

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

- versus -

**CRIM. CASE NO. SB-18-CRM-0244**

*For: Violation of Section 3(e) of Republic Act No. 3019, as amended*

**ELENO U. COLINARES, JR., ET AL.,**


*Accused.*

Present:

HERRERA, Jr., J., Chairperson

MUSNGI, J., Associate Justice

PAHIMNA, J., Associate Justice

*January 7, 2019*  
Promulgated 

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**RESOLUTION**

**MUSNGI, J.:**


The Court resolves the *Motions to Quash / Dismiss (on the ground of inordinate delay)*<sup>1</sup> separately filed by accused Lionson Cribе (“CRIBE”) on 17 September 2018 and accused Eleno U. Colinares, Jr. (“COLINARES”) on 18 September 2018.

Accused Cribе and Colinares seek the dismissal of the instant case on the ground of inordinate delay in the filing of the *Information* in this case, which resulted in the violation of their constitutional rights to due process and to speedy disposition of their case. They implore the Court to apply its ruling in its Resolution dated 28 August 2018 which dismissed the case against their former co-accused, Gilbert C. Olfindo (“Olfindo”), as the instant motions were based on exactly the same grounds.

At the outset, accused Cribе and Colinares aver that the allegations in the *Information* of this case are exactly the same as the allegations in the criminal case filed against their former co-accused Olfindo for violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, before the Provincial Prosecution Office of Camarines Sur in May 2002. The said case was elevated before Branch 23 of the Regional Trial Court (RTC) of Naga City and docketed as Criminal Case No. 2003-0100. However, the RTC of Naga City ordered the quashal of its *Information* on 14 December 2004 due to the lack of authority of the officer who filed the same. The records of

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<sup>1</sup> Sandiganbayan Records, Vol. 2, pp. 19-46.



  


Criminal Case No. 2003-0100 were then forwarded to the Office of the Ombudsman through an Indorsement dated 07 November 2008. Meanwhile, the Department of Justice promulgated a Resolution on 27 November 2008 granting the Petition for Review filed by Olfindo, which reversed and set aside the finding of probable cause in the same case. Thereafter, the Commission on Audit (COA) issued its Decision disallowing the questioned transactions subject of the present case. The said COA Decision attained finality on 26 August 2011. On 02 February 2015, the Field Investigation Office (FIO) of the Office of the Ombudsman filed the Complaint in the instant case against former accused Olfindo and herein accused Cribe, Colinares and Teresita B. Demabasa ("Demabasa") after conducting another investigation.

Accused Cribe, for his part, avers that he filed his Counter-Affidavit on 01 October 2015 after receiving a copy of the Complaint on 25 September 2015. On 30 August 2016, the Office of the Ombudsman issued a Resolution finding probable cause against the herein accused to which accused Cribe filed a Motion for Reconsideration on 29 May 2017. However, the same was denied in an Order dated 07 August 2017, for being filed out of time. The *Information* in this case was then filed before the Court on 06 April 2018.

On the other hand, accused Colinares states that he only came to know about the present case when he received a call sometime in April 2018 from his former and co-accused Olfindo, who was his District Engineer during his incumbency as Regional Director of the Department of Public Works and Highways (DPWH). Since his retirement in May 2005, he was not aware of any case filed against him regarding the subject transactions as he never received any notice or subpoena from the Office of the Ombudsman relative to any case.

According to accused Cribe and Colinares, there was gross and inordinate delay committed by the Office of the Ombudsman in the filing of the instant case before the Court because (a) despite the information and knowledge already available to the Office of the Ombudsman when the records of Criminal Case No. 2003-0100 were transmitted to them in 2008, it still took them seven (7) years to file the subject Complaint on 02 February 2015; (b) despite the finality of the COA Decision on 26 August 2011, from which the subject Complaint was based, it took the Field Investigation Office of the Office of the Ombudsman four (4) years to decide to file the Complaint on 02 February 2015; (c) the Office of the Ombudsman had already issued its Resolution finding probable cause against all the accused on 30 August 2016 but it was only on 06 April 2018 or after about two (2) years that the *Information* in this case was filed before the Court; (d) the Motion for Reconsideration filed by accused Cribe should

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not have worked to delay the filing of the said *Information* as it was denied out of pure technicality; and (e) the period of three (3) years, two (2) months, and four (4) days that it took the Office of the Ombudsman to complete the preliminary investigation is unjustified considering that the foregoing case is not complicated since it involved only one count of violation of Sec. 3(e) of R.A. 3019, as amended.

Accused Cribe and Colinares further argue that the long delay in the investigations seriously impaired their defense as the case involved transactions which occurred in 1999 to 2002, which is more or less 19 to 16 years ago. Considering the long years that have elapsed, accused Cribe and Colinares allege that they experienced difficulty in getting official or even unofficial copies of records of the transactions needed for their defense. The witnesses that could help prove their innocence were also either dead, sick or could no longer be found because too much time have already passed.

Finally, accused Cribe alleges that the prolonged investigations which took years did not just cause physical, mental and emotional toll on him, it also drained his resources, impaired his ability to work and conduct his business and took its toll on his health. Conversely, accused Colinares asserts the presumption of regularity and good faith in the performance of his official duties and claims that such cannot be brushed aside by a case filed in violation of his constitutional right.

In its *Consolidated Opposition (Re: "Motion to Quash/Dismiss on the ground of inordinate delay)*,<sup>2</sup> the prosecution prays for the Court to deny the instant motions for being unmeritorious. The prosecution argues that the 28 August 2018 Resolution of the Court does not apply to accused Cribe and Colinares because accused Cribe has a different timeline as compared with Olfindo, while accused Colinares never participated in the preliminary investigation. It asserts that accused Cribe and Colinares were never impleaded or made to participate in the proceedings filed before the DOJ. Thus, the circumstances surrounding the case of Olfindo are not applicable to accused Cribe and Colinares.

The prosecution further alleges that the conduct of the preliminary investigation before the Office of the Ombudsman for both accused Cribe and Colinares was not attended by capricious, vexatious and oppressive delay considering that the proceeding was conducted in two (2) years and seven (7) months from the time that accused Cribe filed his Counter-Affidavit on 25 September 2015 up to the filing of the *Information* in Court on 06 April 2018. It claims that in dealing with cases involving inordinate delay, the Supreme Court has not applied the periods provided in the rules

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<sup>2</sup> *Ibid.*, pp. 54-61.

but the balancing test where the factors considered are the (1) length of delay; (2) the reason for the delay; (3) the assertion by the accused of such right; and (4) the prejudice caused to him by the delay.

The prosecution pleads for the Court to consider that the Office of the Ombudsman perused voluminous documents involved in the transactions between Olfindo and Cribbe which were approved by accused Colinares. The pleadings, subpoenas and other processes are also usually sent through mail. The accused filed motions for extension of time to file their Counter-Affidavits, which was granted by the Ombudsman as part of due process accorded to them.

According to the prosecution, accused Cribbe and Colinares are attempting to mislead the Court when it considered the period of 2002 to 2008 when the DOJ took cognizance of the case as they were never impleaded therein. They cannot invoke such period as the same were not applicable to them. The DOJ proceedings were entirely different from the proceedings before the Office of the Ombudsman. The former did not involve the final adjudication of the COA while the findings of the Office of the Ombudsman were based on the COA final ruling which only became final on 26 August 2011.

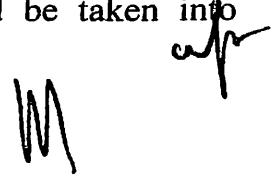
The prosecution further argues that accused Cribbe and Colinares never asserted their right for early resolution of the case before the Office of the Ombudsman. The fact-finding investigation should not be considered in the determination of whether there was violation of the right of an accused to speedy disposition of case. It maintains that the present case failed the four-factor balancing test.

### RULING

The Court **grants** the instant motions for violation of the accused's constitutional right to speedy disposition of cases.

Accused Cribbe is charged in this case as a private individual who entered into successive contracts with a public officer, the former accused Olfindo, sometime in 1999 to 2002. Accused Colinares was also charged in this case for approving the said contracts. Pursuant to the Court's 28 August 2018 Resolution, the case against Olfindo was dismissed on the ground that his constitutional right to speedy disposition of his case has been violated due to the inordinate delay committed by the Office of the Ombudsman in the conduct of preliminary investigation.

In determining whether the accused have been denied of their right to speedy disposition of cases, the following factors should be taken into

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consideration: (1) length of delay; (2) reason for the delay; (3) the accused's assertion of their right; and (4) prejudice to the accused.<sup>3</sup>

Applying the foregoing factors in determining whether the accused has been denied his right to a speedy disposition of cases, the Court noted in its 28 August 2018 Resolution that the period of **three (3) years, two (2) months, and four (4) days** that it spent in the concluding the preliminary investigation was unjustified. Pertinent portion of the said Resolution is restated hereunder, to *wit*:

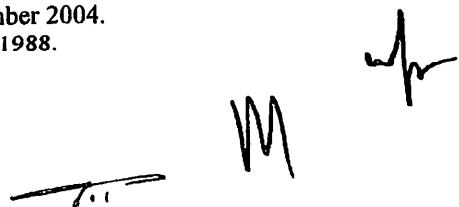
Culled from the records of these cases are the following uncontroverted dates and incidents:

<b>Date:</b>	<b>Incident:</b>
02 February 2015	The Field Investigation Office (FIO) I of the Office of the Ombudsman filed a Complaint against accused Olfindo, et al.
28 August 2015	Accused Olfindo was ordered by the Office of the Ombudsman to file his Counter-Affidavit
01 October 2015	Accused Lionson Cribе ("Cribе") filed his Counter-Affidavit
10 November 2015	Accused Olfindo filed his Counter-Affidavit with the Office of the Ombudsman
30 August 2016	The Resolution of the Office of the Ombudsman finding probable cause against accused Olfindo
10 April 2017	Date of approval of the Resolution by Ombudsman Conchita Carpio-Morales
07 August 2017	Order of the Office of the Ombudsman denying the Motion for Reconsideration filed by accused Cribе on the Resolution dated 30 August 2016
02 October 2017	Date of approval of the Order of the Office of the Ombudsman denying the Motion for Reconsideration filed by accused Cribе
06 April 2018	<i>Information</i> against accused Olfindo was filed before the Sandiganbayan

The records show that from the time the FIO filed its complaint on 02 February 2015, it took the Office of the Ombudsman a total period of **three (3) years, two (2) months, and four (4) days** to conduct and conclude its preliminary investigation, and to file the Information in Court on 06 April 2018. A period of delay of even just close to three (3) years has already been held inordinate by the Supreme Court when the reason therefor is found unjustified,<sup>4</sup> as in the case at bar.

<sup>3</sup> *Corpuz vs. Sandiganbayan*, G.R. No. 162214, 11 November 2004.

<sup>4</sup> *Tatad v. Sandiganbayan*, G.R. No. 72335-39, 21 March 1988.



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At the outset, it is worthy to note that as early as 13 November 2008, the Office of the Ombudsman already had the records of Criminal Case No. 2003-0100. A perusal of the *Information* filed in Criminal Case No. 2003-0100 before Branch 23 of the RTC of Naga City shows that the facts and circumstances upon which accused Olfindo was being charged therein are similar with the charges in the instant case.

Moreover, as submitted by the prosecution in its *Opposition*, the COA already issued a Notice of Finality of its Decision on the transactions subject of this case on 26 August 2011. Notwithstanding the receipt of the said records from the Provincial Prosecution Office on 13 November 2008 and the finality of the COA findings on 26 August 2011, the FIO complaint was only filed on 02 February 2015 or more than six (6) years from the time they received the Indorsement of the Provincial Prosecution Office, and more than three (3) years from the time of the finality of the COA Decision. Such period spent in the gathering of evidence is unreasonable considering that the allegations in the FIO Complaint were based mainly on the COA findings.

**Even if the period that the Office of the Ombudsman spent in the conduct of its fact-finding investigation were not included in the computation, the delay of more than three (3) years just for the determination of probable cause constitutes inordinate delay.**

In order to justify the delay in the conduct of the Office of the Ombudsman's preliminary investigation, the prosecution explains that it investigated other accused who were not included in the proceedings before the COA and DOJ, and it gathered voluminous documents to have a precise determination of probable cause. It also avers that accused Olfindo requested for extension of time to file his Counter-Affidavit and was only able to submit the same on 10 November 2015; accused Cribbe was able to submit his Counter-Affidavit on 01 October 2015 while accused Eleno Colinares, Jr. ("Colinares") was served a copy of the complaint on 27 November 2015.

The Court is not persuaded.

The instant case involves one (1) count of violation of Section 3(e) of R.A. No. 3019 filed against accused Olfindo, Colinares, Cribbe and Teresita Demabasa ("Demabasa"). Although the case involves, as the prosecution submits, voluminous documents, the foregoing does not involve a very complicated issue which would require more than three (3) years of preliminary investigation, especially given the fact that records were readily made available by the finality of the findings of COA since 26 August 2011.

Furthermore, the prosecution cannot blame accused Olfindo for the delay by moving for an extension of time because as the records bear out, he filed his Counter-Affidavit on 10 November 2015. From that time, it still took the prosecution more than two (2) years to determine probable cause and to file the *Information* with the Court.

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Records also show that accused Colinares and Demabasa failed to file their Counter-Affidavits. Section 4, Rule II of Administrative Order No. 07, or the Rules of Procedure of the Office of the Ombudsman outlines the procedure to be followed in conducting its preliminary investigation. Paragraph 4 of the said Rules provides that, "If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record." Thus, the delay in the completion of the preliminary investigation cannot be attributed to the accused for their failure to file counter-affidavits, nor to the fact that they cannot be located, because the rules already provide that the complaint shall be submitted for resolution, which the Office of the Ombudsman should have done with reasonable dispatch.

The length of time that the prosecution spent in resolving the Motion for Reconsideration filed by accused Cribbe cannot also justify the delay because the same was denied based on technicality for failure to file the same within five (5) days from notice. As disclosed in the records, the Motion for Reconsideration was resolved on 07 August 2017, but the *Information* was filed only on 06 April 2018. The prosecution thus failed to allege and prove factual circumstances that could have justified its delay in the conduct of the preliminary investigation. (Emphasis Supplied)

In the instant motions, the Court notes that the aforequoted finding is likewise applicable to accused Cribbe and Colinares. As the records disclose, indeed it took the Office of the Ombudsman a total period of **three (3) years, two (2) months, and four (4) days** to conduct and conclude its preliminary investigation and to file the *Information* in Court on 06 April 2018. The said preliminary investigation was conducted not only with respect to Olfindo, but also against accused Cribbe, Colinares and Demabasa, which resulted to the filing of the *Information* against them in Court. Hence, the same period also applies to them. The Court, in issuing its 28 August 2018 Resolution, has already resolved that such length of time is considered an inordinate delay in view of the surrounding circumstances of this case.

It must be emphasized that when the records of Criminal Case No. 2003-0100 consisting of 421 pages have been forwarded to the Office of the Ombudsman on 13 November 2008, the documents relative to the transactions which are subject of the instant case were already available for perusal by the said Office. The said documents were again made readily available by the COA when it issued a Notice of Finality of its Decision on 26 August 2011, which held accused Colinares and Demabasa solidarily liable with former accused Olfindo for the transactions subject of this case. A reading of the FIO Complaint dated 02 February 2015 shows that the allegations were based mainly from the findings of the COA. Thus, the relevant documents considered for the filing of the Complaint in the instant case have already been in the hands of the Office of the Ombudsman for more than six (6) years when the RTC records were transmitted to it. More

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than three (3) years have also elapsed since the finality of the COA Decision before it filed the Complaint against accused Cribe and Colinares on 02 February 2015. This, notwithstanding, the Court ruled that there was inordinate delay not because of the period that the Office of the Ombudsman spent in the fact-finding investigation but because of the period it spent in the conduct of preliminary investigation which lasted for more than three (3) years.

