



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0371 to 0374**
Plaintiff, For: Violation of Section 3(e)
of R.A. No. 3019

SB-18-CRM-0375 to 0378
For: Malversation of Public Funds
under Art. 217 of the RPC

- versus -

Present

MIGUEL D. ESCOBAR, ET AL.
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

DEC 13 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion to Quash Information/Dismiss the Case of Accused Arthur Aller*.¹

Accused Aller prays that the Informations be quashed, and the cases be dismissed on the grounds of (a) violation of his constitutional rights to due process, and to speedy disposition of cases; and (b) the Court's lack of jurisdiction to try the cases. He avers:

1. He was deprived of his right to due process.
 - a. In the Office of the Ombudsman's Resolution dated July 27, 2017, it was stated he was considered to have waived his right to file his counter-affidavit because he failed to file the same despite due notice.

¹ Dated and filed on August 17, 2018

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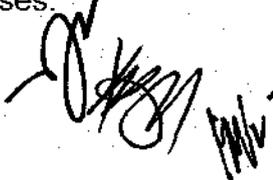
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- b. However, in truth and in fact, he never received any order or notice from the Office of the Ombudsman during the conduct of the preliminary investigation from March 5, 2013 to July 26, 2017.
 - c. From the records of the Office of the Ombudsman, it appears that notices were addressed to a certain "Arthur H. Aller" with address at "CIMP Bldg., Santiago Subd., General Santos City," the old office address of Workers Cooperative of the Philippines (WCP).
 - d. He learned of the complaint against him only on October 20, 2017, when he received the mail addressed to "Arthur H. Aller."
 - e. On October 25, 2017, he filed his Motion for Reconsideration and/or Reinvestigation of the Resolution dated July 27, 2017, wherein he asserted his right to be heard and to defend himself.
 - f. In the Joint Order dated March 9, 2018, the Office of the Ombudsman denied his motion on the ground that it was filed out of time, without discussing the merits he raised in his Motion for Reconsideration/Reinvestigation.
2. His right to speedy disposition of cases was violated.
- a. The Field Investigation Office-Task Force Abono of the Office of the Ombudsman conducted its fact-finding investigation as early as 2007.
 - b. Task Force Abono filed the Complaint dated November 7, 2012 only on March 5, 2013.
 - c. It took the Office of the Ombudsman around four (4) years and four (4) months to issue the Resolution finding probable cause to indict the accused for four (4) counts of violation of Sec. 3(e) of R.A. No. 3019 and four (4) counts of Malversation of Public Funds.
 - d. Such period is unreasonable, considering that the case involved only one (1) transaction, with payment made in two (2) tranches, four (4) disbursement vouchers, and one (1) official receipt.
 - e. The filing of his instant Motion to Quash/Dismiss was the first time he could have asserted his right to speedy disposition of cases.



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- f. Because of the delay in the conduct of the preliminary investigation, he can no longer produce the documents needed for his defense, in particular, those involved in the subject procurement of fertilizers, as well as the bank records that would prove who encashed the checks issued in connection with said procurement.
3. The Court has no jurisdiction to try the present cases. Where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction.

In its *Comment/Opposition (To Accused Arthur Aller's Motion to Quash Information/Dismiss The Case)*,² the prosecution counters:

- 1. There was no violation of accused Aller's right to due process.
 - a. He was afforded due process. In fact, he even filed his Motion for Reconsideration of the Resolution dated July 26, 2017.
 - b. Accused Aller's claim that notices and orders were addressed to "Arthur H. Aller" instead of Arthur A. Aller" is misleading.
 - i. Notices of the Order dated April 18, 2013, and the Joint Order dated December 27, 2017, were sent to "Arthur A. Aller."
 - ii. Only the notice of the Resolution dated July 26, 2017 was addressed to "Arthur H. Aller."
- 2. His right to speedy disposition of cases was not violated.
 - a. The right to speedy disposition of cases is violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having the case tried.
 - b. The fact-finding investigation should not be included for the purpose of determining the length of delay.
 - c. The time of more or less five (5) years to conduct the preliminary investigation was reasonable, considering the steady stream of cases reaching the Office of the

² Dated September 4, 2018 and filed on September 7, 2018

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Ombudsman. This was recognized by the Supreme Court in *Dansal v. Fernandez*.³

3. His motion is nothing but a dilatory procedural tactic.

THE COURT'S RULING

The Court resolves to deny accused Aller's Motion.

A. Right to due process

Accused Aller argues that the present cases should be dismissed because he was deprived of his right to due process. According to him, he was not given the opportunity to be heard when the Office of the Ombudsman denied his Motion for Reconsideration solely on the ground that it was filed beyond the reglementary period, without considering the merits of his motion.

An examination of the Office of the Ombudsman's Joint Order dated December 27, 2017, however, would show that the denial of accused Aller's Motion for Reconsideration was not solely on the ground that his Motion was filed beyond the reglementary period. It appears that the Office of the Ombudsman considered the points raised by therein respondents-movants, and found the same to be without merit. Page 4⁴ of said Joint Order reads:

Parenthetically, on the merits, respondents-movants proffer no newly discovered evidence or grave errors of facts or laws or serious irregularities committed by the Office prejudicial to their interest.

More, the points raised by respondents were already discussed in the assailed Resolution.

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At any rate, even assuming that his Motion for Reconsideration of the Resolution dated July 26, 2017 was denied solely on the ground that it was filed beyond the reglementary period, the same is not a ground for dismissing the present cases. In fact, the Supreme Court categorically ruled that the lack of preliminary investigation is not a

³ G.R. No. 126814, March 2, 2000

⁴ Record, p. 58



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ground for a motion to quash, or to dismiss;⁵ and that preliminary investigation, being merely a statutory right, may be done away with entirely without infringing the constitutional rights of an accused.⁶

B. Right to speedy disposition of cases

The right to speedy disposition of cases, which is enshrined in Art. III, Sec. 16⁷ of the Constitution, was designed to prevent oppression by holding criminal prosecution suspended over the citizen for an indefinite time.⁸ Such right is violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having the case tried.⁹

Recognizing that speedy disposition is a flexible concept, the Supreme Court adopted the balancing test, which weighs the conduct of both the prosecution and the defendant. The balancing test considers (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) prejudice caused by the delay, together with the circumstances peculiar to each case.¹⁰

In the Resolution dated November 14, 2018, this Court found no violation of the right to speedy disposition of cases, and accordingly denied the *Motion to Quash Information/Dismiss the Case* filed by accused Abdulwahab A. Bayao, Estrella C. Sabay and Mustapha G. Ismael. The circumstances being the same, and also considering that accused Aller had no participation in the preliminary investigation prior to the filing of his Motion for Reconsideration of the Office of the Ombudsman's Resolution, this Court adopts its ruling in said Resolution, the pertinent portion¹¹ of which is hereunder quoted for convenience:

The period before March 5, 2013, or the date when the complaint was filed by Task Force Abono-Field Investigation Office at the Office of the Ombudsman, constitutes the fact-finding

⁵ Please see *Yusop v. Sandiganbayan*, G.R. Nos. 138859-60, February 22, 2001

⁶ Please see *Estrada v. Office of the Ombudsman*, G.R. Nos. 212140-41, January 21, 2015

⁷ Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

⁸ *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004

⁹ *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991

¹⁰ Please see *Perez v. People*, G.R. No. 164763, February 12, 2008

¹¹ pp. 6-11

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investigation and should not be attributed to the Office of the Ombudsman Luzon.

In the very recent case of *Cagang v. Sandiganbayan*, the Supreme Court held that the fact-finding investigation is not counted in determining whether or not the right of the accused to a speedy disposition of the case was violated. When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused. A case is deemed to have commenced only from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.

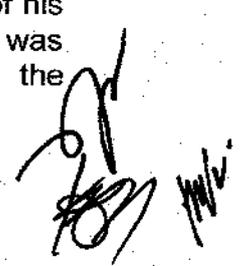
The preliminary investigation of the Office of the Ombudsman Luzon, which lasted from the filing of the complaint by Task Force Abono-Field Investigation Office on March 5, 2013 to the approval of the draft resolution finding probable cause against all of the accused on August 1, 2017, or *four (4) years, four (4) months and twenty-seven (27) days*, is not entirely attributable to the Office of the Ombudsman Visayas.

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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.

Closely related 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 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.

The accused had the burden of proving the factual basis for his motion to quash and/or dismiss on the ground of violation of his right to a speedy disposition of the case, and that the delay was vexatious, capricious, or whimsical. On the other hand, the



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Prosecution had the burden to establish that any delay was reasonably attributed to the ordinary process of justice, and that the accused did not suffer serious prejudice beyond that which ensued after an inevitable and ordinary delay.

In *People vs. Sandiganbayan and Gamos*, the Supreme Court held that there was no inordinate delay when there is no allegation, much less proof, that respondents therein were persecuted, oppressed, or made to undergo any vexatious process during the investigation period before the filing of the informations. It is important to emphasize that what the Constitution prohibits are unreasonable, arbitrary, and oppressive delays which render rights nugatory. Considering the foregoing disquisition, there is no such delay in this case amounting to a violation of the constitutional rights of the respondents therein.

Applying the foregoing principles in these cases, the Court rules that accused-movants Bayao, Sabay, and Ismael failed to state any factual basis of the alleged violation of their right to a speedy disposition of the case. There is also no indication that the cases against them were instituted for the purpose of harassing them or for some malicious motive.

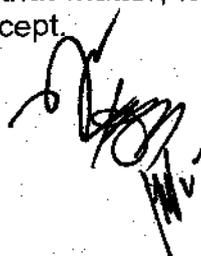
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Moreover, accused-movants waived their right to question the alleged violation of their right to a speedy disposition of the case.

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In the cases before the Court, accused-movants Bayao, Sabay, and Ismael failed to seasonably assert their right to a speedy disposition of the case. They neither raised the issue of inordinate delay before the Office of the Ombudsman nor took any overt acts questioning the alleged inordinate delay. Their inaction shows acquiescence and waiver to question any violation of their right to a speedy disposition of the case.

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. 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.



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Considering the number of times that the cases had to be reviewed, the levels of review that the cases had to undergo, waiver of the right to a speedy disposition of the case, and the lack of prejudice to accused-movants Bayao, Sabay, and Ismael, the period that lapsed could not be considered vexatious, capricious and oppressive. Under the circumstances, this cannot be considered inordinate delay. Accused-movants Bayao, Sabay, and Ismael cannot now seek the protection of the law to benefit from the adverse effects of their own conduct in these cases. The assertion of accused-movants Bayao, Sabay, and Ismael that their right to a speedy disposition of the case has been violated must necessarily fail.

(citations omitted)

This Court finds that, as with accused Bayao, Sabay, and Ismael, accused Aller is deemed to have waived his right to speedy disposition of cases.

In *Cagang v. Sandiganbayan*,¹² it was held that such right must be invoked once delay has become prejudicial to the respondent. The failure to make a timely invocation of the right to speedy disposition of cases constitutes a valid waiver of the right. viz.:

The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has already become prejudicial to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

(underscoring supplied)

In his Motion for Reconsideration of the Office of the Ombudsman's Resolution dated July 26, 2017, accused Aller appears to have invoked his right to due process, but not his right to speedy disposition of cases.¹³ He now claims that he was prejudiced by the delay in the conduct of the preliminary investigation because the documents needed for his defense are no longer available. Considering that said Motion for Reconsideration was filed less than a

¹² G.R. Nos. 206438, 206458, 210141-42, July 31, 2018

¹³ Joint Order dated December 27, 2017; Record, pp. 55-59

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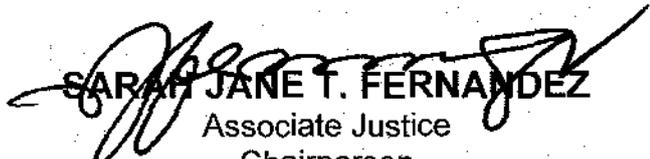
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year before his instant *Motion to Quash Information/Dismiss the Case*, the same would also have been true at the time. However, he did not deem it important to assert his right to speedy disposition of cases, and only asserted the same after an unfavorable result. Having acquiesced to the delay, accused Aller cannot now claim that his right to speedy disposition of cases was violated.

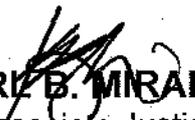
In fine, the Court finds that there was no violation of accused Aller's constitutional rights to due process, and to speedy disposition of cases. Thus, his claim that this Court was ousted of its jurisdiction to try the present cases has no leg to stand on.

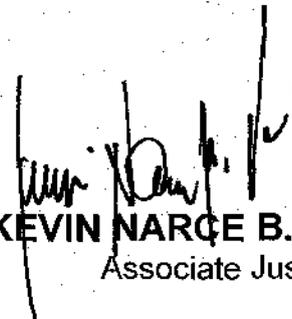
WHEREFORE, accused Aller's *Motion to Quash Information/Dismiss the Case* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice