



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0253

- versus -

For: Violation of Section 1 (b) of P.D.
1829 (Decree penalizing obstruction
of apprehension and prosecution of
Criminal offenders)

SOCRATES FERNANDEZ,

Accused.

Present:
LAGOS, J., Chairperson, CRUZ* and
MENDOZA-ARCEGA, JJ.

Promulgated:

June 01, 2017 *jal*

X-----X

RESOLUTION

LAGOS, J.:

For resolution of this Court is accused Socrates Fernandez's Motion to Dismiss¹ and the prosecution's Comment and/or Opposition².

Accused Fernandez asserts that he was denied his right to speedy disposition of his case by the Office of the Ombudsman. According to the accused, the complaint against him for violation of Section 1 (b) of P.D. No. 1829 penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders was filed before the Office of the Ombudsman, Visayas on June 11, 2010. In an order dated August 2, 2010, which was received by him on September 28, 2010, the Office of the Ombudsman directed him to file his counter-affidavit within ten (10) days from receipt. On October 18, 2010, he submitted his counter-affidavit. On December 11, 2015, accused received a copy of the resolution dated April 28, 2011 indicting him. On December 21, 2015, he filed his motion for reconsideration. Accused claims that, after over

* As per Administrative Order No. 025-2017 dated February 1, 2017.

¹ Records, Vol. I, p. 96.

² Records, Vol. I, p. 214.

jal *mf*

x-----x

one year, the Office of the Ombudsman failed to resolve his Motion for Reconsideration. He claims that it was only on March 1, 2017, when he personally appeared and asked from the Office of the Clerk of Court that he was given a copy of the resolution denying his motion for reconsideration.

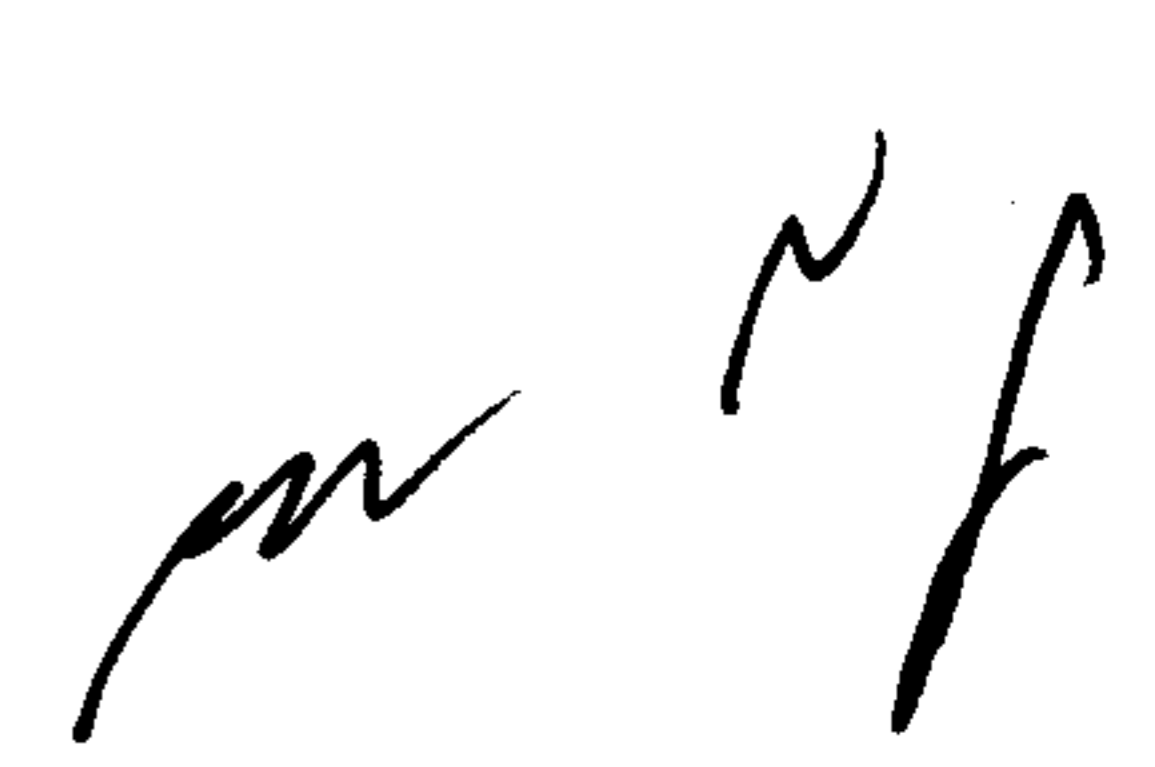
Allegedly, it took the Office of the Ombudsman almost five years to resolve the complaint against him and over a year before the filing of the Information on February 13, 2017, which violated his right to speedy disposition of cases. This inordinate delay was aggravated by the failure of the Office of the Ombudsman to act on his motion for reconsideration.

Allegedly, the Ombudsman sat on his motion for reconsideration for over a year and, instead of resolving it first, filed the Information against him, to his shock. Allegedly, the Ombudsman's apparent inaction after he filed his counter-affidavit led him to believe that the complaint against him was dismissed.

The prosecution, on the other hand, alleges that accused's arguments deserve scant consideration. Allegedly, it is well-settled that a mere mathematical reckoning of the time involved in the preliminary investigation would not suffice. The prosecution stresses that the accused's right to speedy disposition of his case was not violated as the conduct of preliminary investigation was not attended by vexatious, capricious and oppressive delay tantamount to violation of said right.

The timeline of this case according to the prosecution:

Date	Incident
June 11, 2010	The records of the case was referred to the Office of the Ombudsman (Visayas) by the Philippine National Police-Cebu Provincial Office for preliminary investigation, per letter dated June 11, 2010 signed by Investigating Officer SPO1 Elmo Rosales and approved by Provincial Director Erson Udal Digal. Attached to the complaint were various affidavit of witnesses, pictures and other supporting documents.
	The Office of the Ombudsman (Visayas) then informed SPO1 Elmo Rosales that the complaint has been docketed and assigned to an Investigation Officer who has been instructed to submit a report to the Deputy Ombudsman for the Visayas.
	A Consolidated Evaluation Report was issued by Maria Corazon Vergara-Naraja, Graft Investigation



X-----X

	and Prosecution Officer II, stating that upon initial evaluation, the complaint was found sufficient warranting further investigation, and recommending that the respondent be directed to file his counter-affidavit ad controverting evidence.
September 17, 2010	The Office of the Ombudsman (Visayas) released the Order requiring accused Fernandez to submit his counter-affidavit within ten days from receipt.
October 13, 2010	Counsel for accused Fernandez filed a Formal Appearance as Counsel and Urgent Ex-Parte Motion for Extension of Time to File Respondent's Counter-Affidavit & Other Controverting Evidences.
October 18, 2010	Accused Fernandez filed his counter-affidavit
November 25, 2010	An Order was issued directing the parties to submit their verified position papers
January 21, 2010	The complainant filed his position paper
February 3, 2011	Accused Fernandez filed his position paper
	The assigned investigating prosecution officer prepared the resolution dated Aril 28, 2011 finding probable cause against accused Fernandez for violation of Section 1 (b) of Presidential Decree 1829
	The resolution was reviewed by Assistant Ombudsman Virginia Palanca-Santiago. The same was recommended for approval by then Deputy Ombudsman Palagio S. Apostol
	The records of the case, together with the resolution dated April 28, 2011, was forwarded to the Office of the Ombudsman proper, for approval of then Ombudsman Ma. Merceditas N. Gutierrez.
	As shown on the last page of the resolution dated April 28, 2011, the same was not approved by then Ombudsman Gutierrez as the latter resigned on May 6, 2011 following the impeachment complaint filed against her.
May 7, 2017 to July 25, 2011	Orlando C. Casimiro became acting Ombudsman.
July 26, 2011	Ombudsman Conchita Carpio-Morales assumed office. Upon her assumption, the Ombudsman was confronted with thousands of cases for her final review and approval.
November 11, 2015	After the change in leadership in the Office of the Ombudsman, in addition to the numerous cases received everyday requiring immediate action, the

X-----X

	resolution was approved and signed by the Ombudsman.
November 25, 2015	The signed resolution was returned to the investigation prosecution officer for submission of Information.
December 11, 2015	The Information was forwarded to the Ombudsman Proper for approval of the Ombudsman.
December 12, 2015	Accused Fernandez filed an Urgent Ex-Parte Motion for Holding in Abeyance the Filing of the Information.
December 21, 2015	Accused Fernandez filed a Motion for Reconsideration on Resolution dated April 28, 2011 as well as two other motions.
May 23, 2016	These motions were denied in a Joint Order.
July 26, 2016	The Information was forwarded to the Office of the Special Prosecutor for review prior to filing the same with the Sandiganbayan. The assigned prosecutor submitted his recommendation and revised Information.
August 8, 2016	The Information was endorsed by the Deputy Special Prosecutors to the Overall Deputy Ombudsman.
August 31, 2016	The Overall Deputy Ombudsman recommended that the Information be filed before the Sandiganbayan.
September 9, 2016	The Ombudsman approved the Information and the same was filed before the Sandiganbayan on February 13, 2017.

Based on the timeline, the prosecution claims that the preliminary investigation proceeded with regularity, except for the period when the resolution prepared by the investigating prosecution officer was not immediately approved, due to the resignation of then Ombudsman Gutierrez; hence, it was Ombudsman Morales who later signed the same. It is the prosecution's opinion that, while there is perceived delay in the approval of the resolution of the complaint in this case, such delay is justified by the fact that there was a change in leadership in the Office of the Ombudsman, in view of the resignation of then Ombudsman Gutierrez. Allegedly, the circumstances surrounding the preliminary investigation of the complaint subject of this case show that, despite the number of years it took the Office of the Ombudsman to finally file the Information, the alleged delay cannot be characterized as vexatious, capricious and oppressive. There is, therefore, no violation of accused's right to a speedy disposition of his case.

X-----X

On the other hand, allegedly, the accused failed to point any particular prejudice caused to him by the alleged delay. Also, allegedly, it appears the accused is deemed to have waived such right as it was only after this case was set for arraignment that he raised the issue of alleged inordinate delay attendant in the conduct of the preliminary investigation.

As regards accused's claim that his right to due process was violated when the Information was filed without first resolving his motion for reconsideration, the same, allegedly, has no basis as said motion was resolved in a Joint Order dated May 23, 2016, and was furnished to him on May 31, 2016. Notwithstanding, the prosecution notes that, under the Rules and Procedure of the Office of the Ombudsman, the filing of a motion for reconsideration or reinvestigation shall not bar the filing of the corresponding Information in Court on the basis of the finding of probable cause in the resolution subject of the motion.

RULING

In determining whether an accused has been deprived of the right to speedy disposition of cases, four factors must be considered: (a) length of delay; (b) reason of the delay; (c) the defendant's assertion of his right; and (d) prejudice of the defendant.³

Length of Delay

According to the prosecution's own timeline, the assigned investigating prosecution officer already prepared the resolution finding probable cause against accused Fernandez for violation of Section 1 (b) of Presidential Decree 1829 on April 28, 2011. After the change in leadership in the Office of the Ombudsman, the resolution was approved and signed by the Ombudsman Carpio-Morales on November 11, 2015. This means that the resolution was simply pending approval, in other words delayed, for more than four years. This fact is undisputed and even admitted by the prosecution.

Reasons for the Delay

Also according to the prosecution, the records of the case, together with the resolution dated April 28, 2011, was forwarded to the Office of the Ombudsman proper, for approval of then Ombudsman Ma. Merceditas N. Gutierrez. However, the same was not approved by then Ombudsman

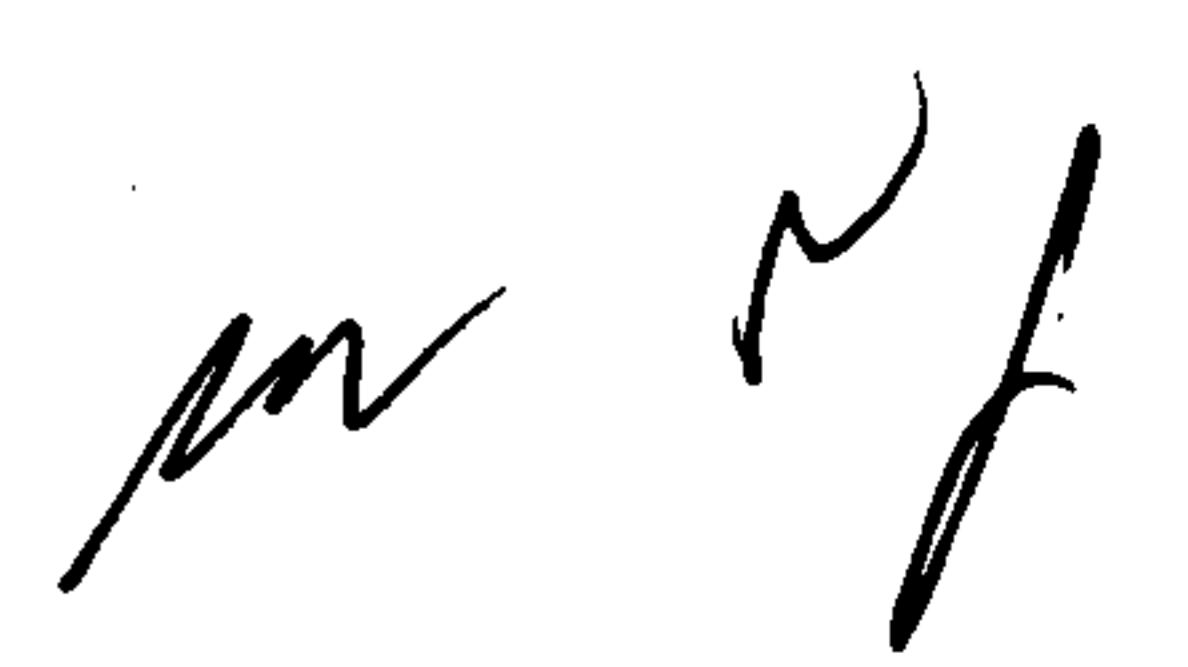
³ Commo. Lamberto Torres v. Sandiganbayan (First Division) and People of the Philippines (G.R. Nos. 221562-69, October 5, 2016).

X-----X

Gutierrez as the latter resigned on May 6, 2011 following the impeachment complaint filed against her. Thereafter, Orlando C. Casimiro became acting Ombudsman from May 7, 2011 to July 25, 2011 or until Ombudsman Conchita Carpio-Morales assumed office. Allegedly, due to the change in leadership in the Office of the Ombudsman, in addition to the numerous cases received everyday requiring immediate action, Ombudsman Carpio-Morales was confronted with thousands of cases for her final review and approval. Hence, the delay in the approval of the April 28, 2011 resolution. For these reasons, the prosecution alleges that the delay incurred by the Ombudsman in resolving accused's case was not unreasonable.

We disagree. The change in leadership of the Office of the Ombudsman cannot be used to justify a delay of more than four years. To sustain otherwise, will hold the accused hostage to the mercies of the continuous and eventual change in personnel in the Office of the Ombudsman. The constitutional protection of the right to speedy resolution of cases cannot be suspended by resignations and political appointments. Notably, while the position of Ombudsman was occupied by three different persons during the pendency of accused's case, the same was never left vacant. There was always an Ombudsman in place who could have approved the resolution indicting the accused. Furthermore -

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 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



X-----X

resolved the preliminary investigation proceedings against the petitioners.⁴

Defendant's Assertion of His Right

The prosecution asserts that the accused is deemed to have waived his right to speedy disposition as it was only after this case was set for arraignment that he raised the issue of alleged inordinate delay attendant in the conduct of the preliminary investigation.

The Supreme Court, in the case of *Coscolluela*⁵, citing *Barker v. Wingo*⁶, opined that:

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:²⁸

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.

As current jurisprudence dictates then, it is not accused Fernandez's duty to follow up the resolution of his case with the Office of the Ombudsman. Instead, it is the latter's duty to resolve the same within a reasonable timeframe. As it is, it is sufficient that the accused has asserted his right at this juncture of his trial especially considering his allegation that he was not made aware of the denial of his motion for reconsideration of the Ombudsman's resolution until this case was already filed in court.

Prejudice to the Defendant

The prosecution alleges that the accused failed to point any particular prejudice caused to him by the alleged delay.

⁴ Rafael L. Coscolluela, v. Sandiganbayan (First Division) and People of the Philippines (G.R. No. 191411, July 15, 2013).

⁵ Id.

⁶ 407 U.S. 514 (1972).

x-----x

While the first three requisites of the right to speedy disposition were found extant by this Court, upon perusing the accused's Motion to Dismiss, We must agree with the prosecution that the fourth requisite of prejudice is absent. Nowhere is it alleged in the said motion that the accused suffered any prejudice by the delay of the resolution of his case before the Office of the Ombudsman. Consequently, the present motion to dismiss anchored on the right of accused Fernandez to speedy disposition cannot prosper.

WHEREFORE, premises considered, accused Socrates Fernandez's Motion to Dismiss is hereby DENIED for lack of merit. Arraignment is set to proceed on June 6, 2017 as scheduled.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO B. CRUZ
Associate Justice


**MARIA THERESA V. MENDOZA-
ARCEGA**
Associate Justice