



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

- versus -

VIRGILIO PONCIANO A. OCAYA,
Accused.

Present

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

Promulgated:

JUL 10 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Virgilio Ponciano A. Ocaya's *Motion for Reconsideration*.¹

The accused prays that this Court (1) reconsider and set aside the Resolution dated June 6, 2018, and (2) dismiss the case against him for violation of his right to speedy disposition of cases. He avers:

1. In *Corpuz v. Sandiganbayan*,² it was held that for the government to sustain its right to try the accused despite a delay, it must show that (1) the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) there was no more delay than is reasonably attributable to the ordinary processes of justice.

* J. Musngi participated in the assailed Resolution; 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 IX, Sec. 2[a])

¹ Dated June 14, 2018 and filed on June 18, 2018

² G.R. No. 162214, November 11, 2004

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2. He was substantially prejudiced by the inordinate delay in the present case.
 - a. His defense was adversely affected by the delay.
 - b. The documents needed for his defense were lost in the flood caused by typhoon Ondoy in 2009.
 - c. He filed his Counter-Affidavit in June 2004 but the Office of the Ombudsman approved the Resolution finding probable cause to indict him in court only on August 29, 2012.
3. He did not waive his right to speedy disposition of cases.
4. The present case is not on all fours with *Perez v. People*.
 - a. In *Perez*, the accused asserted his right to speedy disposition of cases only after the trial was already completed.
 - b. Here, he failed to include a notice of hearing in his *Urgent Omnibus Motion*.³ In the Resolution denying the same, it was stated that "the denial of his motion to dismiss however, is without prejudice to any remedy or pleading clearly reiterating the grounds relied upon."
 - c. Before the trial, he filed his *Motion to Dismiss*,⁴ insisting on the dismissal of the present case in view of the inordinate delay in the conduct of the preliminary investigation.
 - d. In *Perez*, the Supreme Court required only one instance of the assertion of the right to speedy disposition of cases. Here, he filed two (2) motions to dismiss on the ground of inordinate delay.
5. Under Rule 119, Sec. 9 of the Rules of Court, an accused is deemed to have waived the right to have the case dismissed on the ground of inordinate delay only if he or she fails to move for the dismissal of the case prior to trial.

In its *Comment/Opposition (On the Motion for Reconsideration dated 14 June 2018)*,⁵ the prosecution counters:

³ Record, Vol. 1, pp. 461-464

⁴ Dated March 27, 2018; Record, Vol. 2, pp. 172-185

⁵ Dated and filed on June 22, 2018

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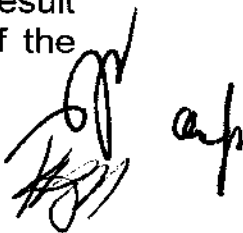
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1. The accused cherry-picked a part of *Corpuz* to support his bid for dismissal, completely disregarding the balancing test used in determining if the accused' right to speedy disposition of cases was violated.
2. The accused failed to substantiate his claim of being substantially prejudiced by the inordinate delay.
3. Assuming *arguendo* that the accused suffered serious prejudice by reason of the delay, the Court must still consider the other factors in the balancing test.
4. The documents that the accused claims to have been lost are still available. The prosecution was able to secure documents in relation to the accused' employment from the MWSS and PCGG.
5. The accused merely claimed that he would have a difficult time in the retrieval and examination of documents pertinent to his defense. He never claimed that he made any attempt and failed to secure such documents.
6. The accused, in his *Pre-Trial Brief* dated November 20, 2017 and *Counter-Affidavit* dated June 3, 2004, already admitted his simultaneous employment with the MWSS and PCGG.
7. The accused was not serious in asserting his right to speedy disposition of cases. In his *Urgent Omnibus Motion*, the accused asked, as an alternative, for the resetting of the pre-trial and considered availing of the modes of discovery.
8. The accused' actions prior to filing his *Urgent Omnibus Motion*, and in between the filing of his *Urgent Omnibus Motion* and his *Motion to Dismiss*, show that he is waiving his right to speedy disposition of cases. As held in the assailed Resolution, the accused cannot now invoke his right to speedy disposition of cases after participating in the proceedings for more than two (2) years and leading the Court to believe that he intended to proceed to trial.

THE COURT'S RULING

The *Motion for Reconsideration* of the accused is devoid of merit and should be denied.

The accused claims that he suffered serious prejudice as a result of the inordinate delay in the proceedings before the Office of the

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Ombudsman. However, he does not make any arguments other than those he already made in his *Motion to Dismiss*. This Court had already considered such arguments and found the same to be without merit in the assailed Resolution, the pertinent portion⁶ of which is hereunder quoted for convenience:

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

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.

The accused now contends that he did not waive his right to speedy disposition of cases because he invoked the same prior to the commencement of the trial.

Indeed, Rule 119, Sec. 9 provides that failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss on the ground of denial of the right to speedy trial. *Viz.:*

Sec. 9. Remedy where accused is not brought to trial within the time limit. – If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this Rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under Section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section.

(underscoring supplied)

⁶ Resolution dated June 6, 2018, p. 8



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But it must be emphasized that the aforequoted provision specifically pertains to the right of the accused to speedy trial, which, though similar to the right to speedy disposition of cases, is nonetheless separate and distinct therefrom.⁷

Assuming that said provision also applies to the right to speedy disposition of cases, it merely recognizes that the accused' failure to move for dismissal before trial constitutes a waiver. It must not be interpreted as the only instance which may be considered as a waiver of such right. The Supreme Court, in *Perez v. People*⁸ and *Guerrero v. Court of Appeals*,⁹ recognized that the failure to seasonably assert the right to speedy disposition of cases, without referring to any particular stage in the proceedings, constitutes a waiver of such right.

As this Court found in the assailed Resolution, the accused not only failed to seasonably assert his right to speedy disposition of cases despite having every opportunity to do so – for more than two (2) years. He also led this Court to believe that he intended to proceed to trial. Thus, he is deemed to have waived his right to speedy disposition of cases. The pertinent portion¹⁰ of the assailed Resolution is hereunder quoted for convenience:

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* 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.


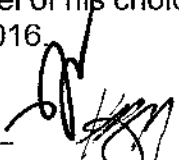
On July 14, 2016, the accused filed his *Urgent Motion to Reset Arraignment*. Again, no mention was made of the filing of a motion for the dismissal of the case on the ground of violation of his right to speedy disposition of cases, or of his intention to file such motion. This Court granted his Motion in the Order dated July 14, 2016 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.

⁷ Please see *Guerrero v. Court of Appeals*, G.R. No. 107211, June 28, 1996

⁸ G.R. No. 164763, February 12, 2008

⁹ *Supra*. Note 7

¹⁰ Resolution dated June 6, 2018, pp. 10-11



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The accused, without filing his motion to quash, was arraigned on November 21, 2016. Subsequently, on April 18, 2017, he asserted his right to speedy disposition of cases for the first time by filing his *Urgent Omnibus Motion*. In the Resolution dated August 1, 2017, 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 March 5, 2018. 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. 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. 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 Brief 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.

The accused failed to show any valid reason that would warrant the reversal of the Resolution dated June 6, 2018.



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WHEREFORE, the *Motion for Reconsideration* 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