombudsman to study the charges filed against accused-movant, such that even if this Court would reckon the period from July 10, 2012, the date of the Order in question, it would certainly be considered an inordinate delay, particularly when the prosecution failed to explain to the satisfaction of this Court why the Ombudsman took so long to conduct its re-investigation.

Neither can this Court accept the contention of the prosecution that the inordinate delay was caused by accused-movant. The antecedents clearly show that the delay occurred when the Office of the Ombudsman conducted its re-investigation.


Lastly, accused-movant cannot be faulted for availing of the remedies which would help him in his defense, and even more so when he feels that there is delay in the disposition of his case. His right to a speedy disposition of his cases, which is provided for under Section 16, Article III of the 1987 Constitution, cannot be stressed enough. As it is not fair to subject accused-movant to prolonged uncertainty with regard to his cases, this Court is inclined to dismiss the cases against him.


WHEREFORE, in light of the foregoing, this Court **GRANTS** the “Motion to Resolve Pending Incidents and Dismiss Cases on Grounds of Inordinate Delay” by accused-movant Tomas Joyce Monteverde IV, and the cases are accordingly **DISMISSED**.

SO ORDERED.


ALEX L. QUIROZ
Associate Justice

WE CONCUR:


JOSE R. HERNANDEZ
Associate Justice
Chairperson


GERALDINE FAITH A. ECONG
Associate Justice