



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:

AUG 16 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Rodolfo W. Antonino's *Motion for Reconsideration (Resolution dated 05 July 2018)*.¹

In his Motion, accused Antonino prays that this Court reconsider its Resolution dated July 5, 2018² and dismiss the present cases. He avers:

1. He timely asserted his right to speedy disposition of cases, and hence, did not waive the same.

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

** J. Trespeses participated in the assailed Resolution. (Per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule IX, Sec. 2[a])

¹ Dated July 19, 2018, Record, Vol. 4, pp. 20-A to 20-J

² Record, Vol. 3, pp. 424-433

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RESOLUTION

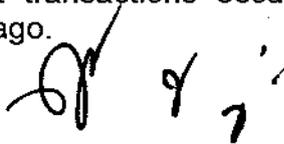
People vs. Antonino, et al.

Criminal Cases No. SB-17-CRM-1593 to 1596

Page 2 of 8

X-----X

- a. Under Rule 119, Sec. 9 of the Rules of Court, the accused' right to speedy trial may be waived only if the accused fails to assert it before the case proceeds to trial.
 - b. He asserted his right to speedy disposition of cases prior to the pre-trial and before the prosecution started presenting its evidence.
 - c. He cannot be said to have slept on his rights because upon indictment, he immediately filed a petition before the Supreme Court to cause the dismissal of the charges at the outset.
 - d. *Perez v. People* and *Guerrero v. Court of Appeals* do not apply in the present cases.
 - i. In *Perez*, it took the Sandiganbayan more than twelve (12) years to render its judgment. During the period, the accused never asserted his right to speedy trial.
 - ii. In *Guerrero*, the last pleading was filed on December 21, 1979. The trial judge ordered the retaking of the testimonies of the witnesses on November 9, 1990. The accused was deemed to have waived his right to speedy trial because he asserted his right to speedy trial only after more than eleven (11) years.
 - iii. Here, trial has not yet commenced. Moreover, in contrast to the accused in *Perez* and *Guerrero*, who asserted their right only after more than twelve (12) years and eleven (11) years, respectively, he asserted his right only after a short period of four (4) months.
2. He suffered prejudice as a result of the delay.
- a. His right to travel was curtailed because of the Hold Departure Order issued against him.
 - b. During the five (5) years the Commission on Audit (COA) and the Office of the Ombudsman conducted their respective investigations, his credibility, reputation and goodwill were cast in serious doubt.
 - c. His defense has been impaired, considering that the subject transactions occurred more than twelve (12) years ago.



RESOLUTION

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

Page 3 of 8

x-----x

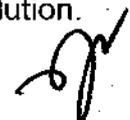
3. The dismissal of the cases against accused Yap precludes the prosecution from proving the alleged conspiracy between him (accused Antonino) and accused Yap.
 - a. The ruling in *Villa v. Sandiganbayan* does not apply because the facts therein are different from those in the present cases.
 - b. In *Villa*, the acts committed by the accused in one set of cases were different from the acts committed by the accused in the other case.
 - c. The dismissal of the cases against accused Yap and Mendoza will lead to a situation where those who actively participated in the disbursement, release, and certification of the alleged fictitious expenses will get off scot-free, while he, who was involved in a merely recommendatory role, will bear the ignominy and brunt of a public trial.
4. He is similarly situated as accused Yap and Mendoza. They were all subjected to the preliminary investigation for over three (3) years but the Court applied a different standard in resolving their respective motions to dismiss.

In its *Comment/Opposition (Re: Accused Rodolfo W. Antonino's Motion for Reconsideration of the Honorable Court's Resolution dated 05 July 2018)*,³ the prosecution counters:

1. Accused Antonino's *Motion for Reconsideration* should be denied outright.
 - a. Under the *Revised Guidelines for Continuous Trial of Criminal Cases* (Revised Guidelines), a motion for reconsideration of the resolution of a meritorious motion must be filed within a non-extendible period of five (5) calendar days from receipt of the resolution.
 - b. Accused Antonino received a copy of the Resolution dated July 5, 2018 on July 10, 2018. His *Motion for Reconsideration* was filed only on July 20, 2018, which is beyond the 5-day period.
2. Even on the merits, accused Antonino's Motion should be denied because he did not raise new matters and/or issues that would warrant the reconsideration of the assailed Resolution.

³ Dated July 24, 2018 and filed on July 25, 2018

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RESOLUTION

People vs. Antonino, et al.

Criminal Cases No. SB-17-CRM-1593 to 1596

Page 4 of 8

X-----X

3. Accused Antonino waived his right to speedy disposition of cases when he failed to timely assert the same.
 - a. Accused Antonino was arraigned and filed his pre-trial brief before he invoked his right to speedy disposition of cases around four (4) months after he learned about the cases against him.
 - b. It would be fair to assume that had the majority of the members of the Special Sixth Division not dismissed the present cases as to accused Yap, accused Antonino would have continued to sleep on his right.
4. Accused Antonino suffered no prejudice beyond that which ensued from the ordinary and inevitable delay.
5. As long as the acquittal of a co-conspirator does not remove the basis of a charge, one defendant may be found guilty of the offense.

THE COURT'S RULING

Accused Antonino's *Motion for Reconsideration* should be denied for being filed beyond the 5-day period for filing a motion for reconsideration of the resolution of a meritorious motion.⁴ He received a copy of the assailed Resolution on July 10, 2018 but filed his *Motion for Reconsideration* only on July 20, 2018.

Even on the merits, his Motion should be denied.

Citing Rule 119, Sec. 9 of the Rules of Court, accused Antonino argues that he did not waive his right to speedy disposition of cases because he invoked the same prior to the commencement of the trial. This Court is not convinced.

To be sure, under Rule 119, Sec. 9, the 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. The provision reads:

⁴ III. 2. (c) x x x The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

8 7.

RESOLUTION

People vs. Antonino, et al.

Criminal Cases No. SB-17-CRM-1593 to 1596

Page 5 of 8

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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 Sec. 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)

However, it must be noted that Rule 119, Sec. 9 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.⁵

Even if the aforementioned 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.

In *Perez v. People*⁶ and *Guerrero v. Court of Appeals*,⁷ the Supreme Court recognized that the failure to seasonably assert the right to speedy disposition of cases constitutes a waiver of such right, without reference to any particular stage of the proceedings or to the number of years within which the accused must assert such right.

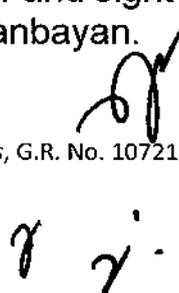
In the more recent case of *People v. Sandiganbayan*,⁸ the Supreme Court, in holding that there was no unreasonable, arbitrary, and oppressive delay which renders rights nugatory, considered the fact that the respondents did not assert their right to speedy disposition of cases when the alleged delay occurred, but rather, filed their Motion to Dismiss only one (1) year and eight (8) months after the Informations were filed with the Sandiganbayan.

⁵ Please see *Guerrero v. Court of Appeals*, G.R. No. 107211, June 28, 1996

⁶ G.R. no. 164763, February 12, 2008

⁷ *Supra.* Note 5

⁸ G.R. Nos. 232197-198, April 16, 2018

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RESOLUTION

People vs. Antonino, et al.

Criminal Cases No. SB-17-CRM-1593 to 1596

Page 6 of 8

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Next, accused Antonino insists that he suffered prejudice as a result of the delay in the proceedings, but as in his *Motion to Dismiss*, the prejudice he may have suffered appears to have been caused by the fact that cases were filed against him, and not brought about by the delay.

Finally, accused Antonino's insistence that the prosecution is precluded from proving the alleged conspiracy among the accused also fails. According to him, the ruling in *Villa v. Sandiganbayan*⁹ does not apply in the present cases because the acts committed by one set of therein accused in one case were different from those committed by another set of accused in the other case. In contrast, herein accused were charged in a single set of Informations.

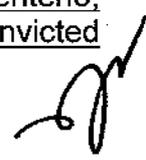
Accused Antonino's argument is premised on a misunderstanding of the facts in *Villa*. In that case, while there were two (2) sets of cases, and two (2) sets of accused, both sets of cases arose from the same transaction. The second case charging the second set of accused (Jimenez, et al.) was belatedly filed after the presiding judge, Judge Romeo Escareal, in his Decision convicting the accused (David, et al.) in the first case, directed the Chief State Prosecutor to assign a State Prosecutor to conduct an investigation because Judge Escareal found that Jimenez, et al. conspired with David, et al., but were not included in the charge.

From the Information filed with the Sandiganbayan, docketed as Criminal Case No. 5915, against Jimenez, et al., it is clear that had David, et al. not been charged in and convicted by the lower court, they would have been included in the case before the Sandiganbayan. The Information reads:

That during the period from June 9 to 30, 1975, or thereabout, at Lapu-Lapu City, Philippines, and within the jurisdiction of this Honorable Sandiganbayan, the accused Arturo Somosa Jimenez, then Airport General Manager, Mactan International Airport; Rodolfo Evangelista Montayre, Assistant Airport General Manager; Camilo Gido Villa, Chief of the Logistics Section, CAA Mactan; Josefina Sanchez Socalit, Technical Inspector of the COA, Cebu City; Manuel Raneses Bustamante, Regional Auditor, Cebu City; and Hereto Cabrera Leonor, Chief Accountant, CAA, Manila, taking advantage of their public positions and while in the performance of the duties of their office, together with Fernando Dario, Estanislao Centeno, Serafin Robles and Casimiro David, who had already been convicted

⁹ G.R. Nos. 87186, 87281, 87466 and 87524 April 24, 1992

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RESOLUTION

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

Page 7 of 8

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in the Criminal Circuit Court of Cebu in Criminal Case No. CCC-XIV-1457-Cebu, entitled "People v. Casimiro David, et al." confederating together and mutually helping one another or otherwise, acting in concert, with intent to defraud and gain, did then and there, willfully, unlawfully and feloniously cause to influence other public officials, or allow to be influenced, to violate rules and regulations duly promulgated by competent authority relative to their respective duties, and for financial and pecuniary interest, by then and there permitting, promoting and approving the negotiation, perfection and consummation of the purchase and payments of the Civil Aeronautics Administration (CAA), Mactan International Airport, of which the accused are by law called upon to officially intervene and take part, the following items or articles, to wit:

x x x

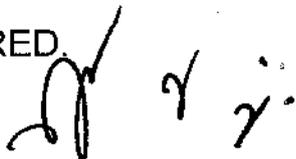
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It must be noted that the judgment of acquittal of the Court of Appeals in favor of David, et al., was based on the insufficiency of evidence, and not on the finding that no offense had been committed. Hence, such acquittal did not remove the bases for the charge of conspiracy. Although the two (2) sets of cases arose from the same transaction, the Sandiganbayan was not precluded from arriving at a conclusion contrary to that of the Court of Appeals.

Clearly, the ruling in *Villa* applies to the present cases. Thus, accused Antonino's argument has no leg to stand on.

WHEREFORE, accused Antonino's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.

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RESOLUTION

People vs. Antonino, et al.

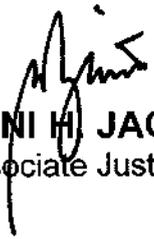
Criminal Cases No. SB-17-CRM-1593 to 1596

Page 8 of 8

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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


BAYANI H. JACINTO
Associate Justice


ZALDY V. TRESPESES
Associate Justice