



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0464**
Plaintiff, For: Violation of Section 3(e)
of Republic Act No. 3019

SB-18-CRM-0465 to 0468
For: Falsification of Public Document

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.
ENRICO R. ECHIVERRI, ET AL. **VIVERO, J.**
Accused.

Promulgated:

OCT 01 2018 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Urgent Motion to Dismiss*¹ filed by accused Enrico R. Echiverri, Russel C. Ramirez, Edna V. Centeno, Evelina M. Garma and Jesusa C. Garcia.

The accused pray for the dismissal of the Information in the present cases on the ground of violation of their rights to due process and to speedy disposition of cases. They aver:

1. Applying the four-fold test enunciated in *Corpuz v. Sandiganbayan*, it is clear that their right to speedy disposition of cases was violated.
2. It took the Office of the Ombudsman a total of two (2) years and eleven (11) months from the filing of the Complaint, to file the Informations with the Court.

¹ Dated July 16, 2018; Record, pp. 245-301

[Signature]

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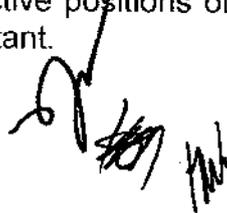
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- a. The Complaint subject of the present cases was filed with the Office of the Ombudsman as early as July 16, 2015.
 - b. The Resolution of the Office of the Ombudsman finding probable cause to indict the accused is dated August 30, 2017. It appears that the same was signed on April 12, 2018, and approved by the Ombudsman on April 13, 2018.
 - c. However, the Information in the present cases were filed only on June 29, 2018, or almost a year from the date of the Resolution.
 - d. It took the Office of the Ombudsman a total of two (2) years and eleven (11) months from the filing of said Complaint to file the Informations.
3. Under the *Rules of Procedure of the Office of the Ombudsman*, the preliminary investigation shall be conducted in the manner prescribed in Rule 112, Sec. 3 of the Rules of Court.
 4. Under Sec. 3(f)² of Rule 112 of the Rules of Court, the investigating officer must determine if there is sufficient ground to hold the respondent for trial within ten (10) days after the investigation.
 5. The period of almost three (3) years it took to conduct and terminate the preliminary investigation, and to file the Informations, is considerably longer than the prescribed period for resolving a case.
 6. In *Tatad v. Sandiganbayan*,³ it was held that a delay of almost three (3) years constitutes a violation of the provisions prescribing the time within which cases must be resolved.
 7. There is no acceptable reason for the inordinate delay in the termination of the preliminary investigation in the present cases.
 - a. The present cases are, more or less, the 100th set of cases covering the same set of accused for the same term they held their respective positions of City Mayor, Budget Officer and Accountant.



² Sec. 3. (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

³ G.R. No. 72335-39, March 21, 1988

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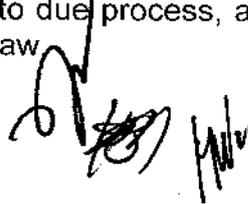
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- b. The first wave of cases were filed as early as March 2017. Cases of the same nature are still being filed almost every month.
 - c. The Complaints filed against the accused are the same, except for the names of the complainants. There is no reason why it had to take almost three (3) years to terminate the preliminary investigation.
 - d. The Office of the Ombudsman's piecemeal filing of Informations is vexatious, capricious and oppressive. It is being done for some reason that only the Office of the Ombudsman knows.
8. They asserted their right to speedy disposition of cases at the earliest opportunity.
 9. Prejudice was caused by the delay.
 - a. They suffered agitation, anxiety, public humiliation as a result of the piecemeal filing of the numerous cases.
 - b. The piecemeal filing of the cases also resulted in different cases based on the same facts and transactions being at different stages of trial, and pending before the different divisions of the Sandiganbayan, thereby preventing, or making consolidation difficult.
 - c. Aside from having to periodically suffer anxiety from having warrants issued against them, they have to post bail in amounts which, if combined, will surely bankrupt them.

In its *Opposition (To Urgent Motion to Dismiss Dated 16 July 2018)*,⁴ the prosecution counters:

1. Delay becomes inordinate only if it is arbitrary, vexatious and oppressive, considering the attendant circumstances.
2. Nowhere in the accused' *Urgent Motion* can it be seen that the filing of the complaint and the Informations were done with the intention to harass. Neither was it shown that there was any unjust or malicious exercise of power, or willful or arbitrary action on the part of the Office of the Ombudsman.
3. The State is also entitled to due process, and has the right to prosecute violators of the law.

⁴ Dated August 3, 2018; Record, pp. 308-319



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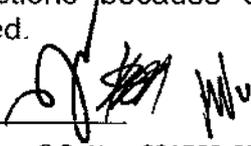
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4. The State should not be precluded from going after violators of law, provided that the prosecution is not barred by the statute of limitations.
5. Applying the balancing test, there was no violation of the accused' right to speedy disposition of cases.
6. From the filing of the Complaint to the filing of the Informations with the Sandiganbayan, a period of around two (2) years and eleven (11) months passed.
 - a. The Resolution finding probable cause to indict the accused was prepared around ten (10) months from the filing of the accused' counter-affidavits and the complainant's reply-affidavit.
 - b. Said Resolution was approved by the Office of the Ombudsman around two (2) months thereafter. The Joint Order denying the accused' respective motions for reconsideration was approved almost two (2) months after the filing of said motions for reconsideration.
 - c. The Informations were filed around three (3) months after the approval of the Joint Order.
7. The period of around two (2) years and eleven (11) months cannot be equated with delay as contemplated by jurisprudence. In recent cases, the periods involved are at least sixteen (16) years;⁵ more than eleven (11) years;⁶ and about six (6) years.⁷
8. The accused admit that the numerous cases against them involve different transactions, involving different funds or sources of funds, different projects, and different contractors.
9. Every complaint involving a particular transaction requires a separate and distinct investigation. Considering that the Office of the Ombudsman has to evaluate hundreds of such transactions, the period of two (2) years for the conduct of the investigation cannot be considered whimsical, oppressive or capricious.
10. Investigating prosecutors must meticulously examine the transactions because of the vast amount of public funds involved.


⁵ *Torres v. Sandiganbayan*, G.R. Nos. 221562-69, October 5, 2016

⁶ *Almeda v. Office of the Ombudsman (Mindanao) and People*, G.R. No. 204267, July 25, 2016

⁷ *People v. Sandiganbayan*, G.R. No. 188165 and 189063, December 11, 2013

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11. The accused invoked their right to speedy disposition of cases for the first time when they filed the instant *Urgent Motion*. They never asserted their right during the preliminary investigation.
12. Because of their failure to assert their right at the earliest opportunity, they are deemed to have waived the same.
13. There was no prejudice caused by the delay.
 - a. The prejudice, as contemplated in jurisprudence, must be specific and real. It does not encompass simple vexations or inconveniences that naturally arise as a consequence of a criminal indictment.
 - b. The numerous cases filed against the accused are consequences of entering into hundreds of irregular and illegal transactions and misuse of massive amounts of public funds.
 - c. The accused failed to support their bare allegation that they suffered anxiety, agitation, and the like.
 - d. Because the cases are transactional in nature, the documents are readily available. No prejudice could have resulted from the delay in the resolution of the present cases.

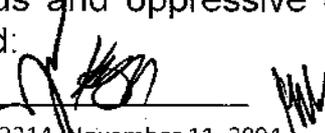
THE COURT'S RULING

The Court resolves to deny the *Urgent Motion to Dismiss* filed by the accused.

Art. III, Sec. 16 of the Constitution guarantees the right to speedy disposition of cases. The provision reads:

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

The mere fact of delay does not automatically equate to a violation of the right to speedy disposition of cases. Such right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In *Corpuz v. Sandiganbayan*,⁸ it was held:


⁸ G.R. No. 162214, November 11, 2004

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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 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.

Because speedy disposition is a flexible concept, the mere mathematical reckoning of the time involved will not suffice. The Court, in determining if there is a violation of such right, must take into account 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.⁹

In the recent case of *Cagang v. Sandiganbayan*,¹⁰ the framework for determining whether or not the right to speedy disposition of cases was violated was further refined as follows:

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have

⁹ *Perez v. People*, G.R. No. 164763, February 12, 2008

¹⁰ G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018; decided by the Supreme Court *en banc*

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occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.

Applying *Cagang*, this Court will now determine if the delay in the conduct and termination of the preliminary investigation violated the accused' right to speedy disposition of cases.

