



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

**Criminal Case No. SB-17-
CRM-2398**

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

- versus -

**Criminal Case No. SB-17-
CRM-2400**

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

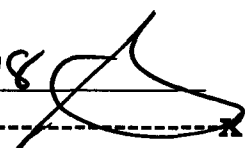
**AUGUSTUS CAESAR L.
MORENO, et al.,**

Accused.

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
**FERNANDEZ, B., J. and
MENDOZA-ARCEGA, J.¹**

Promulgated:

APML 17, 2018 

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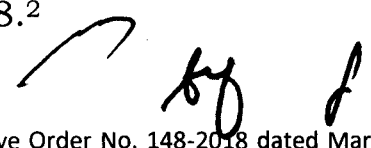
RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Augustus Caesar L. Moreno's
"Motion to Quash" dated February 13, 2018.²

¹ Sitting as a special member of the Third Division as per Administrative Order No. 148-2018 dated March 12, 2018.

² pp. 18-30, Record



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Accused-movant Moreno prays that the *Informations* against him be quashed and the cases against him dismissed on the ground of a violation of his constitutional right to speedy disposition of cases.³

He submits that his right to speedy trial was violated when it took the Office of the Ombudsman five (5) years to conduct the fact-finding investigation and preliminary investigation in these cases.⁴ To support his argument, the accused-movant chronicles the following factual antecedents conducted before the Office of the Ombudsman,⁵ to wit:

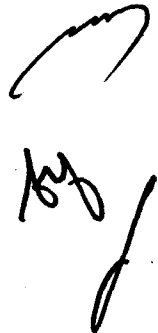
SUMMARY	
DATE(S)	INCIDENT(S)
27 April 2012	Affidavit-Complaint filed by Danilo L. Margallo before the Office of the Ombudsman for the Visayas and docketed as CPL-V-12-0298.
3 October 2014	The Field Investigation Office (FIO), Office of the Ombudsman – Visayas, filed a Complaint before the Office of the Ombudsman and was docketed as OMB-V-C-0606 and OMB-V-A-14-0451.
25 November 2014	The Office of the Ombudsman issued an Order directing herein Accused AMoreno ⁶ and his co-respondents therein to file their respective Counter-Affidavits.
8 January 2015	Accused AMoreno received a copy of the 25 November 2014 Order.
12 February 2015	Accused AMoreno filed his Counter-Affidavit.
12 February 2015	The FIO filed a Supplemental Complaint-Affidavit before the Office of the Ombudsman.
16 February 2015	The Office of the Ombudsman issued an Order directing herein Accused AMoreno and his co-respondents

³ p. 29, Record

⁴ p. 21, *Id*

⁵ pp. 21-22, *Id*

⁶ For brevity, the Office of the Ombudsman referred to the accused-movant as "AMoreno"



Resolution

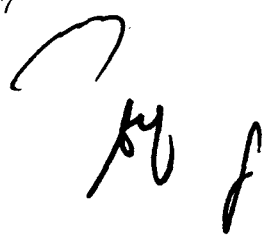
Criminal Cases Nos. SB-17-CRM-2398 and 2400
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	therein to file their respective Supplemental Counter-Affidavits.
25 March 2015	Accused AMoreno filed his Position Paper.
7 April 2015	Accused AMoreno received the 16 February 2015 Order without the attached Supplemental Complaint-Affidavit.
21 November 2016	Assistant Special Prosecutor Maria Janina J. Hidalgo issued a Joint Resolution for OMB-V-C-0606 and OMB-V-A-14-0451.
28 November 2016	The Ombudsman Conchita Carpio Morales approved [the] said Joint Resolution.
10 February 2017	Accused AMoreno had to personally request for a copy of the Joint Resolution.
15 February 2017	Accused AMoreno filed a Motion for Reconsideration to the Joint Resolution.
27 February 2017	The Office of the Ombudsman issued an Order denying Accused AMoreno's Motion for Reconsideration.
14 June 2017	Accused AMoreno received a copy of the 27 February 2017 Order.
11 October 2017	The Office of the Ombudsman issued an Information against Accused AMoreno for violation for Sec. 3 (e) of R.A. No. 3019.
1 December 2017	The Office of the Ombudsman filed with this Honorable Court the abovementioned 11 October 2017 Informations.
17 January 2018	Accused AMoreno was served a warrant of arrest for the instant cases.

According to the accused-movant, the above-mentioned facts and circumstances readily show the existence of inordinate delay in these cases which violated his constitutional right to speedy disposition of cases; hence, the present cases should be dismissed outright.⁷

⁷ p. 22, Record



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To bolster his claim of a violation of his right to speedy disposition of cases, he invokes the cases of **People v. Sandiganbayan, et al.**,⁸ **Torres v. Sandiganbayan**,⁹ **Tatad v. Sandiganbayan**,¹⁰ **Cervantes v. Sandiganbayan**,¹¹ **Almeda v. Office of the Ombudsman**,¹² and **Coscolluela v. Sandiganbayan**,¹³ wherein the Supreme Court found the existence of inordinate delay and consequently ordered the dismissal of the cases against the accused.¹⁴

In its “*Opposition (to the Motion to Quash)*” dated March 2, 2018,¹⁵ the prosecution contends that there was no violation of the accused’s right to speedy disposition of cases during the fact-finding investigation and preliminary investigation of these cases. It recounts the following timeline with the corresponding dates and events, which allegedly transpired during the proceedings before the Office of the Ombudsman,¹⁶ thus:

Date	Event
27 April 2012	Affidavit-Complaint filed by Danilo L. Margallo before the Office of the Ombudsman for the Visayas and docketed as CPL-V-12-0298.
3 October 2014	The Field Investigation Office (FIO), Office of the Ombudsman – Visayas, filed a Complaint before the Office of the Ombudsman and was docketed as OMB-V-C-0606 and OMB-V-A-14-0451.
25 November 2014	The Office of the Ombudsman issued an Order directing herein Accused AMoreno and his co-respondents therein to file their respective Counter-Affidavits.

⁸ 712 SCRA 359 (2013)

⁹ 805 SCRA 455 (2016)

¹⁰ 159 SCRA 70 (1988)

¹¹ 307 SCRA 149 (1999)

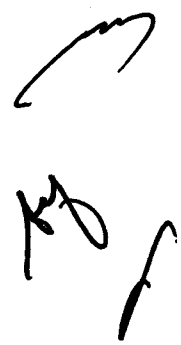
¹² 798 SCRA 131 (2016)

¹³ 701 SCRA 188 (2013)

¹⁴ pp. 23-28, Record

¹⁵ pp. 31-37, *Id*

¹⁶ pp. 33-35, *Id*



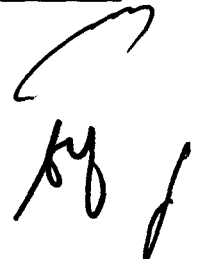
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8 January 2015	Accused AMoreno received a copy of the 25 November 2014 Order.
20 January 2015	Atty. Allan Orvien P. Geotina, filed his Formal Entry of Appearance (as counsel for respondents Cynthia Go Moreno and AMoreno) with Motion for Extension of Time asking in behalf of his clients for an additional period of ten (10) days from 16 January 2015 up to 26 January 2015 within which to file their counter-affidavits.
02 February 2015	Atty. Richard Bauzon, counsel for respondents Villages [sic], Andrino, Flordeliza, Ababon, Manigos, Nengasca and Celis, filed a Motion for Additional Time with Manifestation.
12 February 2015	Accused AMoreno filed his Counter-Affidavit.
12 February 2015	Respondents Villegas, Andrino, Flordeliza, Ababon, Manigos, Nengasca and Celis filed their Joint Counter Affidavit.
12 February 2015	The FIO filed a Supplemental Complaint-Affidavit before the Office of the Ombudsman.
16 February 2015	The Office of the Ombudsman issued an Order directing herein Accused AMoreno and his co-respondents therein to file their respective Supplemental Counter-Affidavits.
25 March 2015	Accused AMoreno filed his Position Paper.
7 April 2015	Accused AMoreno received the 16 February 2015 Oder [sic] without the attached Supplemental Complaint-Affidavit.
21 November 2016	Assistant Special Prosecutor Maria Janina J. Hidalgo issued a Joint Resolution for OMB-V-C-0606 and OMB-V-A-14-0451.
28 November 2016	The Ombudsman Conchita Carpio Morales approved [the] said Joint Resolution.



Resolution

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People vs. Moreno, *et al.*

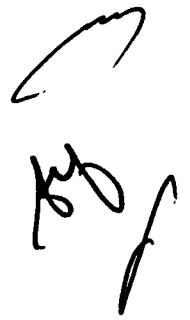
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15 February 2017	Accused AMoreno filed a Motion for Reconsideration to the Joint Resolution.
16 February 2017	The Office of the Ombudsman issued an Order partially granting the Motion for Reconsideration of Accused Maguilimotan, Villegas, Flordeliza, Ababon and Manigos. The OMB withdrew its finding of probable cause against Maguilimotan but maintained the finding of probable cause against Villegas, Flordeliza, Ababon and Manigos.
27 February 2017	The Office of the Ombudsman issued an Order denying Accused AMoreno's Motion for Partial Reconsideration.
14 June 2017	Accused AMoreno received a copy of the 27 February 2017 Order.
11 October 2017	The Office of the Ombudsman issued an Information against Accused AMoreno for violation for Sec. 3 (e) of R.A. No. 3019.
11 October 2017	The Office of the Ombudsman issued an Information against Accused AMoreno for violation for Sec. 3 (h) of R.A. No. 3019.
1 December 2017	The Office of the Ombudsman filed with this Honorable Court the abovementioned 11 October 2017 Informations.

The prosecution explains that the afore-quoted timeline of events reveals that the cases against the accused-movant and his co-accused was resolved within a reasonable time.¹⁷ It argues that the purported delay in these cases cannot be attributed solely to the Office of the Ombudsman because the filing of several *motions for extension of time to file counter-affidavits* by the accused-movant and his co-accused also contributed to the alleged delay.¹⁸ Thus, the accused-movant

¹⁷ p. 35, Record

¹⁸ p. 35, *Id*



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should not be allowed to complain and benefit from a situation wherein he himself directly contributed.¹⁹

Moreover, the prosecution contends that the accused-movant failed to assert his right to speedy disposition of cases at the earliest opportunity.²⁰ It ratiocinates that the issue of inordinate delay is a mere afterthought because the accused-movant failed to raise the same when he filed his *motion for reconsideration* before the Office of the Ombudsman.²¹

Lastly, the prosecution avers that there appears to be no evidence that the accused-movant was prejudiced by the purported delay.²² It points out that the accused-movant had posted bail and he is not suffering from any pre-trial incarceration.

THE RULING OF THE COURT

After an assiduous assessment of the arguments raised by the parties, the Court finds the subject *motion* unmeritorious.

To begin with, it is settled that although the Constitution guarantees the right to speedy disposition of cases, such speedy disposition is a flexible concept.²³ To properly define that concept, the facts and circumstances surrounding each case must be evaluated and taken into account.²⁴

In other words, jurisprudence instructs that courts are compelled to approach such cases on an *ad hoc* basis and weigh the conducts of both the prosecution and the accused *vis-à-vis* the [1] length of delay; [2] reason for the delay; [3] accused's

¹⁹ p. 35, Record

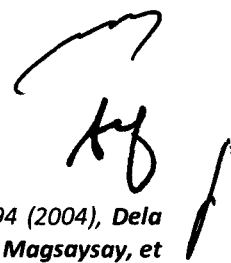
²⁰ p. 35, *Id*

²¹ p. 35, *Id*

²² p. 36, *Id*

²³ See *Ombudsman v. Jurado*, 561 SCRA 135 (2008), *Corpuz v. Sandiganbayan* 442 SCRA 294 (2004), *Dela Peña v. Sandiganbayan*, 360 SCRA 478 (2001), *Dansal v. Fernandez, Sr.*, 327 SCRA 145 (2000), *Magsaysay, et al., v. Sandiganbayan*, 316 SCRA 65 (1999) and *Alvizo v. Sandiganbayan*, 220 SCRA 55 (1993)

²⁴ *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017



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assertion or non-assertion of his/her right to speedy trial; and, [4] prejudice caused to the accused resulting from the delay.²⁵ Notably, none of the above-mentioned elements is either a necessary or sufficient condition to hold the existence of inordinate delay.²⁶ Jurisprudence teaches that these factors must be considered and related together with other relevant circumstances and Courts must still engage in a difficult and sensitive balancing process.²⁷

Thus, the cases invoked by the accused-movant to support his claim of inordinate delay cannot be blindly applied to the present cases without a close scrutiny of the attendant facts and circumstances surrounding the fact-finding investigation and preliminary investigation in the present cases. To be sure, a mere mathematical reckoning of the time involved is not sufficient to hold the existence of inordinate delay.²⁸

A review of the records of these cases show that the *complaint* filed by Danilo L. Margallo involved multiple transactions concerning the award of government contracts to AVG Bakeshop which was allegedly owned and operated by accused Cynthia Moreno.²⁹ During the fact-finding investigation of these cases, several documents which included, among others, the Commission on Audit (COA) "*Audit Report on the Municipality of Alanguinsan for the Year Ended 2010*"³⁰ and Audit Observation Memorandum (AOM) No. 2010-003 dated August 26, 2011, were evaluated in order to check the veracity of the *complaint*.³¹ Also, it must be noted that it took the BAC Secretariat of the Municipality of *Alanguinsan*, Cebu approximately six (6) months to partially comply with the *subpoena duces tecum* issued by the Public Assistance and Corruption Prevention Office (PACPO) of the Office of the Ombudsman-Visayas which required, among others, the

²⁵ *Id*

²⁶ *Id*

²⁷ *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017; *Spouses Uy v. Adriano* 505 SCRA 625 (2006)

²⁸ *Dela Peña v. Sandiganbayan*, 360 SCRA 478 (2001)

²⁹ Criminal Case No. SB-17-CRM-2397; p. 51, Record

³⁰ Criminal Case No. SB-17-CRM-2397; pp. 53-99, Record

³¹ Criminal Case No. SB-17-CRM-2397; pp.100-104, Record

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submission of the complete list of members of the BAC of the municipality from 2005 up to the date of the *subpoena*.³²

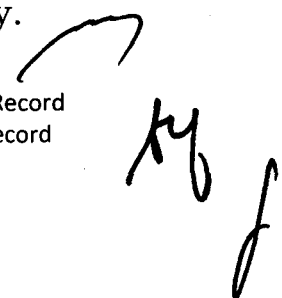
At the end of the fact-finding investigation, which spanned approximately two (2) years and six (6) months, the Field Investigation Office (FIO) found probable cause for violations of Sections 3 (e) and (h) of Republic Act (R.A.) No. 3019 and Section 9 in relation to Section 11 of R.A. No. 6713 against the respondents (now accused) Augustus Moreno and Cynthia Moreno. The FIO also found probable cause for violation of Section 3 (e) of R.A. No. 3019 against respondents Villegas, Andrino, Flordeliza, Manigos, Ababon, Nengasca and Celis. Furthermore, the FIO filed an administrative *complaint* for grave misconduct against all of the respondents.³³

After the *complaint* was filed by the FIO, the Office of the Ombudsman took continued actions to resolve the preliminary investigation which involved ten (10) respondents. These respondents were given the opportunity to be heard and answer the accusations against them. Also, the *motion for reconsideration* and *motion for partial reconsideration* filed by them were immediately resolved. While there may have been delay in the disposition of these cases before the Office of the Ombudsman, the Court does not find such delay as vexatious, arbitrary, capricious or oppressive warranting the dismissal of the present cases.

Indeed, the number of the respondents involved, the time expended in gathering the pertinent documents during the fact-finding investigation, the period during which these documents were examined and reviewed, the amount of time spent during the examination and review of the pleadings filed by the parties, the *motions for extension of time* filed by them, the time poured into the research of pertinent laws and applicable jurisprudence, the levels of review that the case had to go through and the exercise of legal judgment and discretion should also be taken into consideration in determining the existence of inordinate delay.

³² Criminal Case No. SB-17-CRM-2397; p. 106, Record

³³ Criminal Case No. SB-17-CRM-2397; p. 46, Record



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To repeat, the concept of speedy disposition is relative and flexible.³⁴ It is consistent with reasonable delays that is attributable to the ordinary processes of justice;³⁵ hence, particular regard must be taken of the facts and circumstances peculiar to each case such that a mere mathematical reckoning of the time involved should not be the sole determinant of the existence of inordinate delay.³⁶

It is noteworthy that the accused-movant and his co-accused never raised the issue of inordinate delay, or at least took any step in order to accelerate the proceedings before the Office of the Ombudsman. It is only now that the accused-movant is minded to assert his right to speedy trial.

While it is true that a respondent in a criminal case has no obligation to follow-up on his case, it is likewise jurisprudentially settled that the accused's assertion of his/her right to speedy disposition of cases is entitled to strong evidentiary weight in determining whether or not he/she is being deprived thereof; hence, failure to claim such right at the earliest opportunity will make it difficult to prove that there was denial of the respondent's right to speedy trial.³⁷

Finally, in his bid to dismiss the cases against him, the accused-movant simply relies on the case of ***Almeda v. Office of the Ombudsman***,³⁸ and argues that he was prejudiced by the delay in these cases. However, a plain reading of the said case reveals that the ruling of the High Court was based on the following peculiar facts and circumstances, to wit:

First of all, the preliminary investigation proceedings in said case took more than 11 long years to resolve, or from March 23, 2001 when the proceedings were initiated and docketed, to September

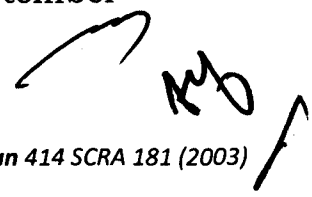
³⁴ *Id*

³⁵ See *Corpuz v. Sandiganbayan* 442 SCRA 294 (2004), *Mendoza-Ong v. Sandiganbayan* 414 SCRA 181 (2003)

³⁶ See *Dela Peña v. Saniganbayan*, 360 SCRA 478 (2001)

³⁷ See *Perez v. People*, 544 SCRA 532 (2008) citing *Barker v. Wingo*, 407 US 514 (1972)

³⁸ 798 SCRA 131 (2016)



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6, 2012, when petitioner's Motion for Reconsideration was denied.

Secondly, the delay in the proceedings was caused **solely by the repeated indorsement of the Ombudsman and the OSP,³⁹** which may be attributed to the Ombudsman's failure to realize that petitioner was not under the jurisdiction of the OSP or the Sandiganbayan. Moreover, when Dela Cruz-Likit, **the handling GIPO, went on official study leave, no GIPO was assigned to OMB-MIN-01-0183; as a result, the case was neglected.⁴⁰** Even if, as respondents argue, petitioner's Motion for Reconsideration was tardy and that she filed a motion to defer the filing of the information, these have no bearing as in fact they are irrelevant to the issue; the fact remains that the Ombudsman's resolution of the case took too long; the fact that the ground for denying the Motion for Reconsideration involved a simple procedural issue highlights the Ombudsman's failure to timely resolve the same.

Third, **petitioner had no hand in the delay. As a matter of fact, she sent a letter and filed written manifestations seeking the immediate resolution of her case.⁴¹** While they were filed only in 2010 and 2011, petitioner's letter and manifestations cannot be considered late, and no waiver or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same.⁴²

Plainly, the pronouncement of the Supreme Court in the above-mentioned case was made under a different set of facts; hence, the ruling therein cannot be applied to the present cases. Also, aside from a plain invocation of the case of **Almeda**, the accused-movant miserably failed to demonstrate any kind of prejudice and/or anxiety that he suffered during the

³⁹ Emphasis supplied

⁴⁰ Emphasis supplied

⁴¹ Emphasis supplied

⁴² p. 10, *Almeda v. Office of the Ombudsman*, 798 SCRA 131 (2016)

Resolution

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fact-finding investigation and preliminary investigation of these cases.

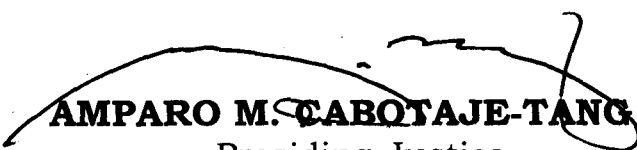
WHEREFORE, accused-movant Augustus Caesar L. Moreno's "*Motion to Quash*" dated February 13, 2018, is **DENIED** for lack of merit.

Set the arraignment of the accused-movant and pre-trial on April 27, 2018, at 1:30 in the afternoon.

Meantime, the parties are directed to appear before the Division Clerk of Court for the pre-marking of their exhibits, possible stipulations of fact and other matters related thereto on April 20, 23, 24 and 25, 2018, all at 9:30 in the morning.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice