



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-17-CRM-0627

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019

-versus-

PRESENT:

**WILLIAM I. RAMIREZ and
MA. FLORDELIZA M.
ANGEL,**

Accused,

PONFERRADA, J., Chairperson
MIRANDA, J, &
MUSNGI, J.¹

Promulgated:

SEP 04 2017

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RESOLUTION

MIRANDA, J.:

This resolves: 1) accused William I. Ramirez's Motion to Dismiss with Motion to Defer Arraignment dated May 5, 2017; and 2) the Prosecution's Comment/Opposition (On Omnibus Motion dated May 5, 2017) dated May 29, 2017.

In his Motion to Dismiss, the accused prays that: a) the case against him be dismissed on the ground of violation of his rights to due process and speedy disposition of his case; b) there is no probable cause to indict him; and c) there is no conspiracy between him and co-accused Flordeliza M. Angel (Angel). In support thereof, the accused claims that it took the Office of the

¹ Special Member in view of the vacancy in the Sixth Division, per Administrative Order No. 124-2017 dated April 4, 2017.

Ombudsman almost three (3) years to finish its fact-finding investigation, preliminary investigation, and to file the information in Court.

In its comment on the motion to dismiss, the Office of the Special Prosecutor (OSP) alleges that: 1) the preliminary investigation started only on October 1, 2013 when Director Nellie P. Boguen-Golez (Boguen-Golez) of the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) of the Office of the Ombudsman issued an order directing the accused to file his counter-affidavit; 2) the issuance of the resolution finding probable cause against the accused in *two (2) years and four (4) months* cannot be considered inordinate delay; 3) the delay in the approval of the resolution was due to various levels of review in the Office of the Ombudsman, other pending resolutions for approval, heavy caseload, and administrative matters and functions; 4) the accused waived his right to the speedy disposition of his case when he failed to invoke it during the preliminary investigation; 5) the cases on inordinate delay cited by the accused are not applicable; 6) the issue on probable cause is already moot as the Court had already determined the existence of probable cause for the purpose of issuing a warrant of arrest in its minute proceedings held on March 27, 2007; and 7) the issue on conspiracy is still premature, a matter of defense, and to be determined after a full-blown trial.

FACTUAL ANTECEDENTS

On September 12, 2013, Atty. Maribel P. Rodriguez (Rodriguez), Legal Officer and authorized representative of the Philippine Sports Commission (PSC), filed a Complaint-Affidavit dated September 10, 2013, against accused William I. Ramirez, former PSC Chairman, and Ma. Flordeliza M. Angel (Angel), President of Excelgard Security and Research Services, Inc. (Excelgard), with the Office of the Ombudsman for violation of Section 3 (e) and (g) of R.A. No. 3019 and R.A. No. 9184, otherwise known as the Anti-Graft and Corrupt Practices Act and Government Procurement Reform Act, respectively.²

On October 1, 2013, Director Boguen-Golez ordered the accused and Angel to file their counter-affidavits in the preliminary investigation docketed as OMB-C-C-13-0308.³ Records show that the said order was not served on

² Complaint-Affidavit dated September 10, 2013, Records, pp. 16-67, 16.

³ Resolution dated May 18, 2016, Records, pp. 5-14, 5.

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Angel as she already moved out from the address on record and left without any forwarding address per Process Server's Return dated October 3, 2013.⁴

On November 19, 2013, the accused, through counsel, filed his first Motion for Extension of Time to File Counter-Affidavit. The Office of the Ombudsman granted the extension in an Order dated November 20, 2013.⁵

On November 25, 2013, the accused filed a second Motion for Extension of Time to File Counter-Affidavit, which was granted on November 27, 2013.⁶

On December 10, 2013, the accused filed a third Motion for Extension of Additional Time to File Counter-Affidavit, which was granted on January 2, 2014.⁷

Despite the several extensions of time granted the accused, he still failed to file his counter-affidavit.⁸

On May 18, 2016, GIPO I Myra Nimfa R. Solidum-Mendieta (Solidum-Mendieta) drafted the resolution finding probable cause against the accused and Angel for violation of Section 3 (e) of R.A. No. 3019.⁹ On the same day, GIPO I Solidum-Mendieta also drafted the corresponding information against them.¹⁰

On June 1, 2016, Director Anna Isabel G. Aurellano (Aurellano) reviewed the draft resolution finding probable cause, while Assistant Ombudsman Marilou B. Ancheta-Mejica (Ancheta-Mejica) recommended it for approval. On July 7, 2016, Ombudsman Conchita Carpio-Morales (Carpio-Morales) approved the said resolution.¹¹

Thereafter, on November 2, 2016, Ombudsman Carpio-Morales approved the information dated May 18, 2016. The OSP filed the Information on March 21, 2017.¹²

⁴ Resolution dated May 18, 2016, Records, pp. 5-14, 8.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

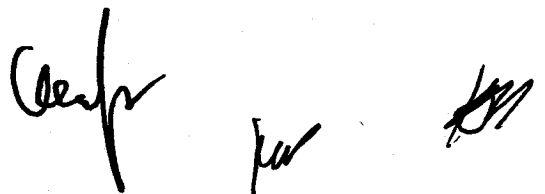
⁸ *Id.*

⁹ Resolution dated May 18, 2016, Records, pp. 5-14.

¹⁰ Information dated May 18, 2016, Records, pp. 1-3.

¹¹ Resolution dated May 18, 2016, Records, pp. 5-14.

¹² Information dated May 18, 2016, Records, pp. 1-3.



On March 27, 2017, after perusing the information and evaluating the resolution of the prosecutor, the evidence in support thereof, and the records of the preliminary investigation attached thereto, the Court found sufficient grounds for the finding of probable cause for the purpose of issuing a warrant of arrest against the accused and Angel.¹³

On May 9, 2017, the accused sought the dismissal of the case against him for violation of his rights to due process and the speedy disposition of his case, and for judicial determination of probable cause.¹⁴

On June 5, 2017, the Court received the OSP's Comment/Opposition (On Omnibus Motion dated May 5, 2017) dated May 29, 2017.¹⁵

The above-stated incidents can be summarized in a table as follows:

Incidents	Date
Atty. Rodriguez, Legal Officer of the PSC, filed a Complaint-Affidavit dated September 10, 2013, against the accused and Angel with the Office of the Ombudsman for violation of Section 3 (e) and (g) of R.A. No. 3019, and R.A. No. 9184.	September 12, 2013
Director Boguen-Golez ordered the accused and Angel to file their counter-affidavits.	October 1, 2013
The accused filed his first motion for extension of time to file his counter-affidavit.	November 19, 2013
The Office of the Ombudsman granted the first extension.	November 20, 2013
The accused filed his second motion for extension of time to file his counter-affidavit.	November 25, 2013
The Office of the Ombudsman granted the second extension.	November 27, 2013
The accused filed his third motion for extension of time to file his counter-affidavit.	December 10, 2013
The Office of the Ombudsman granted the third extension.	January 2, 2014
GIPO I Solidum-Mendieta drafted the resolution finding probable cause against the accused and Angel for violation of Section 3 (e) of R.A. No. 3019, and the corresponding information.	May 18, 2016

¹³ Minutes of the Proceedings held on March 27, 2017, Records, p. 69.

¹⁴ Motion to Dismiss with Motion to Defer Arraignment dated May 5, 2017, Records, pp. 99-117.

¹⁵ Comment/Opposition (On Omnibus Motion dated May 5, 2017) dated May 29, 2017, Records, pp. 130-139.

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Incidents	Date
Director Aurellano reviewed the draft resolution finding probable cause.	June 1, 2016
Assistant Ombudsman Ancheta-Mejica recommended the draft resolution for approval.	undated
Ombudsman Carpio-Morales approved the draft resolution.	July 7, 2016
Ombudsman Carpio-Morales approved the Information dated May 18, 2016.	November 2, 2016
The OSP filed the information with the Court.	March 21, 2017
The Court found probable cause for the issuance of a warrant of arrest against the accused and Angel.	March 27, 2017
The accused sought the dismissal of the case against him for violation of his rights to due process and speedy disposition of his case, and for judicial determination of probable cause.	May 9, 2017
The OSP filed its comment/opposition.	June 5, 2017

DISCUSSION AND RULING

Each case must be decided upon the facts peculiar to it.¹⁶ A mere mathematical reckoning of time involved would not be sufficient.¹⁷

The Court, after a thorough review of the case, holds that the time it took the Office of the Ombudsman to investigate the complaint against the accused and Angel, and file the necessary information against them was with valid reasons. Accordingly, the motion to dismiss should be denied.

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.* The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence,

¹⁶ Benares v. Lim, G.R. No. 173421, December 14, 2006.

¹⁷ Bernat v. Sandiganbayan, G.R. No. 158018, May 20, 2004.



under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.¹⁸

Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of speedy trial, speedy disposition of cases is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.¹⁹

The conduct of both the prosecution and the defense, 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.²⁰

Hence, the doctrinal rule is that in the determination of whether that right has been violated, the following factors **may** be considered and balanced: (1) the **length** of 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.²¹

The preliminary investigation of the Office of the Ombudsman, which lasted from the filing of the complaint-affidavit by Atty. Rodriguez on September 10, 2013 to the approval of the draft resolution finding probable cause against the accused and Angel on July 7, 2016, or *two (2) years, nine (9) months and twenty-seven (27) days*, is not entirely attributed to the Office of the Ombudsman.

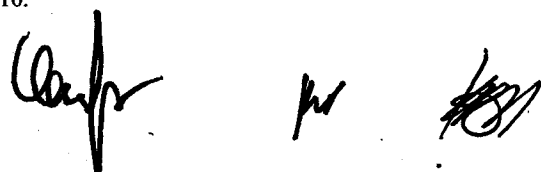
After the complaint-affidavit was filed against the accused and Angel, it took Director Boguen-Golez *twenty-one (21) days*, or until October 1, 2013, to direct the accused and Angel to submit their counter-affidavits. This reasonable period is attributable to the Office of the Ombudsman.

¹⁸ The Ombudsman v. Jurado, G.R. No. 154155, August 6, 2008.

¹⁹ The Ombudsman v. Jurado, G.R. No. 154155, August 6, 2008.

²⁰ Ty-Dazo v. Sandiganbayan, G.R. Nos. 143885-86, January 21, 2002.

²¹ Roquero v. Chancellor of UP Manila, et al., G.R. No. 181851, March 9, 2010.

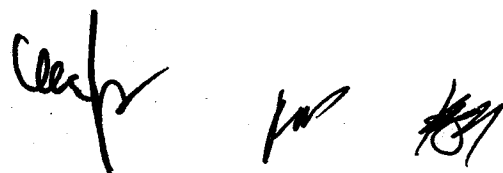


The period from October 1, 2013 to January 2, 2014, or *three (3) months and one (1) day*, is attributed to the accused. During this period, the accused sought **three extensions of time** to file his counter-affidavit on November 19, 2013, November 25, 2013, and December 10, 2013. The Office of the Ombudsman granted all three motions for extensions on November 20, 2013, November 27, 2013, and January 2, 2014. Despite these three (3) extensions of time granted him, the accused failed to file his counter-affidavit.

The period from January 2, 2014 to the approval of the resolution finding probable cause on July 7, 2016, or *two (2) years, six (6) months and five (5) days*, is attributable to the Office of the Ombudsman. This period, however, is reasonable because it only took GIPO I Solidum-Mendieta *two (2) years, four (4) months and sixteen (16) days*, or until May 18, 2016, to finish the preliminary investigation and draft the resolution finding probable cause against the accused and Angel for violation of Section 3 (e) of R.A. No. 3019. GIPO I Solidum-Mendieta evaluated the records to check whether there was indeed probable cause to charge the accused and Angel in Court. On motion of the accused, the Office of the Ombudsman gave him three chances to file his counter-affidavit. In the end, he failed to file his counter-affidavit. The Office of the Ombudsman's actions were put on hold pending compliance of the accused with the order directing him to file his counter-affidavit. Thus, this undetermined time can be excluded from this period because of the failure of the accused to file his counter-affidavit. This Court, however, ascribed the said time to the Office of the Ombudsman because it cannot be determined and measured. The said time cannot also be separated from the period of the drafting of the resolution finding probable cause.

The periods spent by Director Aurellano to review the draft resolution (*fourteen [14] days*, or on June 1, 2016), for Assistant Ombudsman Ancheta-Mejica to recommend the approval thereof, and for Ombudsman Carpio-Morales to approve the resolution (*one [1] month and six [6] days*, or on July 7, 2016) are reasonable. The periods spent by Director Aurellano, Assistant Ombudsman Ancheta-Mejica, and Ombudsman Carpio-Morales to review, recommend the approval, and approve, respectively, the draft resolution to ensure that the proper, correct, and strong cases are filed against the accused and Angel are also reasonable.

The period from the approval of the draft resolution finding probable cause against the accused and Angel on July 7, 2016 to the filing of the information with the Court on March 21, 2017, or *eight (8) and fourteen (14) days*, is attributed to the Office of the Ombudsman. Although GIPO I Solidum-Mendieta drafted the information on May 18, 2016, the said information cannot be immediately approved until a motion for



reconsideration had been filed by the accused or Angel, or the period to file a motion for reconsideration had lapsed. Considering that the draft resolution was approved by Ombudsman Carpio-Morales on July 7, 2016 and no motion for reconsideration was filed after some time, Ombudsman Carpio-Morales promptly approved the information on November 2, 2016, or in *three (3) months and twenty-six (26) days*. The time it took the OSP to file the information on March 21, 2017, or after *four (4) months and nineteen (19) days* is also reasonable. This is because the OSP reviewed the case again and made sure that only the case that could stand the rigors of trial would be filed.

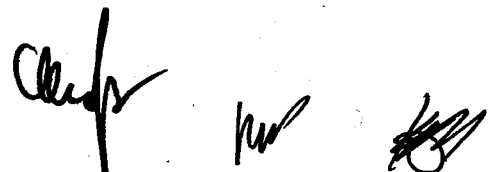
In sum, the total period of *three (3) months and one (1) day* is attributed to the accused which should be excluded from the time spent by the Office of the Ombudsman to terminate the preliminary investigation, and for the OSP to file the corresponding information in this Court. Again, this period is attributed to the accused because of his failure to file his counter-affidavit despite three extensions of time sought by the accused and granted by the Office of the Ombudsman.

Subtracting the periods attributable to the accused and those beyond the control of the Office of the Ombudsman, the total period it took the Office of the Ombudsman to finish its preliminary investigation, and for the OSP to file the corresponding information is only *three (3) years, three (3) months and ten (10) days*. Under the circumstances and as previously discussed, the said period is justified, acceptable, and not capricious, oppressive and vexatious.

The accused cannot claim to be prejudiced by a delay he is partially responsible for. In *Gonzales v. Sandiganbayan*,²² the Supreme Court held that if the long delay in the termination of the preliminary investigation was not solely the prosecution's fault, but was also due to incidents attributable to the accused and his counsel, the right of the accused to speedy disposition of cases is not violated, as in this case.

Prejudice should be assessed in the light of the following interests of the accused which the speedy trial was designed to protect: a) to prevent oppressive pre-trial incarceration; b) to minimize anxiety and concerns of the accused to trial; and c) to limit the possibility that his defense will be impaired. The last interest is the most serious because the inability of an accused to adequately prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud

²² G.R. No. 94750, July 16, 1991.



of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.²³

In this case, the accused cannot claim to be prejudiced by the preliminary investigation of the Office of the Ombudsman. He was not suspended from office and was given all the opportunity to present his defenses during the preliminary investigation. Despite the three extensions of time sought by the accused to file his counter-affidavit, he failed to do so. The defense of the accused would not be diminished because the case against him is based mainly on documentary evidence. These documentary evidence can be easily retrieved from the PSC, COA which conducted the post-audit, and the Office of the Ombudsman which conducted the preliminary investigation. The accused cannot also complain that the complaint-affidavit was filed several years after the transaction happened in 2008. The PSC needed to ascertain first the facts and circumstances after the Commission on Audit (COA) issued an audit observation memorandum before filing the complaint-affidavit in the Office of the Ombudsman on September 12, 2013.

From the time the accused first sought an extension of time to file his counter-affidavit until the issuance of the resolution finding probable cause, the accused neither objected to the delay in the termination of the preliminary investigation against him nor sought to expedite its resolution. More importantly, the Ombudsman's actions were put on hold pending accused's compliance with his own motion to be given more time to file his counter-affidavit and the several opportunities afforded him by the Ombudsman to do so.

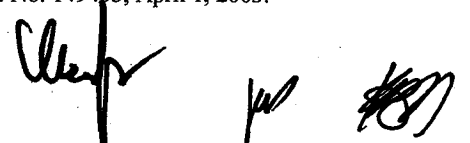
Deprivation of liberty for any duration of time is quite oppressive. Any delay in trying a case would cause an accused great prejudice.²⁴ Here, the accused cannot claim to be prejudiced because he was not confined in jail from the time the preliminary investigation started until the information was filed in Court.

Anxiety typically accompanies a criminal charge. But not every claim of anxiety affords the accused a ground to decry a violation of the rights to speedy disposition of cases and to speedy trial. The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge.²⁵ Here, the accused cannot also be said to be living under the cloud of anxiety, suspicion, hostility, public obloquy, depleted financial resources, and restricted association

²³ G.R. No. 162214, November 11, 2004.

²⁴ Mari and People v. Gonzales, G.R. No. 187728, September 12, 2011.

²⁵ See Separate Concurring Opinion of Justice Bellosillo in People v. Lacson. G.R. No. 149453, April 1, 2003.



because he neither claimed to experience these things nor provided details thereof. The Court cannot assume these matters.

Considering the number of times that the case had to be reviewed, the levels of review that the case had to undergo, the accused's contributory delay, and the lack of prejudice to the accused, the period that lapsed could not be considered vexatious, capricious and oppressive. Under the circumstances, this cannot be considered inordinate delay. The accused cannot now seek the protection of the law to benefit from the adverse effects of his own conduct in this case. The accused's assertion that his right to speedy disposition of the case against him has been violated must necessarily fail.

The cases on inordinate delay cited by the accused in his motion to dismiss are not applicable in the case against him now pending before this Court.

In *Tatad v. Sandiganbayan*,²⁶ the inordinate delay of almost three (3) years in the conduct of the preliminary investigation was due to political motivation and blatant departure from procedures prescribed by law in the conduct of preliminary investigation. Also, the long delay in resolving the preliminary investigation was not justified by the records.

In *Coscolluela v. Sandiganbayan and People*,²⁷ the Supreme Court found the presence of inordinate delay because it took the Ombudsman eight (8) years to complete the preliminary investigation. Petitioners therein could not be faulted for failing to assert their right to speedy disposition of their cases because they were not aware that the preliminary investigation was still on-going. They were merely asked to comment and not to file any counter-affidavits. Thereafter, the Resolution finding probable cause and the Information were issued and filed, respectively, only after six (6) years. They could have reasonably assumed that the proceedings were already terminated.

In *Roque v. Office of the Ombudsman*,²⁸ the Ombudsman failed to give any valid reason why it took six (6) years to resolve the complaints against petitioner therein.

In *Jacob, et al. v. Sandiganbayan*,²⁹ the Office of the Ombudsman failed to submit its reinvestigation report despite the lapse of the sixty days

²⁶ No. L-72335, March 21, 1988.

²⁷ G.R. No. 191411, July 15, 2013.

²⁸ G.R. No. 129978, May 12, 1999.

²⁹ G.R. No. 162206, November 17, 2010.

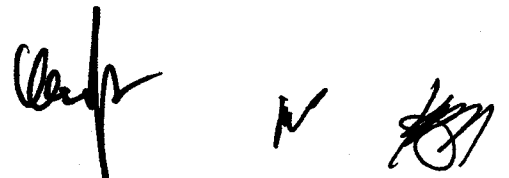


given to it by the Sandiganbayan, and even more than a year thereafter. While the reinvestigation by the Office of the Ombudsman delayed the proceedings in the Sandiganbayan, the said process was indispensable to protect the rights of the petitioners therein. Although the criminal proceeding was delayed and the petitioners therein suffered prejudice, the interest of the State and the petitioners' right to speedy trial should be balanced. The State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman. Thus, the verbal order to dismiss the case was correctly set aside for being baseless and a nullity.

The accused's motion to dismiss on the ground of inordinate delay must be resolved on the basis of the particular facts of the case which are different from the cases cited by him. The circumstances of inordinate delay in the foregoing cases are not present in the cases now before this Court. There was neither political motivation nor blatant departure from prescribed procedures in the preliminary investigation. The accused was aware that a preliminary investigation was being conducted against him. He was served copies of the complaint-affidavit and given the opportunities to file his counter-affidavit. In fact, the accused filed three (3) motions for extension of time to file his counter-affidavit. The Office of the Ombudsman granted all three motions for extension of time to file counter-affidavit but to no avail as the accused still did not file his counter-affidavit. The Office of the Ombudsman did not conduct any reinvestigation of the case either. The Prosecution gave sufficient justification for the time it took the Office of the Ombudsman to conduct its preliminary investigation and file the information with the Court.

Accused Ramirez seeks to justify his failure to file his counter-affidavit by claiming that the Office of the Ombudsman should not have taken three (3) years to resolve the complaint against him. The general rule is that a client is bound by the counsel's acts, including mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. It is the client's duty to be in contact with his lawyer from time to time to be informed of the progress and developments of his case. To merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.³⁰ Thus, the failure of the lawyer to file the accused's counter-affidavit binds the latter. The accused cannot complain now and attribute the entire

³⁰ Bejarasco v. People, G.R. No. 159781, February 2, 2011.



period of the preliminary investigation to the Office of the Ombudsman because of the negligence of his counsel.

The protection under the right to a speedy disposition of a case should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases or in generally seeing to it that all who approach the bar of justice are afforded a fair opportunity to present their side.³¹

This Court is not unmindful of the duty of the Ombudsman under the Constitution and R.A. No. 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.³² Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their complaints against wrongdoings of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.³³

To our mind, the time it took the Office of the Ombudsman to complete the preliminary investigation, and for the OSP to file information against the accused can hardly be considered an unreasonable and arbitrary delay as to deprive the accused of his constitutional right to the speedy disposition of his case.

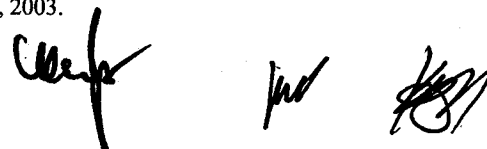
The accused's prayer for the judicial determination of probable cause is already moot. The Court had already determined probable cause for the purpose of issuing a warrant of arrest in its minute proceedings held on March 27, 2017.

Notably, under the Revised Guidelines for Continuous Trial of Criminal Cases, which shall take effect on September 1, 2017, a motion for judicial determination of probable cause will now be a prohibited motion. The said prohibited motion shall be denied outright before the scheduled arraignment without need of comment and/or opposition. This will expedite trial and the resolution of cases.

³¹ Dansal v. Fernandez G.R. No. 126814, March 2, 2000.

³² Dansal v. Fernandez G.R. No. 126814, March 2, 2000.


³³ Mendoza-Ong v. Sandiganbayan and People, G.R. No. 146368-69, October 23, 2003.




As to the accused's argument on conspiracy, it is premature to discuss or resolve it at this point. It is a matter of defense which is best determined after a full-blown trial on the merits.


WHEREFORE, the Motion to Dismiss with Motion to Defer Arraignment dated May 5, 2017, of accused William I. Ramirez is **DENIED** for lack of merit. The arraignment and pre-trial of the accused shall proceed as scheduled on October 26, 2017.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


RODOLFO A. PONFERRADA
Associate Justice
Chairperson


**MICHAEL FREDERICK L.
MUSNGI**
Associate Justice