



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*

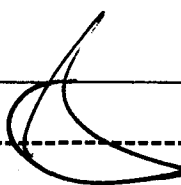
*Present:*

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

**Accused.**

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J. and  
MENDOZA-ARCEGA, J.<sup>1</sup>**

*Promulgated:*

*JULY 2, 2018*  


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**RESOLUTION**

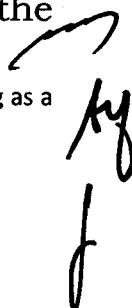
**CABOTAJE-TANG, P.J.:**

For resolution is accused Augustus Caesar L. Moreno's "Motion for Reconsideration (Re: Resolution dated 17 April 2018)" dated May 28, 2018.<sup>2</sup>

Accused-movant Moreno maintains that the present cases against him should have been dismissed on the ground of the

<sup>1</sup> Associate Justice Maria Theresa V. Mendoza-Arcega was a signatory to the assailed *Resolution*. Sitting as a special member of the Third Division as per Administrative Order No. 148-2018 dated March 12, 2018.

<sup>2</sup> pp. 396-398, Record



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existence of inordinate delay which was allegedly committed by the Office of the Ombudsman in the conduct of its fact-finding investigation and preliminary investigation.<sup>3</sup>

Relying anew on the case of ***Almeda v. Office of the Ombudsman***,<sup>4</sup> the accused-movant insists that he has no duty to follow-up on the resolution of the cases against him but it is the duty of the State to expedite the same within the bounds of reasonable timeliness and it is also the duty of the prosecutor to speedily resolve the *complaint* against him regardless of whether he did not object to the delay or that the delay was with his acquiescence.<sup>5</sup>

Moreover, accused-movant Moreno reiterates that his constitutional right to speedy disposition of cases had been infringed due to the delay of five (5) years in the proceedings before the Office of the Ombudsman.<sup>6</sup> According to the accused-movant, the delay herein is undoubtedly vexatious, capricious and unjustifiable which caused him “*serious anxiety*.”<sup>7</sup>

In its “*Opposition (to the Motion for Reconsideration)*” dated May 30, 2018,<sup>8</sup> the prosecution points out that the arguments raised by accused-movant Moreno are mere reiterations of the issues and statements he already raised in his *motion to quash*. It submits that the accused-movant failed to allege any cogent reason or argument that would warrant the reversal of the findings of the Court in its assailed *Resolution*.<sup>9</sup>

### **THE RULING OF THE COURT**

The Court finds the subject *motion* bereft of merit.

As aptly pointed out by the prosecution, the accused-movant merely reiterates the argument he raised in his *motion*

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<sup>3</sup> p. 397, *Id*

<sup>4</sup> 798 SCRA 131 (2016)

<sup>5</sup> p. 397, *Id*

<sup>6</sup> p. 397, *Id*

<sup>7</sup> p. 397, *Id*

<sup>8</sup> pp. 400-406, *Id*

<sup>9</sup> p. 405, *Id*



**Resolution**

Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

-3-

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*to quash*. To be sure, these arguments were squarely passed upon by the Court in its questioned *Resolution* promulgated on April 17, 2018. The Court rejected a simple mathematical reckoning of the time spent in the fact-finding investigation and preliminary investigation of these cases in ascertaining the existence of inordinate delay. Instead, it applied settled jurisprudence and considered the [1] length of delay; [2] reason for the delay; [3] accused's assertion or non-assertion of his/her right to speedy trial; and, [4] prejudice caused to the accused resulting from the delay in order to determine whether or not accused-movant Moreno's constitutional right to speedy disposition of cases had been violated. Thus:

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.<sup>10</sup> To properly define that concept, the facts and circumstances surrounding each case must be evaluated and taken into account.<sup>11</sup>

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 assertion or non-assertion of his/her right to speedy trial; and, [4] prejudice caused to the accused resulting from the delay.<sup>12</sup> Notably, none of the above-mentioned elements is either a necessary or sufficient condition to hold the existence of inordinate delay.<sup>13</sup> Jurisprudence teaches that these factors must be considered and related together with other relevant circumstances and Courts

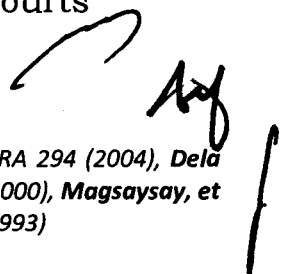
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<sup>10</sup> See *Ombudsman v. Jurado*, 561 SCRA 135 (2008), *Corpuz v. Sandiganbayan* 442 SCRA 294 (2004), *Dela Peña v. Sandiganbayan*, 360 SCRA 478 (2001), *Dansal v. Fernandez, Sr.*, 327 SCRA 145 (2000), *Magsaysay, et al., v. Sandiganbayan*, 316 SCRA 65 (1999) and *Alvizo v. Sandiganbayan*, 220 SCRA 55 (1993)

<sup>11</sup> *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017

<sup>12</sup> *Id*

<sup>13</sup> *Id*



**Resolution**

Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

-4-

x-----x

must still engage in a difficult and sensitive balancing process.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup> 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*"<sup>17</sup> and Audit Observation Memorandum (AOM) No. 2010-003 dated August 26, 2011, were evaluated in order to check the veracity of the *complaint*.<sup>18</sup> 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 submission of the complete list of members of the BAC of the municipality from 2005 up to the date of the *subpoena*.<sup>19</sup>

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

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<sup>14</sup> *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017; *Spouses Uy v. Adriano* 505 SCRA 625 (2006)

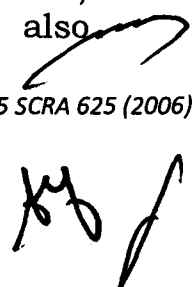
<sup>15</sup> *Dela Peña v. Sandiganbayan*, 360 SCRA 478 (2001)

<sup>16</sup> Criminal Case No. SB-17-CRM-2397; p. 51, Record

<sup>17</sup> Criminal Case No. SB-17-CRM-2397; pp. 53-99, Record

<sup>18</sup> Criminal Case No. SB-17-CRM-2397; pp.100-104, Record

<sup>19</sup> Criminal Case No. SB-17-CRM-2397; p. 106, Record



**Resolution**

Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

-5-

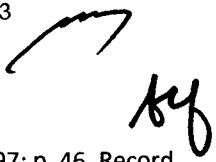
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found probable cause for violation of Section 3 (e) of R.A. No. 3019 against respondents Villegas, Andrino, Flordeliza, Manigos, Ababon, Nengasca and Celis. Furthermore, the FIO filed an administrative *complaint* for grave misconduct against all of the respondents.<sup>20</sup>

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.

To repeat, the concept of speedy disposition is relative and flexible.<sup>21</sup> It is consistent with reasonable delays that is attributable to the ordinary processes of justice;<sup>22</sup> 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.<sup>23</sup>

  
<sup>20</sup> Criminal Case No. SB-17-CRM-2397; p. 46, Record

<sup>21</sup> *Id.*; *Id.*

<sup>22</sup> See *Corpuz v. Sandiganbayan* 442 SCRA 294 (2004), *Mendoza-Ong v. Sandiganbayan* 414 SCRA 181 (2003)

<sup>23</sup> See *Dela Peña v. Saniganbayan*, 360 SCRA 478 (2001)

**Resolution**

Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

-6-

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Anent accused-movant Moreno's insistence that he has no duty to follow-up on the resolution of the cases against him, the Court likewise passed upon the said argument in its assailed *resolution*, to wit:

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.<sup>24</sup>

In his further bid to dismiss the present cases against him, accused-movant Moreno continues to rely on the case of ***Almeda v. Office of the Ombudsman***<sup>25</sup> and avers that the ruling of the Supreme Court in the said case is applicable to him and/or the present cases.

The Court is not persuaded.

In its challenged *Resolution* promulgated on April 17, 2018, the Court rejected the application of the above-mentioned case to the present cases on the ground that the factual milieu of the said case on which the ruling of the Supreme Court was based is completely different from those of the present cases, *viz:*

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<sup>24</sup> See *Perez v. People*, 544 SCRA 532 (2008) citing *Barker v. Wingo*, 407 US 514 (1972)

<sup>25</sup> 798 SCRA 131 (2016)

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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***,<sup>26</sup> 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 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***,<sup>27</sup> 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***.<sup>28</sup> 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***.<sup>29</sup> 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

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<sup>26</sup> 798 SCRA 131 (2016)

<sup>27</sup> Emphasis supplied

<sup>28</sup> Emphasis supplied

<sup>29</sup> Emphasis supplied



**Resolution**

Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

-8-

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required as a rule to follow up on her case; instead, it is the State's duty to expedite the same.<sup>30</sup>

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 fact-finding investigation and preliminary investigation of these cases.***<sup>31</sup>

To be clear, jurisprudence instructs that courts should approach "speedy disposition cases" on an *ad hoc* basis.<sup>32</sup> Heedful thereof, the Court carefully weighed the factual circumstances peculiar to these cases *vis-à-vis* the *four-fold factors* and found that the time spent in the fact-finding investigation as well as the preliminary investigation of these cases does not constitute inordinate delay.

In sum, accused-movant Moreno failed to raise any new or substantial matters that would warrant the grant of his *motion for reconsideration*.

**WHEREFORE**, accused-movant Augustus Caesar L. Moreno's "*Motion for Reconsideration (Re: Resolution dated 17 April 2018)*" dated May 28, 2018, is **DENIED** for lack of merit and/or being *pro-forma*.

**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

<sup>30</sup> p. 10, *Almeda v. Office of the Ombudsman*, 798 SCRA 131 (2016)

<sup>31</sup> Emphasis supplied

<sup>32</sup> See *Remulla v. Sandiganbayan*, G.R. No. 218040, April 17, 2017





**Resolution**

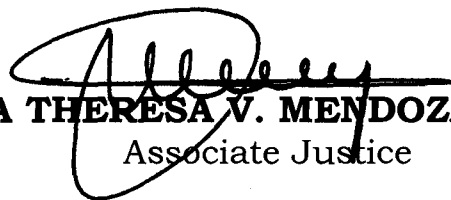
Criminal Cases Nos. SB-17-CRM-2398 and 2400  
People vs. Moreno, *et al.*

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**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

