



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-18-CRM-0397

For: Violation of Section 3(e)  
of Republic Act No. 3019

- versus -

ENRICO R. ECHIVERRI, ET AL.,  
Accused.

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PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-18-CRM-0398

For: Falsification of Public Document

- versus -

EDNA V. CENTENO, ET AL.,  
Accused.

Present

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

VIVERO J.

X-----X

Promulgated:

AUG 22 2018

*Sezyl C. de Juan*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion to Dismiss*<sup>1</sup> filed by accused Enrico R. Echiverri, Edna V. Centeno and Jesusa C. Garcia.

In their *Urgent Motion*, the accused pray that this Court dismiss the present cases against them for violation of their right to speedy disposition of cases. They aver:

<sup>1</sup> Dated June 28, 2018; Record, pp. 191-197

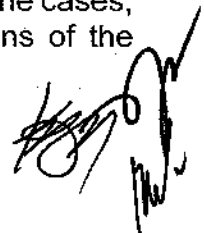
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1. Their rights to due process and to speedy disposition of cases were violated because of the inordinate delay in the conduct and termination of the preliminary investigation.
2. Felix X. Magpantay filed the Complaint against them as early as September 18, 2015. However, the Information in the present cases were filed only on May 28, 2018—around two (2) years and eight (8) months from the filing of said Complaint.
  - a. The Informations were filed only after almost two (2) years from the date of the Resolution finding probable cause to indict the accused in court.
  - b. After the Ombudsman approved said Resolution, it took several months before the Informations were filed with the Court.
3. Under the Rules of Procedure of the Office of the Ombudsman, the preliminary investigation shall be conducted in the manner prescribed in Sec. 3, Rule 112 of the Rules of Court. Paragraph (f) thereof requires the investigating officer to determine within ten (10) days after the investigation whether or not there is sufficient ground to hold the respondent for trial.
4. Applying the four-fold test as enunciated in *Corpuz v. Sandiganbayan*, it is clear that their right to speedy disposition of cases was violated and dismissal of the present cases is warranted.
  - a. The Rules of Court provide that the preliminary investigation should be completed within ten (10) days. In the present cases, the preliminary investigation was terminated after almost three (3) years.
  - b. There is no acceptable reason for the delay in resolving the Complaint, considering that it was, more or less, the 100<sup>th</sup> case covering the same set of accused for the same term as Mayor, Budget Officer, and City Accountant, respectively, and arising from the same set of facts and allegations.
  - c. The piecemeal filing of the Informations against them is vexatious, capricious and oppressive.
  - d. They suffered constant agitation, anxiety, and public humiliation as a result of the piecemeal filing of the numerous cases against them.
  - e. The way the Informations were filed resulted in the cases, which are pending before the different divisions of the



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Sandiganbayan, to be at different stages of trial, preventing, or making the possibility of consolidation difficult.

In its *Consolidated Opposition (To Urgent Motion to Dismiss dated June 28, 2018)*,<sup>2</sup> the prosecution counters:

1. Delay becomes inordinate only when it is arbitrary, vexatious and oppressive.
2. Nowhere in the accused' *Urgent Motion* was it stated that there was unjust or malicious exercise of power, or willful or arbitrary action on the part of the Office of the Ombudsman.
3. The accused' right to speedy disposition of cases does not preclude the exercise of the State's right to prosecute violators of the law.
4. Applying the balancing test in the present cases, there is no inordinate delay.
  - a. The Information in the present cases were filed only around two (2) years and eight (8) months from the filing of the Complaint.
  - b. The shortest period that the Supreme Court considered as inordinate delay was almost three (3) years.<sup>3</sup> In the other cases, the periods involved were considerably longer.
  - c. The time it took to conduct the preliminary investigation is justified by the sheer volume of transactions that the Office of the Ombudsman had to evaluate.
  - d. The amounts of the public funds involved required the investigating prosecutors to be meticulous and careful in their investigation.
  - e. The accused never asserted their right to speedy disposition of cases during the preliminary investigation. Thus, they are deemed to have waived such right.
  - f. The accused failed to show how the delay in the preliminary investigation caused prejudice to them.

<sup>2</sup> Dated June 11, 2018; Record, pp. 200-210

<sup>3</sup> *Tatad v. Sandiganbayan*, G.R. No. 72335-39, March 21, 1988.



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- g. The documents pertaining to the subject transactions are readily available. There was no prejudice caused by the delay.

In their *Reply*,<sup>4</sup> the accused further argue:

- 1. The delay and the piecemeal filing of cases against them is a clear case of harassment and oppressive exercise of power.
- 2. The State's right to prosecute supposed violators of the law is not absolute.

**THE COURT'S RULING**

The right to speedy disposition of cases is enshrined in Art. III, Sec. 16 of the Constitution, which provides:

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

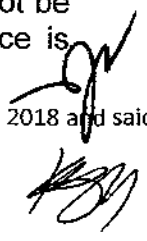
At the outset, it bears stressing that the right to speedy disposition of cases is violated not by the mere fact of delay. Such right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In *Corpuz v. Sandiganbayan*,<sup>5</sup> the Supreme Court explained:

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.

When 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

<sup>4</sup> Dated July 22, 2018; The *Motion for Leave to File and Admit Attached Reply* dated July 22, 2018 and said *Reply* are attached to the *Manifestation* dated and filed on July 25, 2018.

<sup>5</sup> G.R. No. 162214, November 11, 2004



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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.

In resolving the question of whether the proceedings are attended by capricious, vexatious and oppressive delays, the Court must look into the peculiar circumstances surrounding each case. Thus, the Supreme Court adopted the balancing test, in which the conduct of both the prosecution and the accused are weighed. In the balancing test, the following factors are considered and balanced: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right; and (4) prejudice caused by the delay.<sup>6</sup>

This Court will apply the balancing test in the present cases.

A. Length of delay

From the records, it can be gleaned that the following events happened from the filing of Felix S. Magpantay's *Complaint-Affidavit* dated September 18, 2015 with the Office of the Ombudsman, to the filing of the Information in the present cases:

September 18, 2015	Felix S. Magpantay filed the <i>Complaint-Affidavit</i> with the Office of the Ombudsman <sup>7</sup>
October 13, 2015	The Office of the Ombudsman issued the Order directing the respondents to file their respective counter-affidavits. <sup>8</sup>
November 12, 2015	Accused Echiverri filed his <i>Counter-Affidavit</i> dated November 12, 2015. <sup>9</sup>
November 27, 2015	Accused Garcia and Centeno filed their <i>Joint Counter-Affidavit</i> dated November 27, 2015. <sup>10</sup>
September 2, 2016	Date of the Resolution finding probable cause to indict the respondents in court. (around 11 months from the filing of the <i>Complaint-Affidavit</i> , and around 9 months from the filing of accused Garcia and Centeno's counter-affidavit)

<sup>6</sup> *Perez v. People*, G.R. No. 164763, February 12, 2008

<sup>7</sup> Record, p. 34

<sup>8</sup> Record, p. 13

<sup>9</sup> Record, p. 94

<sup>10</sup> Record, p. 122

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November 29, 2016	The Ombudsman approved the Resolution dated September 2, 2016. <sup>11</sup> (almost 3 months from the date of the Resolution, and around 1 year and 2 months from the filing of the <i>Complaint-Affidavit</i> )
January 30, 2017	Accused Echiverri, Centeno and Garcia filed their <i>Motion for Reconsideration</i> of the Resolution dated September 2, 2016. <sup>12</sup>
March 29, 2017	Date of the Joint Order denying the <i>Motion for Reconsideration</i> . (almost 2 months from the filing of said Motion)
July 6, 2017	The Ombudsman approved the Order dated March 29, 2017. <sup>13</sup> (around 3 months from the date of the Order)
May 28, 2018	The Informations charging the accused with Violation of Section 3(e) of R.A. No. 3019 (Crim. Case No. SB-18-CRM-0397) and Falsification of Public Document (Crim. Case No. SB-18-CRM-0398) were filed with the Sandiganbayan. (around 10 months from the approval of the Joint Order denying the accused' <i>Motion for Reconsideration</i> )

From the filing of the *Complaint-Affidavit* to the filing of the Information in the present cases, a period of two (2) years and eight (8) months passed.

B. Reason for the delay

Closely related to the length of the delay is the reason for the delay. Whether the length of the delay can be considered reasonable would depend on the State's explanation therefor. How the State's justification is weighed against the length of delay was explained in *Corpuz* as thus:

Closely relate 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 weighted 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 weighted less heavily against the State. x x x

<sup>11</sup> Record, p. 24  
<sup>12</sup> Record, p. 28  
<sup>13</sup> Record, p. 31

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Here, the prosecution explained that the Office of the Ombudsman took over two (2) years to conduct the preliminary investigation because of the number of complaints involving the transactions entered into by accused Echiverri, Centeno and Garcia. Each complaint involves a particular transaction, and requires a separate investigation. As the accused admitted, there are over a hundred of such complaints. Considering the sheer volume of complaints that the Office of the Ombudsman had to evaluate, the time it took to conduct the preliminary investigation cannot be characterized as whimsical, oppressive or capricious.

This Court is inclined to agree with the prosecution. In *Mendoza-Ong v. Sandiganbayan*,<sup>14</sup> citing *Dansal v. Fernandez*,<sup>15</sup> the Supreme Court recognized that the number of cases reaching the Office of the Ombudsman may adversely affect the rate of the disposition of such cases. To wit:

x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x

(underscoring supplied)

In *People v. Sandiganbayan*,<sup>16</sup> a case of more recent vintage, the Supreme Court recognized the large volume of cases pending before the Office of the Ombudsman. It was held that although the rules prescribe a certain period within which investigating officers must act upon complaints, such rules are not absolute. *Viz.:*

At this juncture, this Court takes judicial notice of the fact that these cases are not the only ones pending before the OMB. As can be gleaned from the assailed resolutions, these circumstances were not considered by the court *a quo* as it, evidently, merely ventured into a mathematical computation of the period from the filing of the First Complaint to the filing of the Informations before it.

<sup>14</sup> G.R. Nos. 146368-69, October 18, 2004

<sup>15</sup> G.R. No. 126814, March 2, 2000

<sup>16</sup> G.R. Nos. 232197-98, April 16, 2018

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It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of everyday life. It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.

(underscoring supplied)

Considering the numerous complaints pending before the Office of the Ombudsman—including those involving the transactions entered into by the City Government of Caloocan, and those not in connection with such transactions—the period of around one (1) year and two (2) months it took the Office of the Ombudsman to issue the Resolution dated September 2, 2016 cannot be considered unreasonable.

Furthermore, it does not appear that the piecemeal filing of the Informations was maliciously done. Neither does it appear that the period between the issuance of the Office of the Ombudsman’s Resolution and the filing of the Informations with the Sandiganbayan was attended by vexatious, capricious, and oppressive delays, as defined in *Tai Lim v. Court of Appeals*<sup>17</sup> as follows:

As aptly held by the Court of Appeals,

“The right has been defined by our Supreme Court in *Gregorio Kalaw versus Segundo Apostol, et al.*, 62 Phil. 852,” as a trial conducted according to law of criminal procedure and the rules and regulations, free from vexatious, capricious and oppressive delays. As the Appellate Court put it in “*Steward versus State*, 13 Arkansas, 720”: “what the constitution prohibits is vexatious, capricious and oppressive delays, manufactured by them ministers of justice.” Not every delay in the trial is vexatious, capricious or oppressive. In the legal firmament. The terms have distinct connotations. Vexatious suggests an act which is willful and without reasonable cause, for the purpose of annoying and embarrassing another or one lacking justification and intended to harass (page 2548, Third Edition, Webster’s International Dictionary). Oppressive connotes an unjust or cruel exercise of power or authority. Capricious action, on the other hand, means willful and unreasoning action...

(underscoring supplied)

<sup>17</sup> G.R. No. 131483, October 26, 1999



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*C. Assertion or failure to assert the right to speedy disposition of cases*

The time it took to conduct the preliminary investigation is not so long as would necessitate the filing of a motion to resolve the complaint.

*D. Prejudice caused by the delay*

In *Corpuz*, the Supreme Court explained that, indeed, inordinate delay may cause prejudice to the accused. However, such prejudice should be weighed against the State's right to prosecute criminals. To wit:

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 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 clear that what the Court should consider is serious prejudice to the accused as a result of inordinate delay. This Court is not unmindful of the fact that the accused may have suffered some form of prejudice. However, it does not appear that such prejudice was caused by delay, much less, inordinate delay, but rather, a result of the

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filing of cases against them. Moreover, as previously discussed, the time it took to conduct the preliminary investigation is not unreasonable.

In fine, this Court finds no violation of accused Echiverri, Centeno and Garcia's right to speedy disposition of cases.

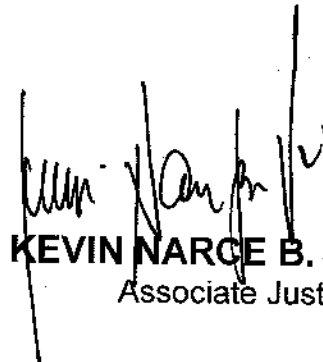
**WHEREFORE**, accused Echiverri, Centeno and Garcia's *Urgent Motion to Dismiss* is hereby DENIED for lack of merit.

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice