



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-17-CRM-0472
Plaintiff,

– versus –

REYNALDO V. TUANDA,
Accused.

**For: Violation of section 3(h) of
Rep. Act No. 3019**

Present:

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

Promulgated:

July 10, 2017 *lad*

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RESOLUTION

LAGOS, J.:

Accused Tuanda moves for reconsideration¹ of the Court's Resolution dated 2 June 2017, which denied his motion to quash. The prosecution filed its opposition to the present motion.²

The accused-movant argues that the Office of the Ombudsman's fact-finding investigation was unreasonably delayed. He contends that matters which are internal to the Office of the Ombudsman do not bind the accused, and that just because there are communications coming from that office does not make the delay reasonable.

He also faults the Court for concluding that the time period was reasonable despite the prosecution not giving any justification. He

* Designated as Special Member, per Administrative Order No. 025-2017 dated 1 February 2017.

¹ Motion for Reconsideration dated June 15, 2017.

² Dated June 20, 2017.

reiterates that it took the Office of the Ombudsman four years and 11 months to file this case.

He claims that he has specified how he was delayed by the time period involved in this case. He cites portions of his earlier motion to quash which discussed his stress and anxiety, and he repeats that the case was akin to a "sword of Damocles" over his head.

He also restates his earlier argument that the permit subject of the Information in this case is not a transaction within the purview of Republic Act No. 3019.

In its opposition, the prosecution argues that the Court did not err in denying the accused's motion to quash. It points out that the Office of the Ombudsman's investigators face difficulties in obtaining information residents, officials and employees, and in securing official documents.

It also noted that the accused has only discussed the negative repercussions of stress, which it claims affects not only the persons with pending cases but also those who resolve such cases. It notes that the accused has not shown concrete medical records showing that he suffered the debilitating effects of stress while waiting for the resolution of the case. It highlights the fact that the accused has not denied that he granted the subject permit to himself.

DISCUSSION and RULING

The motion for reconsideration is not meritorious.

The accused-movant's arguments are mere rehashes of the ones he raised in his motion to quash which the Court denied. He has not raised any substantial arguments that would warrant a reconsideration of the denial of his motion to quash.

Speedy disposition of cases

As explained, the Court used a balancing test to determine whether the accused's right to speedy disposition of his case was violated. This test looks at four factors, which have to be considered altogether to properly assess the issue of violation of the accused's right to speedy disposition of cases. The right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.³

³ Coscolluela v. Sandiganbayan, G.R. Nos. 191411 & 191871, 15 July 2013.

The Court looked at these four factors and arrived at the conclusion that the time period involved in the preliminary investigation of accused's case were not vexatious, capricious, and oppressive so as to warrant the dismissal of the present case.

Anent the accused's objection as regards the Court's review of the records of the preliminary investigation, he cannot fault the Court for verifying his claim of violation of his right. The accused is seeking to dismiss the case based on the defects of the preliminary investigation. The details of this preliminary investigation is borne by the records of this case, which includes part of the records of the preliminary investigation. The accused cannot attack the validity of the preliminary investigation and complain when the Court looks at the record to verify his claims. The Court examined the records to consider the claim of inordinate delay.

As to the first factor of the balancing test, the accused claims there has been a total delay of four years and 11 months. He relies heavily on the supposed three-year delay during the fact-finding investigation. The Court does not agree with the accused's computation of the delay. He included the entire three-year period for fact-finding investigation.

He conveniently leaves out the fact that there is no definitive standard as to how long such investigation is done. Necessarily, therefore, the Office of the Ombudsman's conduct during such investigation must be examined. This is why the Court looked at the records to see if the Office of the Ombudsman was conducting its fact-finding investigation, which it appears to have done. This is in fact in line with the settled rule that the Office of the Ombudsman has a wide latitude of power and discretion in how it conducts its investigations.⁴

And even if it is assumed that the accused's computation is correct, the claimed period of delay does not reach the period of delay in past cases where inordinate delay was found.⁵

As to the second factor, the accused argues that the delay was not reasonable. He again focused on the fact-finding investigation of this case.

⁴ See *Casing v. Ombudsman*, G.R. No. 192334, 13 June 2012.

⁵ In *Coscolluela v. Sandiganbayan* (*supra*), the delay was more than six years; in *Remulla v. Sandiganbayan* (G.R. No. 218040, 17 April 2017), it was 12 years; in *People v. Sandiganbayan* (G.R. Nos. 188165 & 189063, 11 December 2013), it was 5 years; in *Torres v. Sandiganbayan* (G.R. Nos. 221562-69, 5 October 2016), it was at least 6 to 12 years.

There is a period for fact-finding investigation so the Office of the Ombudsman could conduct such investigation in the manner it may deem best. The Court found that the records show that the Office of the Ombudsman indeed conducted such fact-finding investigation during the claimed three-year period. The Court is at a loss how the accused could interpret this as being an unreasonable explanation for the time period spent for the fact-finding investigation.

Just because there are minor delays to terminate or complete such investigation does not render the entire investigation defective. The accused cannot dictate on how the Office of the Ombudsman should conduct its investigatory activities. He cannot cry foul and claim violation of constitutional rights just because there are minor delays in the conduct of the fact-finding investigation. This is especially true when the records show that there was actual fact-finding investigation.

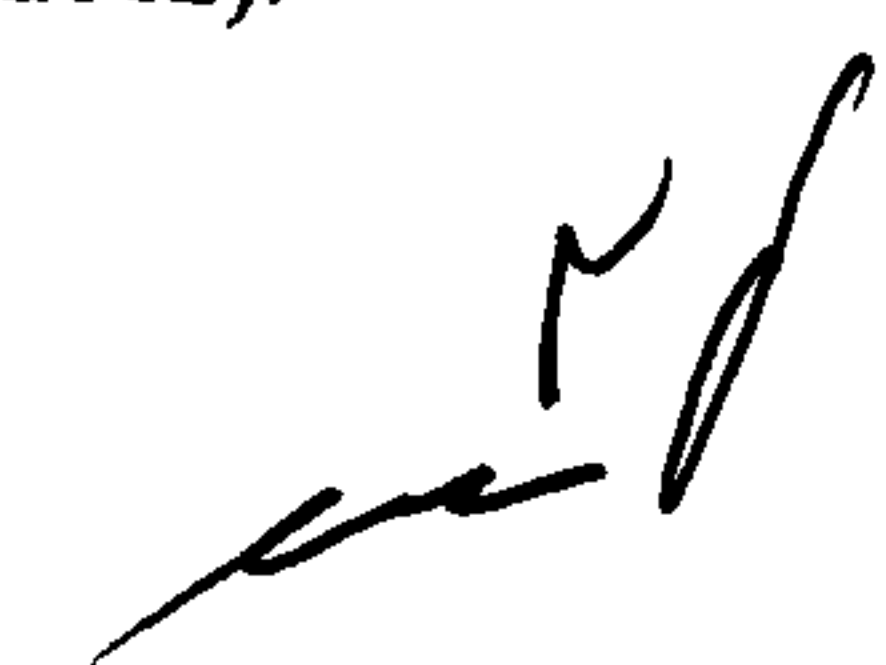
The Court notes the prosecution's claim of difficulty in obtaining information and documents during the fact-finding investigation stage. In this case, there is at least an instance when the Office of the Ombudsman had to reiterate past request for documents.⁶

Moreover, the issues resolved by the Office of the Ombudsman do not appear to be very simple ones. It should be noted that the specifics of the eventual subject of the present charge is slightly varied from the ones brought up in the complaint-affidavit. One of the issues in the complaint-affidavit was the accused's supposed utilization of a dummy person to whom a permit was granted when it was actually the accused who would be ultimately benefitted. In the present case, he is charged for a related activity, which was also the subject of the preliminary investigation – his granting of a permit to operate as a cockpit promoter unto himself. This shows that the facts as established by the evidence gathered had to be distilled to arrive at the actual subject of the offense actually charged.

Agreeing with the accused and being overly and unfairly strict about everything would definitely violate the State's equally valued right to prosecute crimes. There does not appear to be any reason to believe that the conduct of the fact-finding investigation was pointlessly long.

As regards the fourth factor, the accused misunderstands the Court. He discussed the concept of anxiety and stress, but he did not show how these specifically resulted from the time period involved in this case. A general claim of suffering due to anxiety and stress does

⁶ See Records, p. 49 (a letter dated 3 October 2012 following-up an earlier letter dated 3 January 2012).



not convince the Court. Without any specification or causation, this comes off as afterthought.

In addition, one important consideration in determining prejudice to the accused is his ability to mount a proper defense. The Court notes that in his counter-affidavit⁷ submitted during the preliminary investigation, and as noted in the Office of the Ombudsman's order denying his motion for reconsideration⁸, he admitted that he issued a permit to engage as a promoter to himself. He argues thought that such action is not prohibited by any law. The validity of this defense is not prejudiced by the passage of the time period during the preliminary investigation of this case.

In *Remulla v. Sandiganbayan*⁹, the Supreme Court said:

"Accordingly, both sets of cases only show that "[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." To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances.

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In fine, it has been settled that the factors in the balancing test must be given different consideration and weight based on the factual circumstances of each case. xxx xxx xxx"

After examining the factors of the balancing test, the Court neither finds the alleged delay to be inordinate nor the preliminary investigation attended by vexatious, capricious, and oppressive delays. Thus, there is no basis to conclude that the accused's right to speedy disposition of cases and due process has been violated to warrant the dismissal of this case.

The facts charged do not constitute an offense

The accused did not address the discussion that his cited case discusses the term "transaction" in relation to section 3(b) of Rep. Act No. 3019 and not section 3(h) thereof, which is the offense charged in this cases. The accused concedes that there is some monetary exchange involved in the issuance of the permit, but his claim that the permit does not involve any consideration in the context of a credit

⁷ Records, pp. 62-63. See also Records, p. 44, which is copy of the permit attached to the complaint-affidavit that the accused referenced in his own counter-affidavit.

⁸ Records, pp. 13-16.

⁹ G.R No. 218040, 17 April 2017.

transaction is clearly a factual issue that cannot be definitively resolved in a motion to quash. Also, a violation of section 3(h) is not limited to a transaction, as it may involve any "business, contract, or transaction".

The Court already explained that an actual intervention is alleged in this case as the accused is alleged to have granted the permit to operate as promoter, to himself.


WHEREFORE, the motion is hereby DENIED.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


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