



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-15-CRM-0284 - 0285

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

-versus-

PRESENT:

CELESTINO A. MARTINEZ III, CRESENCIO P. VERDIDA, RHETT E. MINGUEZ, MARY LOU B. URSAL, and JULIO S. URSONAL, JR.,

Accused,

FERNANDEZ, SJ, J.,¹ *Chairperson*
MIRANDA, J.,
MUSNGI, J.,²
HERRERA, JR., J.,³ &
JACINTO, J.⁴

Promulgated:

NOV 29 2017 *[Signature]*

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RESOLUTION

MIRANDA, J.:

This resolves: 1) Accused Celestino A. Martinez III (Martinez III) and Rhett E. Minguez's (Minguez) Motion for Reconsideration dated October 10, 2017; and 2) The Prosecution's Comment (On the Motion for

¹ J. Ponferrada, who participated in the assailed Resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

² J. Musngi participated in the assailed Resolution (Per Administrative Order No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule IX, Sec. 2[a]).

³ Participated as a Special Member in a Division of Five Justices in the resolution sought to be reconsidered due to the dissent of J. Musngi, as per Administrative Order No. 7-C-2017 dated July 31, 2017.

⁴ Participated as a Special Member in a Division of Five Justices in the resolution sought to be reconsidered due to the dissent of J. Musngi, as per Administrative Order No. 7-C-2017 dated July 31, 2017.

[Handwritten signatures: cp, M, SJ, JM, and a small mark]

Reconsideration of accused Celestino A. Martinez III and Rhett E. Minguez) dated October 12, 2017.

On October 13, 2017, after the Court reminded Minguez of his regular arraignment for the purpose of travelling abroad, he withdrew his motion for reconsideration in open court. Thus, the Resolution dated August 24, 2017 denying the motion to dismiss on the ground of inordinate delay is already final as to Minguez. The motion for reconsideration now pending before the Court pertains to Martinez III only.

In his motion for reconsideration, Martinez III alleges that: 1) The fact-finding investigation and preliminary investigation of the Office of the Ombudsman, which lasted six (6) years, eight (8) months and three (3) days, is unreasonable, oppressive, vexatious, and prejudicial to him; 2) It is not the duty of the accused to follow-up the prosecution of the case, but it is the responsibility of the Office of the Ombudsman to expedite the same within the bounds of reasonable timeliness; and 3) The issue on inordinate delay was belatedly raised because Martinez III did not know that a fact-finding investigation was conducted, and he did not have access to the complete records of the case or the same was not made available to him.

In the Prosecution's comment, the Office of the Special Prosecutor (OSP) asserts that: 1) The motion for reconsideration was filed out of time; 2) Counsel of the accused did not notify the Court and the Prosecution of the notice of change of address; 3) the motion for reconsideration of Minguez is already moot and academic because he agreed to be regularly arraigned on September 29, 2017 despite knowledge that his motion to dismiss was denied; and 4) The issues raised by Martinez III and Minguez are mere reiterations of the grounds raised in their motion to dismiss, and were already passed upon by the Court in its comprehensive and well-crafted resolution.

The Court will first rule on whether the motion for reconsideration was filed by Martinez III on time.

On March 30, 2017, the Court received the Notice of Change of Address from the counsel of Martinez III and Minguez from "U 709, 7th Floor, City & Land Mega Plaza, ADB Avenue, Ortigas, Pasig City" to "Suite 603, 6th Floor, The Boni Tower, 602 Boni Avenue, Plainview, Mandaluyong City." The said notice of change of address was received by

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W. G.

[Signature]

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the Office of the Special Prosecutor (OSP) also on March 30, 2017.⁵ In the Minutes of the Proceedings held on April 7, 2017, the Court noted the change of address filed by the counsel of Martinez III and Minguez.⁶ The said minutes of the proceedings was sent to the Prosecution and the counsel of Martinez III and Minguez. Thus, it is not correct to say that the OSP was not informed of the said change of address.

On August 30, 2017, the Sheriff's Office of the Sandiganbayan received the Resolution dated August 24, 2017 for mailing to the counsel of Martinez III and Minguez. The resolution, however, was mailed to the former address of the counsel of Martinez III and Minguez as indicated in the Notice of Resolution dated August 25, 2017, not to its new address on record.⁷

Since the Resolution dated August 24, 2017 was sent by the Sheriff's Office to the old address of movant's counsel, the Motion for Reconsideration dated October 10, 2017 filed by Martinez III is admitted having been filed within fifteen days from receipt.

After a restudy of the substantive grounds raised in the motion for reconsideration, the Court finds no valid reason to reconsider its Resolution dated August 24, 2017 denying the motion to dismiss of Martinez III on the ground of violation of his right to speedy disposition of his cases. The issues and arguments raised by Martinez III in his motion for reconsideration are a mere rehash and a repetition of the same issues and arguments raised in his Motion to Dismiss dated March 3, 2017. These issues and arguments have already been considered and passed upon by the Court in its Resolution dated August 24, 2017. There being no new matters or issues raised to warrant a reversal thereof, the Court **denies** the motion for reconsideration of Martinez III.

To reiterate, each case must be decided upon the **facts peculiar** to it.⁸ A mere mathematical reckoning of time involved would not be sufficient.⁹

After deducting the period attributable to Martinez III and those beyond the control of the Office of the Ombudsman, the total period of *six*

⁵ Records, vol. II, pp. 10-11.

⁶ Records, vol. II, p. 18.

⁷ Records, vol. II, p. 78.

⁸ *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

⁹ *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004.

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(6) years, eight (8) months and three (3) days spent by the Office of the Ombudsman and the OSP to complete the fact-finding investigation, preliminary investigation, and filing of informations against Martinez III can hardly be considered an unreasonable and arbitrary delay as to deprive the accused of his constitutional right to the speedy disposition of his cases. To recall, this includes an undetermined period caused by the failure of Mary Lou B. Ursal, one of the accused, to file her counter-affidavit. Since this period to be excluded cannot be determined, this Court attributed it to the Office of the Ombudsman with the qualification that the same was justified. This is also because of the disparity of the charges, the number of persons involved, the levels of review that the cases had to undergo, the attendant circumstances of the cases, and the waiver of the right to a speedy disposition of the cases.

Martinez III cannot claim that the delay of six (6) years is prejudicial to him because he was given an opportunity to present his defense during the preliminary investigation, he was not confined in jail, and he did not claim to have experienced or provided details of any anxiety, suspicion, hostility, public obloquy, depleted financial resources, restricted association, or impairment of his defenses.¹⁰

Martinez III failed to assert his right to speedy disposition of his cases at the Office of the Ombudsman and at the first instance in this Court.¹¹ Accordingly, his claim that it was not his duty to follow-up the prosecution of his case should fail. To recall, upon the filing of the informations on November 2, 2015, Martinez III filed a motion seeking the judicial determination of probable cause and/or quashal of the informations. Martinez III filed a motion to dismiss on the ground of violation of his right to speedy disposition of cases only on March 6, 2017, or *one (1) year, four (4) months and four (4) days* after the informations were filed. This was also after the Fifth Division of this Court denied his motion for judicial determination of probable cause and quashal of informations.

In *Barcelona v. Lim*,¹² the Supreme Court held that petitioner therein is considered to have waived his right to the speedy disposition of his case because of his failure to assert it. The right to speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law.

¹⁰ *Mari and People v. Gonzales*, G.R. No. 187728, September 12, 2011; See Separate Concurring Opinion of Justice Bellosillo in *People v. Lacson*, G.R. No. 149453, April 1, 2003.

¹¹ *Barcelona v. Lim*, G.R. No. 189171, June 3, 2014; *Tilendo v. Ombudsman and Sandiganbayan*, G.R. No. 165975, September 13, 2007.

¹² G.R. No. 189171, June 3, 2014.



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Martinez III alleges that he had no access to the records of the fact-finding investigation, and that he was not required to submit a reply/position paper or appear in a clarificatory hearing. The Court is not persuaded by these allegations. Martinez III had access to the records of the case as he could always have requested or examined the records of the Office of the Ombudsman.¹³ Martinez III even had a copy of the final evaluation report recommending the filing of charges against him which was attached to the order directing him to file his counter-affidavit.¹⁴ Otherwise, Martinez III had no basis in preparing his counter-affidavit. After the submission of the counter-affidavit of Martinez III, the Office of the Ombudsman is not required to conduct a clarificatory hearing as the same is merely directory on the part of the investigating officer.¹⁵ The Rules of Procedure of the Office of the Ombudsman also do not provide that a reply/position paper may be submitted.

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 be afforded a fair opportunity to present their side.¹⁶

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.¹⁷ 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

¹³ Section 4 (c), Rule II of the Rules of Procedure of the Office of the Ombudsman states:

If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. **In any event, the respondent shall have access to the evidence on record.**

¹⁴ Section 4 (b), Rule II of the Rules of Procedure of the Office of the Ombudsman states:

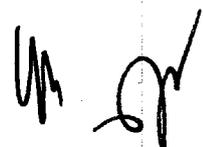
After such affidavits have been secured, **the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence** with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

¹⁵ Section 4 (f), Rule II of the Rules of Procedure of the Office of the Ombudsman states:

If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, **he may conduct a clarificatory hearing** during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

¹⁶ *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000.

¹⁷ *Id.*



personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.¹⁸

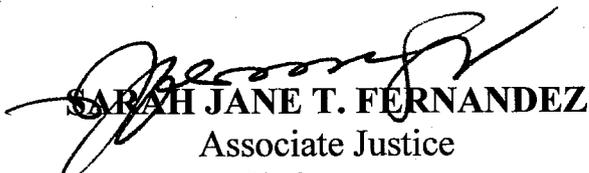
To sum up, the right of Martinez III to the speedy disposition of his cases was not violated because of the failure of one of the accused to file her counter-affidavit, disparity of the charges, number of persons involved, levels of review that the case has to undergo, lack of prejudice, and waiver of the right.

WHEREFORE, the Motion for Reconsideration dated October 10, 2017 of accused Celestino A. Martinez III is **DENIED**. The Resolution of the Court promulgated on August 24, 2017 is **AFFIRMED**.

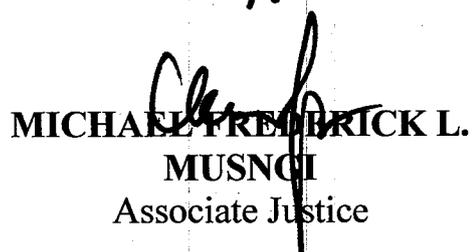
SO ORDERED.

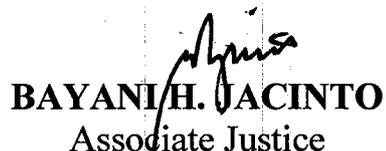

KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


OSCAR C. HERRERA, JR.
Associate Justice

I dissent.

MICHAEL FREDERICK L. MUSNCI
Associate Justice


BAYANI H. JACINTO
Associate Justice

¹⁸ *Mendoza-Ong v. Sandiganbayan and People*, G.R. No. 146368-69, October 23, 2003.

DISSENTING OPINION

MUSNGI, J.:

I dissent from the Resolution denying the *Motion for Reconsideration* dated 10 October 2017 filed by accused Celestino A. Martinez III and Rhett E. Minguez, and maintain the position expressed in my Dissenting Opinion to the 24 August 2017 Resolution of the Court.

Again, a careful consideration of the factors to be considered in determining whether the accused's right to speedy disposition of cases has been violated readily shows that such right of the accused in these cases has indeed been violated.

To reiterate, it took the Office of the Ombudsman an undeniably long period of eight (8) years, one (1) month, and seven (7) days to conclude its fact-finding and preliminary investigation starting from the receipt of the Complaint on 25 September 2007 until the filing of the *Informations* before the Court on 02 November 2015. Even if a portion of the attendant delay is attributable to the accused, it still took the Office of the Ombudsman a period of six (6) years, eight (8) months, and three (3) days to conclude its fact-finding and preliminary investigation. This long period of delay was miserably unjustified by the prosecution. It simply alleged that they had to wait for one of the respondents then, Mary Lou B. Ursal, to file her Counter-Affidavit.

Hence, all circumstances surrounding the delay in the fact-finding and preliminary investigation conducted against the accused should remain attributable to the Office of the Ombudsman.

It cannot be overemphasized that the prosecution is constitutionally mandated to resolve cases with utmost dispatch, thus:

“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.”

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‘Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by



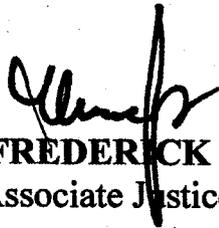
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holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual."¹

Likewise, it should be emphasized that the accused's assertion of their constitutional right to speedy disposition of cases is not the only factor to be considered in determining inordinate delay. Indeed, a balancing test of applying societal interests and the right of the accused necessarily compels the Court to approach speedy disposition cases on an *ad hoc* basis.² The most serious interest protected by the right to speedy disposition of cases is the limitation on the possibility of impairing the accused's defense.

The pending and prolonged disposition of these cases against the accused, which only involve the simple issue of their loan applications that were granted by Bogu City's Multi-Purpose Cooperative, already caused them extreme prejudice. The inordinate delay attendant in these cases has already caused tactical disadvantage in the preparation of their defense.

ACCORDINGLY, I vote to **GRANT** the *Motion for Reconsideration* dated 10 October 2017 filed by accused Celestino A. Martinez III and Rhett E. Minguez, and reiterate my vote to **GRANT** the *Motion to Dismiss* likewise filed by the accused.



MICHAEL FREDERICK L. MUSNGI
Associate Justice

¹ *Coscolluela vs. Sandiganbayan*, G.R. No. 191411, July 15, 2013.

² *Corpus v. Sandiganbayan*, G.R. No. L-37007, 20 July 1987.