As the records bear out, the following events led to the filing of the Information in the present cases:

July 16, 2015	Jerrboy L. Mauricio filed the <i>Complaint-Affidavit</i> dated July 16, 2015 with the Office of the Ombudsman ¹¹
September 1, 2015	The Office of the Ombudsman issued the Order directing the respondents to file their respective counter-affidavits. ¹²
October 1, 2015	Accused Ramirez filed his <i>Counter-Affidavit</i> dated September 30, 2015. ¹³
October 6, 2015	Accused Echiverri and Garma filed their separate <i>Counter-Affidavits</i> both dated October 5, 2015. ¹⁴ Accused Garcia and Centeno also filed their <i>Joint Counter-Affidavit</i> dated October 2, 2015. ¹⁵
August 30, 2017	Date of the Resolution finding probable cause to indict the respondents in court. (around 2 years and 1 month from the filing of the <i>Complaint-Affidavit</i> , and around 1 year and 10 months from the filing of accused Echiverri, Garma, Garcia and Centeno's respective counter-affidavits)

¹¹ Record, p. 56

¹² Record, p. 26

¹³ Record, p. 87

¹⁴ Record, pp. 125 and 169

¹⁵ Record, p. 205

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October 24, 2017	The Ombudsman approved the Resolution dated August 30, 2017. ¹⁶ (almost 2 months from the date of the Resolution, and around 2 years and 3 months from the filing of the <i>Complaint-Affidavit</i>)
December 18, 2017	The accused their respective Motions for Reconsideration of the Resolution dated August 30, 2017 ¹⁷
February 13, 2018	Date of the <i>Joint Order</i> denying said Motions for Reconsideration (almost 2 months from the filing of said Motions)
February 26, 2018	The Ombudsman approved the Order dated February 13, 2018 ¹⁸ (13 days from the date of the <i>Joint Order</i>)
June 29, 2018	The Informations charging the accused with one (1) count of Violation of Section 3(e) of R.A. No. 3019 (Crim. Case No. SB-18-CRM-0464); and four (4) counts of Falsification of Public Document (Crim. Case No. SB-18-CRM-0465 to 0468) were filed with the Sandiganbayan. (around 4 months from the approval of the <i>Joint Order</i>)

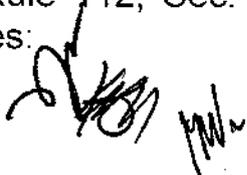
The accused argue that their right to speedy disposition of cases was violated because the Information in the present cases were filed only after almost three (3) years from the filing of the Complaint. Such period is well beyond the periods prescribed under the Rules of Procedure of the Office of the Ombudsman and Sec. 3 of Rule 112 of the Rules of Court.

Rule II, Sec. 4 of the Rules of Procedure of the Office of the Ombudsman provides:

Sec. 4. Procedure. – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

x x x

Rule 112, Sec. 3(f) of the Rules of Court, on the other hand, provides:



¹⁶ Record, p. 43

¹⁷ Record, p. 46

¹⁸ Record, p. 53

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Sec. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

x x x

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Here, the Office of the Ombudsman approved the Resolution dated August 30, 2017 on October 24, 2017, or around two (2) years from the receipt of the accused' respective counter-affidavits. From the approval of said Resolution, it took the Office of the Ombudsman a period of around eight (8) months to resolve the accused' motions for reconsideration of said Resolution, and to file the Informations with the Sandiganbayan. Everything considered, the Information in the present cases were filed around two (2) years and eleven (11) months from the filing of Jerrboy L. Mauricio's *Complaint-Affidavit*.

Clearly, the conduct of the preliminary investigation took longer than the periods prescribed by the Rules of Procedure of the Office of the Ombudsman and the Rules of Court. The prosecution now has the burden of proving that such delay is reasonable, and that no prejudice resulted from the delay.

The prosecution explained that it took the Office of the Ombudsman over two (2) years to conduct the preliminary investigation due to the sheer volume of complaints, involving hundreds of transactions, coupled with the need to meticulously examine each transaction by reason of the vast amount of public funds involved. Each complaint, covering a particular transaction, requires its own investigation. Considering that there are hundreds of such complaints, resolving the same would necessarily take time.

According to the prosecution, no prejudice was caused by the delay. The prejudice the accused claim to have suffered were simple vexations or inconveniences that naturally arise as a consequence of a criminal indictment. Moreover, their defense was not impaired because documents in connection with the subject transaction are readily available.

The Court finds that the prosecution's explanation justifies the delay.



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To be sure, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of each case, but also to resolve the same within the proper length of time.¹⁹ However, this Court must also consider the heavy workload of the Office of the Ombudsman.

In *Mendoza-Ong v. Sandiganbayan*,²⁰ 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)

This was again recognized in *People v. Sandiganbayan*,²¹ wherein the Supreme Court held that although the rules prescribe a certain period within which investigating officers must act upon complaints, such rules are not absolute. *viz.:*

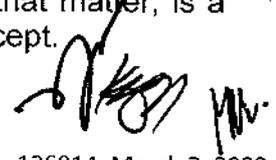
At this juncture, this Court takes judicial notice of the fact that these cases are not the only ones pending before the OMB. As can be gleaned from the assailed resolutions, these circumstances were not considered by the court *a quo* as it, evidently, merely ventured into a mathematical computation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

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.

¹⁹ *Coscolluela v. Sandiganbayan*, G.R. Nos. 191411 and 191871, July 15, 2013

²⁰ G.R. Nos. 146368-69, October 18, 2004, citing *Dansal v. Fernandez*, G.R. No. 126814, March 2, 2000

²¹ G.R. Nos. 232197-98, April 16, 2018



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(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 during accused Echiverri's term as City Mayor, and those not in connection with such transactions—the period of around two (2) years and eleven (11) months it took the Office of the Ombudsman to file the Informations with the Court cannot be considered unreasonable.

Next, the accused insinuate that the piecemeal filing of the cases against them was deliberately done for some ulterior motive. This Court disagrees.

There is nothing, aside from the accused' bare allegation, to show that piecemeal filing of the Informations was done with malice, or that the resultant delay can be characterized as vexatious, capricious, and oppressive, as defined in *Tai Lim v. Court of Appeals*²² 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)

In *Dansal v. Fernandez*,²³ it was held that the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel. The number of complaints being filed with the Office of the Ombudsman is beyond its control, but all the same, it has to act on all such complaints.

²² G.R. No. 131483, October 26, 1999

²³ G.R. No. 126814, March 2, 2000

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As the accused admit, the complaints involving the transactions entered into by the City of Caloocan during accused Echiverri's term as Mayor alone are over a hundred in number. Each complaint, filed by a different complainant, on a different date, is treated as a separate case, and necessitates a separate investigation. It follows that the Informations pertaining to a particular case will be filed separately from those pertaining to other cases.

The resolution of the cases related to the transactions of the City of Caloocan alone will take some time, considering the number of transactions involved. In addition to these cases, the Office of the Ombudsman also handles cases not related to such transactions. In fine, the Court finds that the time it took to terminate the preliminary investigations, as well as the piecemeal filing of Informations, are not unreasonable.

This Court likewise finds that the accused did not suffer prejudice as a result of the delay.

Prejudice, as contemplated in the right to speedy disposition of cases, was defined and explained in *Corpuz v. Sandiganbayan*²⁴ as follows:

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

²⁴ *Supra.* Note 8

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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.

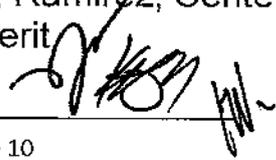
This Court is not unmindful of the fact that the accused may have suffered some form of prejudice. However, it does not appear that such prejudice is that which is contemplated in the right to speedy disposition of cases, *i.e.*, serious prejudice caused by inordinate delay. The agitation, anxiety, public humiliation and financial strain the accused claim to have suffered appears to be a result of the filing of numerous cases against them, rather than caused by the delay in the conduct and termination of the preliminary investigation. The Court notes that the accused, in their *Urgent Motion*, even specifically stated that the prejudice was caused by the piecemeal filing of cases against them.

Considering the foregoing, the Court finds that there was no violation of the accused' right to speedy disposition of cases. At any rate, they are deemed to have waived such right. In *Cagang*,²⁵ it was held that the failure to timely assert the right to speedy disposition of cases is deemed a waiver of such right. *viz.:*

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

The accused claim that there was undue delay in the conduct of the preliminary investigation because the period within which it was conducted was considerably longer than the period prescribed under the applicable Rules. However, it does not appear that herein accused asserted their right to speedy disposition of cases in the proceedings before the Office of the Ombudsman.

WHEREFORE, the *Urgent Motion to Dismiss* of accused Echiverri, Ramirez, Centeno, Garma and Garcia is hereby DENIED for lack of merit



²⁵ *Supra*. Note 10

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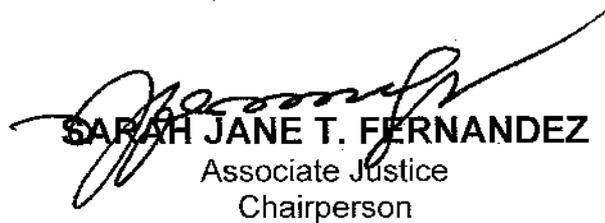
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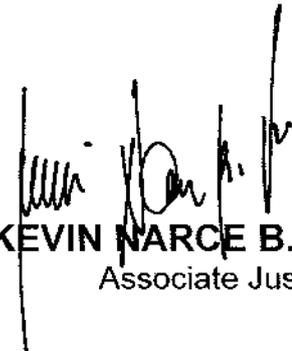
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SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice