



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-17-CRM-1593 and 1594
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019, as amended

SB-17-CRM-1595 and 1596
For: Malversation of Public Funds

Present

- versus -

FERNANDEZ, SJ, J.,

Chairperson

JACINTO,* J. and

TRESPESES, J.**

RODOLFO W. ANTONINO,
ET AL.,

Accused.

Promulgated:

JUL 05 2018 

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. Accused Rodolfo W. Antonino's *Motion to Dismiss (Information for Crim. Cases Nos. SB-17-CRM-1593 – 1596 dated 15 February 2017)*;¹ and
2. Accused Rhodora B. Mendoza's *Omnibus Motion (I.) To Quash and/or Dismiss on the Ground of Violation of Right to Speedy Disposition of Cases and (II.) To Defer Arraignment*²

* In view of the inhibition of J. Miranda (Per Administrative Order No. 307-A-2017 dated August 31, 2017).

** The incidents were submitted for resolution upon the filing of the prosecution's *Comment/Opposition* to accused Mendoza's Motion; in view of the vacancy in the Sixth Division. (Per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3)

¹ Dated March 12, 2018, Record, Vol. 3, pp. 196-205

² Dated April 6, 2018 and filed on April 11, 2018

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RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

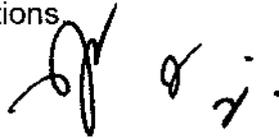
Page 2 of 10

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In his *Motion to Dismiss*, accused Antonino prays for the dismissal of the present cases on the grounds (1) of violation of his right to speedy disposition of cases, and (2) that the allegations of conspiracy cannot be proven on account of the dismissal of the cases against accused Yap. He avers:

1. His right to speedy disposition of cases was violated because it took the Office of the Ombudsman around three (3) years and two (2) months from the filing of the Complaint-Affidavit dated April 28, 2014 to file the Informations with the Court on August 22, 2017.
2. In *Tatad v. Sandiganbayan*,³ it was held that a delay of close to three (3) years in the termination of the preliminary investigation constituted inordinate delay.
3. The Special Sixth Division of the Sandiganbayan, in the Resolution dated February 19, 2018, found that accused Yap's right to speedy disposition of cases was violated and dismissed the present cases as to him (accused Yap).
4. Being similarly situated as accused Yap, the present cases should also be dismissed as to him.
5. He suffered prejudice as a result of the delay in the preliminary investigation.
 - a. Serious doubts were cast on his credibility, reputation and goodwill.
 - b. He and his family were publicly persecuted and branded as PDAF abusers.
6. The delay in the preliminary investigation cannot be justified by the volume of PDAF cases filed before the Office of the Ombudsman because special offices and departments were designated to focus on these cases.
7. The volume of cases being handled by the Office of the Ombudsman does not outweigh the constitutional right of an accused to speedy disposition of cases.
8. The Informations allege that the Department of Agriculture (DA), headed by accused Yap, received the subject PDAF allocations. Thus, the participation of accused Yap is integral in the conspiracy alleged in the Informations.

³ G.R. Nos. 72335-38, March 21, 1988



RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 3 of 10

x-----x

9. The prosecution is precluded from presenting evidence linking accused Yap to the present cases as a result of the dismissal of these cases as to him. Thus, the conspiracy alleged in the Informations will not be established.

In its *Comment/Opposition (To Accused Antonino's Motion to Dismiss)*,⁴ the prosecution counters that there was no undue delay in the conduct of the preliminary investigation. It avers:

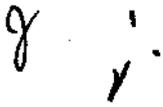
1. Accused Antonino filed his motion only on March 12, 2018, or around a month after he was arraigned on February 9, 2018.
2. It is undisputed that the preliminary investigation took around three (3) years and two (2) months to complete. However, such period does not constitute inordinate delay, considering the complexity of the facts and issues involved in the case.
3. Accused Antonino raised the issue of inordinate delay only when he filed his *Motion to Dismiss*. The accused, including accused Antonino, failed to assert their right to speedy disposition of cases. None of them made any effort to follow-up on the status of the case against them.

Accused Mendoza, in her *Omnibus Motion*, similarly prays that this Court dismiss the present cases on the ground of violation of her right to speedy disposition of cases. She likewise prays for the deferment of her arraignment pending the resolution of her Motion. She avers:

1. The Special Sixth Division, in the Resolution dated February 19, 2018, dismissed the present cases against accused Yap on the ground of violation of his right to speedy disposition of cases.
2. Being similarly situated, the present cases should also be dismissed as to her.
3. She has been separated from NABCOR since 2011. She is being unreasonably and unjustly made to experience continuous anxiety and prolonged agony as a result of being prosecuted for an incident that transpired at least twelve (12) years ago.

Reiterating its arguments in its *Comment/Opposition (To Accused Antonino's Motion to Dismiss)*, the prosecution, in its

⁴ Dated and filed on April 2, 2018



RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 4 of 10

X -----X

Comment/Opposition (to accused Mendoza's Omnibus Motion) ⁵
further argues:

1. Accused Mendoza, after being directed to file her counter-affidavit, asked for an extension of time to file the same. However, she failed to submit her counter-affidavit even after the expiration of the extended period for filing the same.
2. The Office of the Ombudsman waited for her counter-affidavit. It finally decided to resolve the complaint when it appeared that her counter-affidavit was not forthcoming. Accused Mendoza cannot claim that her right to speedy disposition of cases was violated when she contributed to the delay.
3. The time spent during the fact-finding investigation should not be considered in computing the length of delay.

THE COURT'S RULING

The right to speedy disposition of cases⁶ is 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 period of time is allowed to elapse without the party having his case tried.⁷ In determining if such right was violated, a balancing test, taking into account the conflicting interests of the State and the accused or defendant, is applied. This balancing test considers four (4) factors, namely: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of such right; and (4) prejudice to the defendant.⁸

In the Resolution dated February 19, 2018,⁹ the majority of the members of the Special Sixth Division voted to dismiss the present cases as to accused Arthur C. Yap on the ground of violation of his right to speedy disposition of cases. In said Resolution, the majority of the members of said Special Sixth Division found that the prosecution failed to justify the time it took to conduct the preliminary investigation. Such length of time, and the prosecution's justification, or lack thereof, being the same for accused Antonino and Mendoza, it is unnecessary

⁵ Dated April 13, 2018 and filed on April 16, 2018

⁶ *Constitution. Art. III, sec. 16.* All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

⁷ *People v. Sandiganbayan*, G.R. Nos. 188165 and 189063, December 11, 2013

⁸ *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004

⁹ Record, Vol. 3, pp. 92-105

RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 5 of 10

X-----X

for this Court to expound on the matter. What is left for determination are the two remaining factors of the balancing test, *i.e.*, the accused' assertion or failure to assert such right, and the prejudice caused by the delay.

A. Accused Antonino's Motion

The Court resolves to deny accused Antonino's *Motion to Dismiss*.

One of the factors that the Court must consider is the accused' assertion or failure to assert the right to speedy disposition of cases. Indeed, in *Coscolluela v. People*,¹⁰ it was held that it is not the respondents' duty to follow up on the prosecution of their case. However, this does not mean that the accused may sleep on their right to speedy disposition of cases and belatedly invoke the same at any time they deem convenient. Otherwise, there would be no need for courts to consider such factor.

In *Perez v. People*,¹¹ it was held that the failure to assert the right to speedy disposition of cases operates as a waiver of such right. *Viz.:*

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 decides 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.

¹⁰ G.R. Nos. 191411 and 191871, July 15, 2013

¹¹ G.R. No. 164763, February 12, 2008

RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 6 of 10

X-----X

Ang batas ay tumutulong sa mga mapagbantay at hindi sa mga humihimbing sa kanilang karapatan.

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This case is analogous to *Guerrero v. Court of Appeals*.¹² 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 to seasonably 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 dimension if 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.

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Here, accused Antonino appears to have known about the present cases as early as November 9, 2017, when he was prevented from leaving the country by reason of the Hold Departure Order issued by this Court.¹³ On February 9, 2018, accused Antonino entered his plea of "Not Guilty" to the charges against him.¹⁴ This Court received his Pre-trial Brief¹⁵ on February 15, 2018. It was only on March 9, 2018, when accused Antonino manifested his intention to file a motion to dismiss,¹⁶ his instant *Motion to Dismiss* having been thereafter filed on March 13, 2018.

Accused Antonino cannot claim that he is similarly situated as accused Yap. Unlike accused Antonino, who invoked his right to speedy disposition of cases only around four (4) months after he learned of the present cases, after being arraigned and after filing his Pre-trial Brief, accused Yap immediately invoked his right to speedy disposition of cases by filing his *Urgent Omnibus Motion*¹⁷ three (3)

¹² G.R. No. 107211, June 28, 1996

¹³ Record, Vol. 2, p. 59

¹⁴ Record, Vol. 3, pp. 79 to 79-B

¹⁵ Record, Vol. 3, pp. 81-90

¹⁶ Record, Vol. 3, p. 190

¹⁷ Record, Vol. 1, pp. 288-550

RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 7 of 10

x-----x

days after the filing of the Information in the present cases. It would also appear that had the majority of the members of the Special Sixth Division not resolved to dismiss the present cases against accused Yap, accused Antonino would not have asserted his right to speedy disposition of cases. By sleeping on his right to speedy disposition of cases, accused Antonino is deemed to have waived the same.

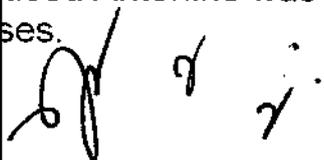
Finally, this Court must consider the prejudice caused by inordinate delay. The Supreme Court recognized that delay may cause prejudice to the accused or defendant. In *Corpuz*, it was held:

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.

This Court finds that accused Antonino may have suffered prejudice, but it appears that such prejudice was brought about by the mere fact of the existence of the cases filed against him, and not by reason of delay in the proceedings.

In fine, accused Antonino was not deprived of his right to speedy disposition of cases.



RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 8 of 10

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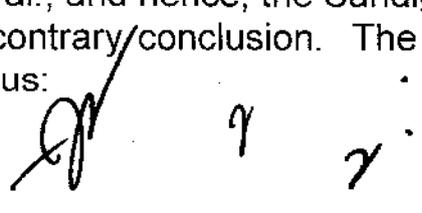
The remaining arguments of accused Antonino are matters of defense which will be passed upon during the trial on the merits. This Court must, however, emphasize that the dismissal of the cases against accused Yap does not preclude the prosecution from presenting evidence showing his participation to prove conspiracy.

In *Villa v. Sandiganbayan*,¹⁸ it was held that so long as the acquittal or death of a co-conspirator does not remove the bases for a charge of conspiracy, even a single defendant may be found guilty of the offense on the basis of conspiracy.

A brief background of that case is in order. There, the Circuit Criminal Court of Cebu City found therein accused David, Centeno, Dario and Robles (David, et al.) guilty of violation of Sec. 3(a), (e), (h) and (i) of R.A. No. 3019. Said court found that the convicted accused conspired with Jimenez, Montayre, Villa, Socalit, Leonor and Bustamante (Jimenez, et al.), and directed the Chief State Prosecutor to conduct an investigation for possible violations of R.A. No. 3019. After the conduct of an investigation, an Information charging Jimenez, et al. with violation of R.A. No. 3019 was filed with the Sandiganbayan.

During the pendency of the case before the Sandiganbayan, the Court of Appeals (CA) promulgated a decision reversing the judgment of conviction against David, et al., on the ground of insufficient evidence. The Sandiganbayan subsequently rendered its decision finding Jimenez, et al. guilty beyond reasonable doubt of violation of Sec. 3(a), (c), (h) and (i) of R.A. No. 3019. It was also found that Jimenez, et al. conspired with David, et al. The Sandiganbayan denied the respective motions for reconsideration of Jimenez, et al., wherein they invoked the CA's decision reversing the judgment of conviction against David, et al.

Jimenez, et al. then filed their respective petitions for review with the Supreme Court. One of their arguments was that the CA found that there was no conspiracy among David, et al., among themselves, or with Jimenez, et al., and hence, the Sandiganbayan was precluded from arriving at a contrary conclusion. The Supreme Court rejected this argument as thus:

Handwritten signature and initials in black ink, appearing to be 'J. M.' followed by '9' and '2'.

¹⁸ G.R. Nos. 87186, 87281, 87466 and 87524, April 24, 1992

RESOLUTION

People vs. Antonino, et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 9 of 10

X-----X

This defense is also untenable. In *United States v. Remigio*, the Court held that although "a conspiracy is in its nature a joint offense . . . it does not follow that one person only cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases for a charge of conspiracy, one defendant may be found guilty of the offense."

Notably, the judgment of acquittal of the Court of Appeals invoked by the herein petitioners was based on the insufficiency of the evidence of guilt of the accused therein and not on a finding that no offense had been committed.

(underscoring supplied)

Similarly, the acquittal of accused Yap is by reason of the dismissal of the present cases against him on the ground of violation of his right to speedy disposition of cases. Hence, the remaining accused may still be found to have conspired among themselves, or with other persons, regardless of whether or not such persons are included or have been dropped from the present cases. The prosecution may, during the trial on the merits, present evidence showing the participation of accused Yap, or other persons for that matter, to prove the allegation of conspiracy.

B. Accused Mendoza's Omnibus Motion

Being similarly situated as accused Yap, this Court is constrained to grant accused Mendoza's Motion.

Accused Mendoza appears to have asserted her right to speedy disposition of cases at the earliest opportunity. Prior to the entry of appearance of Atty. Charity L. Pascua of the Public Attorney's Office (PAO) on April 11, 2018, it was not shown that accused Mendoza was assisted by counsel. Accused Mendoza filed her *Omnibus Motion* on the same day. Thus, there was no waiver of the right to speedy disposition of cases on the part of accused Mendoza.

WHEREFORE, the Court rules as follows:

1. Accused Antonino's *Motion to Dismiss* is hereby **DENIED** for lack of merit.



RESOLUTION

People vs. Antonino et al.
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 10 of 10

x-----x

2. Accused Mendoza's *Omnibus Motion* is hereby **GRANTED**.
Crim. Cases No. SB-17-CRM-1593 to 1596 are hereby
DISMISSED insofar as accused Rhodora B. Mendoza is
concerned for violation of her right to speedy disposition of cases.

Let the hold departure order issued against accused Mendoza
by reason of these cases be lifted and set aside, and her bond released,
subject to the usual accounting and auditing procedure.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


BAYANI H. JACINTO
Associate Justice


ZALDY V. TRESPESES
Associate Justice