



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-14-CRM-0107**
Plaintiff, For: Violation of Section 3(e)
of R.A. No. 3019

Present

- versus -

VIRGILIO PONCIANO A. OCAYA,
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
MUSNGI,* J.

Promulgated:

JUN 06 2018 

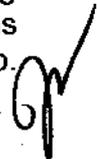
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RESOLUTION

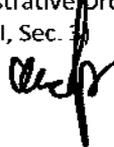
FERNANDEZ, SJ, J.

This resolves accused Virgilio Ponciano A. Ocaya's *Motion to Dismiss*.¹

The accused prays for the dismissal of the present case on the ground of violation of his rights to due process and speedy disposition of cases. He avers:

1. The following facts show the inordinate delay in the conduct of the preliminary investigation by the Office of the Ombudsman.
 - a. On October 14, 2003, Eduardo C. Santos filed with the Office of the Ombudsman the Complaint-Affidavit charging the accused with violations of the Constitutional provisions on double compensation, Republic Act No. 3019 (R.A. No. ).

* The incident was submitted for resolution upon the filing of the prosecution's *Comment/Opposition* on April 10, 2018; In view of the vacancy in the Sixth Division (Per Administrative Order No. 057-2018 dated January 29, 2018; Revised Internal Rules of the Sandiganbayan, Rule XII, Sec. 3)

¹ Dated March 27, 2018; Record, Vol. 2, pp. 172-185  

RESOLUTION

People vs. Ocaya

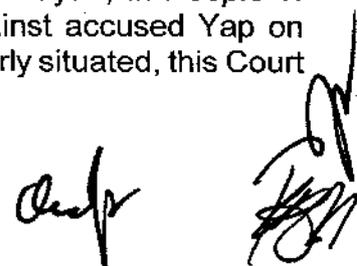
Criminal Case No. SB-14-CRM-0107

Page 2 of 12

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- 3019), R.A. No. 6713, the Civil Service Law and the Administrative Code.
- b. He was directed to file his counter-affidavit in the Order dated April 21, 2004.
 - c. He filed his Counter-Affidavit dated June 3, 2004 on June 8, 2004.
 - d. In the Resolution dated August 18, 2007, the Office of the Ombudsman found probable cause to file a criminal information against him in court. Said Resolution was approved on May 7, 2012.
 - e. An Information for violation of Sec. 3(e) of R.A. No. 3019 was filed with the Sandiganbayan. The case, docketed as Crim. Case No. SB-12-CRM-0220, was raffled to the Third Division.
 - f. Said case was dismissed in the Resolution dated July 3, 2013, in view of the Ombudsman's failure to prove that he received copies of the Resolution and the Review.
 - g. The Information in the present case, redrafted from the same Information in OMB-CC-04-0223-F, was filed on February 4, 2014.
2. The conduct of the preliminary investigation took nine (9) years. Such period constitutes inordinate delay.
 3. It took the Office of the Ombudsman six (6) months to issue the order directing him to submit his counter-affidavit, and three (3) years from the submission of said counter-affidavit to resolve the Complaint. It took another five (5) years to approve the Resolution finding probable cause to indict him in court.
 4. The Office of the Ombudsman provided no justification for such delay.
 5. During the 9-year period within which the preliminary investigation was conducted, he experienced several misfortunes such as his wife's terminal illness and death, change of domicile, and destructive floods which resulted in the loss of pertinent documentary evidence he could have used for his defense.
 6. The Special Sixth Division of the Sandiganbayan, in *People v. Antonino, et al.*,² dismissed the cases against accused Yap on the ground of inordinate delay. Being similarly situated, this Court

² Crim. Cases No. SB-17-CRM-1593 to 1596



RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 3 of 12

X-----X

should render the same judgment to avoid possible conflicting judgments.

In its *Comment/Opposition (On the Motion to Dismiss dated March 27, 2018)*³ the prosecution counters:

1. The right to speedy disposition of cases is a relative term and must necessarily be a flexible concept. It is consistent with delays and depends upon the circumstances. In determining if there is a violation of such right, the court must consider four factors, namely, (a) length of delay, (b) the reason for the delay, (c) the defendant's assertion of such right, and (d) prejudice to the defendant.
2. The accused failed to show that the delay in the conduct of the preliminary investigation was vexatious, capricious or oppressive. His claim of violation of his right to speedy disposition of cases is based solely on the length of delay.
3. The misfortunes the accused claims to have suffered were not caused by the alleged delay. Furthermore, copies of the documents the accused claims to have been lost may easily be obtained from the two (2) government agencies he worked for.
4. The accused' failure to timely assert his right to speedy disposition of cases and his participation in the proceedings operates as a waiver of such right.
 - a. His alternative prayer in his *Urgent Omnibus Motion, i.e.,* for resetting the pre-trial and availing himself of the modes of discovery, shows his willingness to continue with the prosecution of the present case.
 - b. After this Court denied his *Urgent Omnibus Motion* for failure to set it for hearing and to show proof of service, he could have immediately filed another motion rectifying the procedural infirmities in his *Urgent Omnibus Motion*. However, he did not do so, and instead, participated in the pre-trial.
 - c. He appeared during the scheduled hearings on March 5, 2018 and March 21, 2018, and asked for cancellations of the hearings set on March 6, 2018 and March 22, 2018, respectively. He never manifested his intention to file a motion to dismiss on the ground of violation of his right to speedy disposition of cases.

³ Dated April 6, 2018; Record, Vol. 2, pp. 194-202



RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 4 of 12

X-----X

- d. He filed the instant Motion on March 28, 2018 – almost a year after his *Urgent Omnibus Motion* and after participating in the proceedings before this Court.
5. It appears that the accused' belated filing of his Motion was triggered by the overwhelming evidence against him.
6. The State is also entitled to due process and has the right to prosecute violators of the law. It should not be deprived of such rights by reason of the illegal acts of its erring officials.

THE COURT'S RULING

The Court resolves to deny the Motion to Dismiss of the accused.

In *Corpuz v. Sandiganbayan*,⁴ it was explained that the right to speedy disposition of cases was designed to prevent oppression by holding criminal prosecution over the citizen for an indefinite time, and to prevent delays in the administration of justice. In determining whether or not such right was violated, and speedy disposition, being a flexible concept, the Court must consider the different factors as well as the circumstances surrounding each case. To wit:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields not weapons; hence, courts are to give meaning to that intent.

⁴ G.R. No. 162214, November 11, 2004



RESOLUTION

People vs. Ocaya
Criminal Case No. SB-14-CRM-0107

Page 5 of 12

x -----x

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.

The balancing test adopted by the Supreme Court, in which "the conduct of both the prosecution and defendant are weighed," considers four factors, namely: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) prejudice caused by the delay.⁵

In the more recent case of *Remulla v. Sandiganbayan*,⁶ the Supreme Court, in harmonizing two seemingly conflicting sets of cases, had the occasion to emphasize that it had consistently applied the balancing test. Reiterating its ruling in *Corpuz*, it explained that the differences in the outcomes in the two sets of cases resulted from the High Court's appreciation of the peculiar circumstances surrounding each case, rather than a change in the governing doctrine. *Viz.:*

Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in 'sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

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. *Corpuz v. Sandiganbayan* thoroughly explained how the factors of the balancing test should be weighted, particularly the prejudiced caused by the delay, to wit:

x x x

(underscoring supplied)

⁵ Please see *Perez v. People*, G.R. No. 164763, February 12, 2008

⁶ G.R. No. 218040, April 17, 2017

RESOLUTION

People vs. Ocaya
Criminal Case No. SB-14-CRM-0107

Page 6 of 12

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Hence, this Court will apply the balancing test to determine if there was a violation of the accused' right to speedy disposition of cases.

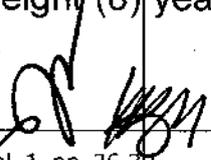
A. Length of delay

From the records, it can be gleaned that the *Complaint-Affidavit* dated October 13, 2003 of Eduardo C. Santos was filed with the Office of the Ombudsman on October 14, 2003.⁷ The Office of the Ombudsman, in the Order dated April 21, 2004,⁸ directed the accused to file his counter-affidavit. The accused filed his *Counter-Affidavit* dated June 3, 2004⁹ on June 8, 2004. The Resolution dated August 18, 2007¹⁰ was approved by the Deputy Ombudsman for Luzon on June 11, 2010. Ombudsman Conchita Carpio-Morales approved the Review dated May 7, 2012¹¹ on August 29, 2012.

An Information for violation of Sec. 3(e) of R.A. No. 3019 was filed with the Sandiganbayan. The case, docketed as Crim. Case No. SB-12-CRM-0220, was raffled to the Third Division of the Sandiganbayan. In the Resolution dated July 3, 2013,¹² the Third Division of the Sandiganbayan dismissed said case without prejudice to its refileing.

On November 6, 2013, the Ombudsman approved the Memorandum dated September 27, 2013¹³ recommending that the Information in OMB-C-C-04-0223-E be redrafted, and the Information in the present case was filed on February 4, 2014. Originally raffled to the Third Division of the Sandiganbayan, the present case was transferred to the Sixth Division pursuant to the special raffle on April 22, 2016.¹⁴

From the filing of the *Complaint-Affidavit* on October 14, 2003 to the date of the approval of the Review on August 29, 2012, a period of around eight (8) years and ten (10) months, or almost nine (9) years, passed.



⁷ Record, Vol. 1, pp. 36-39

⁸ Record, Vol. 1, pp. 270-271

⁹ Record, Vol. 1, pp. 274-277

¹⁰ Record, Vol. 1, pp. 11-27

¹¹ Record, Vol. 1, pp. 28-35

¹² Record, Vol. 1, pp. 355-356

¹³ Record, Vol. 1, pp. 6-10

¹⁴ Record, Vol. 1, p. 415



RESOLUTION

People vs. Ocaya
Criminal Case No. SB-14-CRM-0107

Page 7 of 12

x-----x

B. Reason for the delay

Another factor that the Court must consider is the reason for the delay. As explained by the Supreme Court in *Corpuz*:

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighed heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighed less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.

Here, the prosecution merely argued that there was no arbitrary, vexatious and oppressive delay in the conduct of the preliminary investigation. It provided no explanation as to why it took the Office of the Ombudsman around three (3) years to prepare the Resolution finding probable cause, almost three (3) years to approve such Resolution, and another two (2) years to approve the Review, and for that matter, why it had to conduct such review, before filing the Information with the Court.

Even considering the steady stream of cases reaching the Office of the Ombudsman,¹⁵ it appears that the period of around five (5) years it took to finally approve said Resolution is too long. The case before the Office of the Ombudsman involved only one (1) respondent, and did not involve voluminous records. This Court notes that no supporting evidence was attached to the accused' Counter-Affidavit, and thus, the Office of the Ombudsman did not have any additional evidence to evaluate in resolving the complaint before it.

The Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of the case, but also to resolve the same within the proper length of time.¹⁶ It bears stressing that although the period fixed for the termination of the preliminary investigation is

¹⁵ Please see *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000

¹⁶ *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411 and 191871, July 15, 2013

RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 8 of 12

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"directory," it cannot be disregarded or ignored completely, with absolute impunity.¹⁷

C. Prejudice caused by the delay

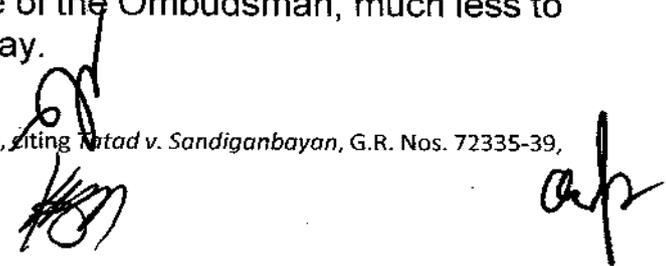
The Supreme Court, in *Corpuz*, recognized that inordinate delay may cause prejudice to the accused or defendant. As in the other factors of the balancing test, the prejudice to the accused or defendant should be weighed against the other factors, and against the State's right to prosecute criminals. *Viz.*:

x x x. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to 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 of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

It is unfortunate that the accused suffered several misfortunes during the pendency of the preliminary investigation in the Office of the Ombudsman. However, these misfortunes do not appear to have any relation to the case before the Office of the Ombudsman, much less to have been caused by inordinate delay.

¹⁷ *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000, citing *Atad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988



RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 9 of 12

X -----X

D. Assertion of, or the failure to assert the right to speedy disposition of cases

In *Perez v. People*,¹⁸ it was held that the failure to assert the right to a speedy disposition of cases negates the claim of violation of such right. To wit:

More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case. Petitioner was duly represented by counsel *de parte* in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

Petitioner has clearly slept on his right. The matter could have taken a different dimension if during all those twelve years, petitioner had shown signs of asserting his right to a speedy disposition of his case or at least made some overt acts, like filing a motion for early resolution, to show that he was not waiving that right.

Currit tempus contra decedes et sui juris contempores: Time runs against the slothful and those who neglect their rights. **Ang panahon ay hindi panig sa mga tamad at pabaya sa kanilang karapatan.** *Vigilantis sed non dormientibus jura in re subveniunt.* The law aids the vigilant and not those who slumber in their rights. **Ang batas ay tumutulong sa mga mapagbantay at hindi sa mga humihimbing sa kanilang karapatan.**

x x x

This case is analogous to *Guerrero v. Court of Appeals*.¹⁹ There, the Court ruled that there was no violation of petitioner's right to speedy trial and disposition of his case inasmuch as he failed seasonably to assert his rights:

In the present case, there is no question that petitioner raised the violation against his own right to speedy disposition only when the respondent trial judge reset the case for rehearing. It is fair to assume that he would have just continued to sleep on his right – a situation amounting to laches – had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different

¹⁸ *Supra.* Note 5

¹⁹ G.R. No. 107211, June 28, 1996

RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 10 of 12

X -----X

dimension of during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was re-raffled, the accused showed signs of asserting his right which was granted him in 1987 when the new Constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

X X X

Here, the accused appears to have been given notice of the present case as early as 2015, as shown by the *Urgent Ex-Parte Motion*²⁰ he filed on August 14, 2015. Although he mentioned the protracted preliminary investigation in said Motion, he never sought the dismissal of the present case and merely prayed for the lifting of the warrant of arrest, his release on recognizance and for an extension of time to file his motion to quash.

On July 14, 2016, the accused filed his *Urgent Motion to Reset Arraignment*.²¹ Again, no mention was made of the filing of a motion for the dismissal of the case on the ground of violation of his right to speedy disposition of cases, or of his intention to file such motion. This Court granted his Motion in the Order dated July 14, 2016²² and reset his arraignment to September 14, 2016. The accused appeared on said date. However, he asked for another resetting of his arraignment on the ground that he intended to engage the services of a counsel of his choice. This Court reset his arraignment to November 21, 2016.²³

The accused, without filing his motion to quash, was arraigned on November 21, 2016.²⁴ Subsequently, on April 18, 2017, he asserted his right to speedy disposition of cases for the first time by filing his *Urgent Omnibus Motion*.²⁵ In the Resolution dated August 1, 2017,²⁶ this Court denied said Motion for the failure of the accused to set his *Urgent Omnibus Motion* for hearing and to show proper proof of service.

Pre-trial was terminated on November 10, 2017 and the first hearing for the presentation of the prosecution evidence was set on

²⁰ Record, Vol. 1 pp. 319-324

²¹ Dated July 12, 2016; Record, Vol. 1, pp. 423-424

²² Record, Vol. 1, p. 426

²³ Order dated September 14, 2016; Record, Vol. 1, p. 434

²⁴ Record, Vol. 1, pp. 438-439

²⁵ Filed by registered mail; Record, Vol. 1, pp. 461-464

²⁶ Record, Vol. 1, pp. 475-476

RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 11 of 12

X-----X

March 5, 2018.²⁷ The accused appeared on said date but moved for the cancellation of the hearings set on March 5 and 6, 2018, manifesting that he intended to secure the services of the Blanco Esguerra Law Office. The initial presentation of the prosecution evidence was reset to March 21, 2018.²⁸ The hearings set on March 21 and 22, 2018 were also cancelled and the next hearing was reset to April 2, 2018 after the defense manifested that it needed more time to study the case.²⁹ Finally, the instant Motion was filed on March 28, 2018, or almost eight (8) months from the denial of his first motion to dismiss on the ground of violation of his right to speedy disposition of cases.

To summarize the above narration of events, the accused knew about the present case as early as August 2015. However, he did not assert his right to speedy disposition of cases until April 2017. In between, he asked that his arraignment be reset twice, and was eventually arraigned. After this Court denied, on procedural grounds, his first motion to dismiss, he could have immediately filed the same or a similar motion to dismiss *sans* procedural defects, but instead, he waited for almost eight (8) months before invoking his right to speedy disposition of cases for the second time. After the denial of his first motion to dismiss and before the filing of the instant Motion, he filed his Pre-trial Brief³⁰ and requested the cancellation and resetting of several hearing dates.

Aside from the two (2) motions to dismiss on the ground of violation of the right to speedy disposition of cases, the accused never asserted such right despite having every opportunity to do so. The accused, having slept on his right to speedy disposition of cases, cannot now invoke such ground for the dismissal of the present case, after participating in the proceedings for more than two (2) years and leading this Court to believe that he intended to proceed to trial.

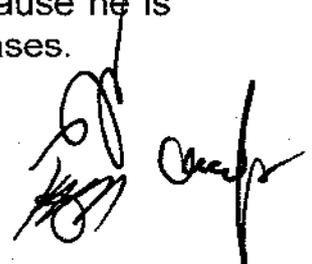
In fine, this Court finds that the preliminary investigation took an overly long time to complete without any convincing explanation from the prosecution. However, there is no violation of the accused' right to speedy disposition of cases because there appears to be no serious prejudice caused by the delay, and more importantly, because he is deemed to have waived his right to speedy disposition of cases.

²⁷ Pre-trial Order dated November 10, 2017; Record, Vol. 1, pp. 500-501

²⁸ Order dated March 5, 2018; Record, Vol. 2, p. 164

²⁹ Record, Vol. 2, p. 167

³⁰ Dated November 20, 2017; Record, Vol. 1, pp. 503-510



RESOLUTION

People vs. Ocaya

Criminal Case No. SB-14-CRM-0107

Page 12 of 12

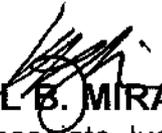
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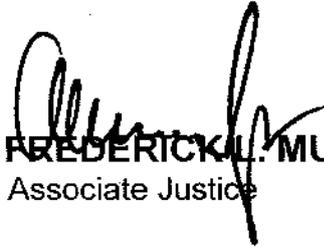
WHEREFORE, the *Motion to Dismiss* of the accused is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice