



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, ¹SB-17-CRM-0031, 0032, and
Petitioner, 0035 to 0037

For: Violation of Sec. 3(e) of R.A.
No. 3019, Art. 171(4), and
Art. 217, in re: Art. 171, of
the Revised Penal Code

- versus -

Present:

Quiroz, J., Chairperson

Cruz, J.

Jacinto, J.

PERPETUO B. YLAGAN, et al., Promulgated:
Respondents. _____

OCT 17 2018

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RESOLUTION

JACINTO, J.:

This resolves accused **Joselito F. Flordeliza's** *Motion to Dismiss (For violation of constitutional right to speedy disposition of cases)*¹ dated 4 September 2018.

Accused Flordeliza argues that the Office of the Ombudsman (OMB) violated his constitutional right to speedy disposition of cases as a result of the inordinate, oppressive, and unreasonable delay in the conduct of preliminary investigation and the delay in filing the *Informations* in these cases. He outlines the period it took the OMB to conclude its preliminary investigation and argues that it is unreasonable per prevailing jurisprudence.²

In addition, he states that he could not have invoked his right to speedy disposition of cases before the OMB since he was not informed of the OMB's preliminary investigation. As such, he was prevented from participating therein. According to him, he was only informed of the

¹ Records, Vol. III, pp. 239-243.

² *Inocentes v. People*, G.R. Nos. 205963-64, 7 July 2016; *People v. Sandiganbayan*, G.R. No. 199151-56, 25 July 2016; and *Angchangco, Jr. v. OMB*, G.R. No. 122728, 13 February 1997.

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pendency of these cases sometime in August this year, after which he voluntarily surrendered.

In its *Comment/Opposition* dated 14 September 2018,³ the prosecution counters that accused Flordeliza's admission that he was only recently informed of the cases against him "negates any notion of prejudice on his part which is a material factor in determining whether there was indeed violation of his constitutional right to speedy disposition of cases." As to the length of the delay in the preliminary investigation proceedings, the prosecution submits that "[d]ue consideration must be consciously given to the timeline of events and the complexity of the facts involved in the present cases as valid justification of the length of delay, if there be any, in the conduct of the preliminary investigation by the Office of the Ombudsman." It adds that these cases are not the only ones handled by the OMB, and that due consideration must be given to the "volume of cases which, more often than not, contain numerous counts of offenses committed by several accused, such as these cases, and which the said Office also has to review and pass upon with equal amount of attention and care."




By way of review, several accused in these cases have already filed motions to dismiss on the ground of inordinate delay. The Court dismissed the cases as against accused Iranzo and Dino. However, the Court denied the motion to dismiss of accused Araullo, Braganza, and Nabor as it found that they were not similarly situated with accused Iranzo and Dino, since they failed to invoke their right in a timely manner. Thus:

It may be recalled that accused-movants had earlier filed an *Urgent Motion for Judicial Determination of Probable Cause*, essentially arguing therein that there was no probable cause to hold them for trial for the crimes charged. Accused Iranzo also filed a *Motion for Judicial Determination of Probable Cause*, likewise raising therein the issue of inordinate delay in the preliminary investigation by the Office of the Ombudsman (OMB).

On 17 July 2017, the Court resolved to dismiss the cases against accused Dory A. Iranzo and Grover L. Dino, finding merit in their argument that inordinate delay attended the preliminary investigation of their cases before the OMB. However, the Court denied accused-movants' motion as it found probable cause to hold them for trial. The dispositive portion of the Court's *Resolution* reads:

WHEREFORE, this Court dismisses Criminal Case
Nos. SB-17-CRM-0031 and SB-17-CRM-0036 as against

³ *Comment/Opposition (To Accused Flordeliza's Motion to Dismiss [For Violation of Constitutional Right to Speedy Disposition of Cases] dated September 4, 2018)* dated 14 September 2018, Records, Vol. III, pp. 269-275.



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accused Dory A. Iranzo, and SB-17-CRM-0032 and SB-17-CRM-0037 as against accused Grover L. Dino, due to inordinate delay. However, it finds probable cause for the issuance of Warrants of Arrest against accused Dennis B. Araullo, Raymundo E. Braganza, and Ma. Nieves R. Nabor.

The bail for the temporary liberty of each accused is set at Php30,000.00 per case.

SO ORDERED.




Accused-movants thereafter filed the present motion, arguing that the cases against them are dismissible on the ground of inordinate delay, stressing that it took five years and two months – counted from the filing of the Complaint in November 2011 until the filing of the Informations before this Court on 16 January 2017 - for the OMB to conclude its preliminary investigation, and that such delay is unjustified.

They also claim that the prolonged pendency of the cases against them has taken a psychological, financial, and emotional toll on them, and makes it difficult for them to secure and preserve their evidence.

In its *Comment/Opposition [to the Motion to Dismiss (on the ground of inordinate delay)]* dated 13 September 2017, the prosecution argues that accused-movants have already waived their right to the speedy disposition of their cases by reason of their failure to invoke said right at the earliest opportunity. It further argues that the Court erred in previously ruling that there was inordinate delay in the OMB's preliminary investigation. It reiterates that in *Castillo v. Sandiganbayan* and in *Dansal v. Judge Fernandez, Sr.*, OMB's significant case load was recognized as a valid justification for the period of time it takes to conclude proceedings.

The Court's ruling in its 17 July 2017 *Resolution* does not automatically translate to the grant of the present motion. This is because personal rights granted by the Constitution and law may be waived. Thus, in *Dela Peña v. Sandiganbayan* the Supreme Court held as follows:

Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case **did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao** which conducted the preliminary investigation." They slept on their right – a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to speedy disposition of their cases or at least made some



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overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was “insensitive to the implications and contingencies” of the projected criminal prosecution posed against him “by not taking any step whatsoever to accelerate, the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence. (emphasis in the original; citations omitted).

In this case, accused-movants failed to invoke their right to the speedy disposition of their cases while the same were pending before the OMB. They also did not raise the same issue in their *Motion for Judicial Determination of Probable Cause*. This would be the first time that they would invoke said right – some seven months after the Informations were filed with the Court – after the warrants for their arrest were issued, and after they filed an *Urgent Ex-Parte Motion for Reduction of Bail Bonds*.

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In other words, the right to the speedy disposition of cases must be positively invoked by the accused at the earliest possible time. If, as in these cases, the accused failed to do so, the dismissal of the charges against them is unwarranted, and the State should be given the opportunity to prove its case. As aptly held in *Jacob v. Sandiganbayan*, “the State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman.”

The fact that accused-movants failed to previously include the prayer of dismissal due to inordinate delay in their earlier motion to dismiss likewise bars the relief that they now ask from this Court. As per the “Omnibus Motion Rule,” which is covered by Sec. 1, Rule 9 of the Rules of Court, in relation to Sec. 8 of Rule 15 thereof, all defenses and objections that are already available must be stated in a given motion to dismiss. Unless the question raised by a party in a subsequent motion concerns the issue of jurisdiction over the subject matter, pendency of another action, or is barred by prior judgment or by the statute of limitations, the same is deemed waived and the subsequent motion must be denied.

In its 7 May 2018 *Resolution*, the Court likewise denied accused Fadri and Galos’s prayer to dismiss the cases since they also failed to invoke their right to speedy disposition of cases in a timely manner:

Accused-movants’ failure to invoke their right to speedy disposition of cases in a timely manner negates the finding of inordinate delay.



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The Court finds that accused-movants are similarly situated with accused Dennis B. Araullo, Raymundo E. Braganza, and Ma. Nieves R. Nabor, who likewise filed a motion to dismiss on the ground of inordinate delay in the proceedings before the OMB. The said accused's motion was denied by the Court in its 11 December 2017 and 2 March 2018 *Resolutions*, wherein it held and affirmed, respectively, that the accused's failure to timely invoke their right to speedy disposition of cases negates a finding that there was vexatious and oppressive delay sufficient to merit the dismissal of these cases.

Given that the Court had already exhaustively discussed its ruling in the said *Resolutions*, there is no reason to repeat the same. However, to add to its previous disquisition, it bears noting that in the *En Banc* cases of *Barcelona v. Lim*, *Gaas v. Gomera*, *Guiani v. Sandiganbayan*, *Licaros v. Sandiganbayan*, *Alvizo v. Sandiganbayan*, *Gaas v. Mitmug*, and *Dela Peña v. Sandiganbayan*, it was held that the timeliness of an accused's invocation of their right to speedy disposition of cases is determinative of whether there is inordinate delay sufficient to merit the dismissal of a case. Common to all the said cases is the finding that the failure to invoke the right during the proceedings below, or at least in the earliest instance, negates a finding of inordinate delay. These are applicable to the cases at bar.

Apart from accused-movants' failure to previously contest the purported delay in the proceedings, it likewise bears highlighting that accused-movants filed the instant *Omnibus Motion* at an even later date than accused Araullo, Braganza, and Nabor.

In the instant motion, accused Flordeliza specifically alleges that he could not have invoked his right to speedy disposition of cases since he was prevented from participating in the proceedings below. The prosecution does not contest this fact and instead states that lack of notice to the accused negates any finding of prejudice he may have suffered from the pendency of these cases. The latter argument cannot obtain.

The Court had indeed previously ruled that the period it took the OMB to conclude its preliminary investigation can be considered as vexatious and oppressive, as it did in the cases of accused Dino and Iranzo. What prevented the Court from dismissing the cases against the other accused is the finding that they have acquiesced to the delay by their unjustified inaction in invoking their right to speedy disposition of cases. This is in keeping with the Supreme Court's pronouncements, which are repeated in the recent case of *Cagang v. Sandiganbayan*.⁴

The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights. In *Alvizo v. Sandiganbayan*, the

⁴ G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

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failure of the accused to timely invoke the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay:


Petitioner was definitely not unaware of the projected criminal prosecution posed against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.

In *Dela Peña v. Sandiganbayan*, this Court equated this acquiescence as one that could amount to laches, which results in the waiver of their rights:

[I]t is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right — a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence." (citations omitted)

On the other hand, in situations where an accused is unaware of the pendency of preliminary investigation, *Cagang* reiterates the pronouncement made in *Duterte v. Sandiganbayan*⁵ and *Coscolluela v.*

 ⁵ G.R. No. 130191, 27 April 1998. 



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*Sandiganbayan*⁶ that the accused could not have been deemed to have acquiesced to delay:

This concept of acquiescence, however, is premised on the presumption that the accused was fully aware that the preliminary investigation has not yet been terminated despite a considerable length of time. Thus, in *Duterte v. Sandiganbayan*, this Court stated that *Alvizo* would not apply if the accused were unaware that the investigation was still ongoing:



Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.


Similarly, in *Coscolluela v. Sandiganbayan*:

Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether xxxx

On the basis of the foregoing, and in line with the previous findings of the Court, there exists sufficient grounds to grant accused Flordeliza's prayer for the dismissal of the cases against for violation of his right to speedy disposition of cases.

WHEREFORE, premises considered, accused **Joselito F. Flordeliza's Motion to Dismiss (For violation of constitutional right to speedy disposition of cases)** dated 4 September 2018 is hereby **GRANTED**. Criminal Cases SB-17-CRM-0031, 0032, and 0035 to 0037 are hereby **DISMISSED** in relation to him.

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⁶ G.R. No. 191411, 15 July 2013. 



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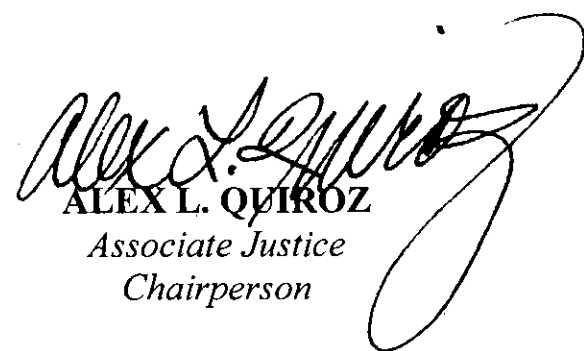
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The surety bond posted by the accused for his provisional liberty is ordered **CANCELLED** and the Hold Departure Order issued against him is hereby **LIFTED**.

SO ORDERED.


BAYANI H. JACINTO
Associate Justice

WE CONCUR:


ALEX L. QUIROZ
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice