



Anna Marie Crespillo
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Acting Executive Clerk of Court III
Second Division

REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB - 13 CRM 0737

- versus -

Present:

ALVIN B. GARCIA, LAURITO M.
MALINAO, RODOLFO V.
CABRERA, RICO REY F.
HOLGANZA, EUSTAQUIO B.
CESA, and PURA
CIMA FRANCA,

MARTIRES, J., *Chairperson,*
MUSNGI, J.
ECONG*, J.

Accused.

Promulgated:

December 14, 2016

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RESOLUTION

Martires, J.:

Before this Court accused Rico Rey Holgnaza moves for the dismissal of the case on the ground of inordinate delay.

Alleging that the preliminary investigation took a protracted period of twelve (12) years and ten (10) months, the accused-movant cries violation of his constitutional right to speedy disposition of cases. The accused reckoned the computation of the delay from the time the Office of the Ombudsman-Visayas (OMB-Visayas) conducted a preliminary investigation on 7 August 2000 up to the filing of the *Information* on 24 June 2013.

First, the material facts.

The case stemmed from a complaint filed before the OMB-Visayas in connection with the construction of a low-cost

condominium project of the City Government of Cebu. Named as respondents were members of the Prequalification Bids and Awards Committee (PBAC), including accused-movant Holganza who is one of three Cebu City councilors implicated in the charge.

On **7 August 2000**, the OMB-Visayas issued an Order directing the respondents to file their counter-affidavits.

Another similar Order was issued on **6 November 2000** with an attached Fact Finding Report prepared by the Commission on Audit (COA).

Subsequently, on **20 June 2005**, then Ombudsman Simeon Marcelo approved Resolution dated **20 March 2002**. The said resolution, which found probable cause for violation of Section 3 (e) of Republic Act No. 3019, contained a notation that the proposed informations be first submitted to the Office of the Special Prosecutor for review.

Eventually, the *Information* in this case was approved by Ombudsman Conchita Carpio-Morales on **31 May 2013**. Thus, the *Information* was filed on **24 June 2013**.

Forthwith, accused Holganza moved that the case against him be remanded to the Office of the Ombudsman for the conduct of preliminary investigation due to lack of notice of the aforementioned orders or resolution issued during the initial investigation. The Court, on 6 August 2013, granted the motion of the accused-movant. Thus, with respect to accused Holganza, the case was *remanded* to the Office of the Ombudsman for the conduct of a preliminary investigation.

The Court's Ruling

We find merit in the motion at bar and, consequently, the case must be dismissed.

In the most recent case of *Almeda v. Office of the Ombudsman (Mindanao)*,¹ the Supreme Court reviewed the doctrinal rules on the right to speedy disposition of cases. We quote:

¹ G.R. No. 204267, 25 July 2016.



"Section 16, Article III of the 1987 Constitution guarantees that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right applies to all cases pending before all judicial, quasi-judicial or administrative bodies; it is "not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action to [sic] all officials who are tasked with the administration of justice." It "includes within its contemplation the periods before, during and after trial," such as preliminary investigations and fact-finding investigations conducted by the Office of the Ombudsman.

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"The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case." For this reason, "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis."

Regarding delays, it may be said that "[i]t is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire." These principles should apply to respondents in other administrative or quasi-judicial proceedings as well. It must also be remembered that generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same "within the bounds of reasonable timeliness."

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A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

“It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.” Failure or inaction may not have been deliberately intended, yet unjustified delay nonetheless causes just as much vexation and oppression. Indeed, delay prejudices the accused or respondent — and the State just the same.”

The High Court likewise held in *Dela Peña v. Sandiganbayan*²:


“The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.”

Applying the foregoing jurisprudential guides to this case, the Court finds that the accused-movant’s right to speedy disposition of his case was violated.

Based on the records, it is crystal clear that counted from 7 August 2000, the date when accused Holganza and his co-respondents were ordered by the OMB-Visayas to submit their counter-affidavits, up to 24 June 2013, or the filing of the *Information* in this case, a period of close to thirteen (13) years had elapsed. To Our mind, such a very long period of time constitutes excessive delay and a grave violation of the constitutionally ordained right of an accused to speedy disposition of cases.

On excessive delay, the Supreme Court explained in *Almeda* –

² G.R. No. 144542, June 29, 2001.

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In *Coscolluela*, the fact that it took the Ombudsman eight years to resolve a case under preliminary investigation was considered violative of the right to speedy disposition of cases. In *Cervantes*, it took the OSP six years from the filing of the initiatory complaint before deciding to file an information; this was struck down as well. In *Tatad v. Sandiganbayan*, a three-year delay in the termination of the preliminary investigation by the Tanodbayan was considered violative of the right. In *Lopez, Jr. v. Office of the Ombudsman*, the preliminary investigation was resolved close to four years from the time all the counter- and reply-affidavits were submitted to the Ombudsman, and this was similarly struck down. In *People v. Sandiganbayan*, the fact-finding investigation and preliminary investigation by the Ombudsman lasted nearly five years and five months, which the Court considered an inordinate delay. The same is true in *Angchangco, Jr.* and *Roque v. Office of the Ombudsman*, where the delay involved a period of six years, more or less. In *Licaros*, the failure of the Sandiganbayan to decide the case even after the lapse of more than 10 years after it was submitted for decision was declared to involve "more than just a mere procrastination in the proceedings."

The prosecution, however, submits, that the right of accused Holganza to speedy disposition of cases cannot be invoked by reckoning the delay from the time the OMB-Visayas conducted the preliminary investigation in 2000. It contends that the clock begins to tick on accused's right to speedy disposition of cases the moment he is required to submit his counter-affidavit. And since accused Holganza admitted that he became aware of the case against him only when the *Information* was filed before the Court, and that he in fact submitted his counter-affidavit and supplemental affidavit only in 2014, or after the case against him was remanded to the OMB for preliminary investigation, the reckoning of time must commence only from such date (2014). The prosecution further submits that from the time of the submission of his supplemental counter-affidavit (on 29 September 2014), it cannot be said that there was already an unreasonable delay.

We do not agree.

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In the 1999 case of *Cervantes v. Sandiganbayan*³, the Supreme Court counted the length of delay from the time of the filing the initiatory complaint against the respondents. Likewise, in *Mendoza-Ong v. Sandiganbayan*⁴ (2004) the reckoning point was the filing of the complaint. The same rule was adopted in *Coscolluela v. Sandiganbayan*⁵ (2013). In the recent case of *Almeda* (2016), the starting point of counting the length of time was also the initiation of the proceedings by filing the complaint. These and the other cases decided by the Supreme Court show a uniform trend in determining delay for purposes of the constitutional guarantee of speedy disposition of cases.

Such guarantee under the Constitution is well-entrenched in our judicial system. The salutary purpose is, among other things, to prevent impairment of the accused's defense. The importance of the right is explained in *People v. Lacson*,⁶ viz:

"They are necessary and vital because a person should not have to face continued anxiety under a prolonged threat of criminal prosecution. Postponement of trial for a long time will ordinarily handicap an accused through the disappearance of necessary witnesses and loss of documentary evidence. Furthermore, after many months or years, the memory of those witnesses who are available will likely be impaired by the passage of time. These rights are protections too against the harassment of being subjected to accusation, with its harmful effect on the accused's reputation and business affairs. As aptly observed in a case, "unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including 'oppressive pre-trial incarceration,' 'anxiety and concern of the accused,' and the 'possibility that the accused's defense will be impaired' by dimming memories and loss of exculpatory evidence." Of these forms of prejudice, the most serious is the last because the inability of the accused to prepare his case skews the fairness of the system."

In this case, the period of almost 13 years counted from the initiation of the complaint against the respondents amounts to no less than an inordinate delay in the conduct of proceedings before the Office of the Ombudsman. We find none from the records any

³ G.R. No. 108595, 18 May 1999.

⁴ 483 Phil. 451, 454-455.

⁵ G.R. No. 191411, 15 July 2013.

⁶ G.R. No. 149453, 1 April 2003.



acceptable justification for the long-drawn-out investigation of the complaint against the respondents.

In any event, there would still be inordinate delay even if We were to reckon the period from the filing by accused Holganza of his counter-affidavit on 19 August 2014⁷.

Under the Rules of Procedure of the Office of the Ombudsman, the hearing officer is given a definite period of "*not later than thirty (30) days*" to resolve the case after the formal investigation shall have been concluded.⁸

Here, the last communication coming from accused Holganza is his Supplemental Counter-Affidavit submitted to the Office of the Special Prosecutor (OSP) on 29 September 2014. Prior to that was his Counter-Affidavit filed on 19 August 2014. Thus, the complaint against Holganza should be deemed submitted for resolution as of 29 September 2014 at the latest.

To this date, or a period of *more than two (2) years* from the submission of the case for resolution, the OSP has yet to resolve the complaint against accused Holganza, or, insofar as the Court is concerned, it is not aware of any such action taken by the OSP on the complaint against accused Holganza.

The prosecution explains in its *Comment/Opposition* that the records of the cases originated from the OMB-Visayas and are voluminous enough to require additional time for the handling prosecutor to take a fresh look on the case. The prosecution adds that

⁷ In Our view, the reckoning is not 29 September 2014, or the date of filing the Supplemental Counter-Affidavit. Upon examination of the contents of such Supplemental Counter-Affidavit, affiant Holganza made no additional statements to refute the allegations in the complaint-affidavit. Instead, what were set forth are arguments in support of the theory of violation of affiant's right to speedy disposition of cases.

⁸ Section 6, Rule III of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman) provides:

SEC. 6. Rendition of decision. — Not later than thirty (30) days after the case is declared submitted for resolution, the Hearing Officer shall submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsman and Deputy Ombudsman concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority. Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein.; see also *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, 15 February 2008.

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the OSP had to transfer its office from the Sandiganbayan building to the central office of the Ombudsman in Agham Road, Quezon City.

We cannot subscribe to the justifications proffered by the prosecution.

As noted above, accused Holganza is just one of the members of the PBAC who were charged in this case. A closer scrutiny of accused Holganza's counter-affidavit reveals some averments that had already been taken up in the counter-affidavits of his co-respondents. Moreover, the main defense of Holganza as gathered from his counter-affidavit is his good faith in affixing his signature on the PBAC resolution that became the basis for his indictment. He further invokes the *Arias* Doctrine in his defense.

Considering that some matters averred in accused Holganza's counter-affidavit were already passed upon in the counter-affidavits of his co-respondents, We are of the view that a resolution of the complaint as against him would not anymore require considerable time, let alone a period of more than two years. The theory of good faith and applicability of the *Arias* doctrine likewise do not present, as We see it, a very complicated issue to warrant such a very long period of time to resolve.

Anent the justification regarding the transfer of office building, We also see this as a lame excuse. It must be noted that, as the prosecution itself admitted in its *Comment/Opposition*, the transfer was completed in only about three months, or from September 2015 to November 2015. Even excluding this period from our computation, the balance would still be about two years, an ample time to review the case.

In the recent case of *People v. Sandiganbayan*,⁹ the Supreme Court brushed aside the reason advanced by the petitioner that in the year 2001 the Office of the Ombudsman was in the midst of transferring to its new building in Agham Road, Quezon City. We so hold in this case.

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⁹ G.R. Nos. 199151-56, 25 July 2016.

In other words, the prosecution has no one to blame but itself in causing the delay in the preliminary investigation of the case against accused Holganza.

All told, the criminal complaint against movant Holganza must be dismissed on the ground of inordinate delay amounting to a transgression of the right to a speedy disposition of cases.

WHEREFORE, the motion is **GRANTED**.

Accordingly, Criminal Case No. SB-13-CRM-0737 with respect to accused RICO REY HOLGANZA for violation of Section 3(e) of R.A. No. 3019, as amended, is hereby **DISMISSED**. Let the bail bond posted by the accused for his provisional liberty be ordered cancelled and returned to him subject to the usual accounting and auditing rules and procedures. The hold-departure order against the accused is also hereby ordered **LIFTED**. Accordingly, let a copy of this resolution be furnished the Bureau of Immigration.


SO ORDERED.

Quezon City, Philippines.


SAMUEL R. MARTIRES
Associate Justice
Chairperson

We concur:


MICHAEL FREDERICK L.
MUSNGI
Associate Justice


GERALDINE FAITH A.
ECONG*
Associate Justice

* *Sitting as Special Member per Administrative Order No. 242-2016 dated 9 August 2016.*