In order to justify the delay in the instant case, the prosecution advanced its previous assertions that the Office of the Ombudsman considered voluminous documents which were used in the proceedings conducted by the COA, the pleadings and processes were usually sent through mail, the accused filed motions for extension of time to file their Counter-Affidavits, and it waited for the Counter-Affidavits of all the accused as part of due process. However, these matters have already been considered by the Court when it issued its Resolution dated 28 August 2018.

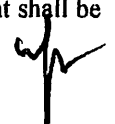
After a careful scrutiny of the records and in consideration of the issues raised by both parties, the Court maintains its ruling that the present case does not involve a very complicated issue which would require more than three (3) years of preliminary investigation, especially given the fact that records were readily made available by the finality of the findings of COA since 26 August 2011. As the records disclose, accused Cribe filed his Counter-Affidavit on 01 October 2015, yet it still took the Office of the Ombudsman more than two (2) years to conclude its findings and file the *Information* in Court. The fact that accused Colinares failed to file his Counter-Affidavit still should not have contributed to the delay since the Rules of Procedure of the Office of the Ombudsman requires the submission of the Complaint for resolution in case respondents failed to file the same.<sup>5</sup>

The Court further reiterates its ruling that the length of time that the Office of the Ombudsman spent in resolving accused Cribe's Motion for Reconsideration is likewise unreasonable considering that the same was merely denied for being filed out of time. When he filed the said Motion for Reconsideration on 29 May 2017, it still took the Office of the Ombudsman almost one (1) year before it filed the *Information* in Court on 06 April 2018. Thus, the prosecution failed to show any special circumstance in this case that would justify the delay.

The prosecution contends that accused Cribe and and Colinares failed to assert their right for the early resolution of their case during the conduct of preliminary investigation. However, the Court finds that their right has

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<sup>5</sup> Section 4, Rule II of Administrative Order No. 07 "If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record."

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been asserted at the earliest time possible. While the prosecution avers that accused Cribbe could have raised the issue of the inordinate before the Office of the Ombudsman, it would then just cover the delay in the fact-finding investigation and not the delay in the preliminary investigation. With respect to accused Colinares, it evident from the records of this case that he timely asserted his right to the speedy disposition of his case because the he could not have done it at an earlier time since he was not able to participate in the preliminary investigation of this case and only learned of the same when an *Information* has already been filed in Court on 06 April 2018. Thus, the earliest time for him to assert such right is before this Court. In the case of *Coscolluela vs. Sandiganbayan*,<sup>6</sup> the Supreme Court, citing *Barker v. Wingo*,<sup>7</sup> ruled that the respondents in a preliminary investigation are not required to follow up on the prosecution of their case. It is with more weight and reason that this doctrine holds true when the accused has no knowledge that a case has been filed against him.

Finally, the most serious interest of the accused which is protected by the right to speedy disposition of cases is the limitation on the possibility of impairing his/her defense. The case of *Corpuz vs. Sandiganbayan*,<sup>8</sup> is instructive, thus:

**“In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant’s assertion of his right; and (d) prejudice to the defendant. 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 is curtailed, and he is subjected to public obloquy.”** (emphasis supplied)

In this case, the passage of time in the conduct of the preliminary investigation has already adversely affected the defense of accused Cribbe and Colinares. It has obviously caused tactical disadvantage in the preparation of their defense. The subject transaction occurred sometime in 1999 to 2002. It was only nineteen (19) to sixteen (16) years thereafter that a

<sup>6</sup> G.R. No. 191411, July 15, 2013.

<sup>7</sup> 407 U.S. 514 (1972).

<sup>8</sup> G.R. No. 162214, 11 November 2004.



complaint was filed against them in April 2015. Hence, during the course of the preliminary investigation and up to the time the *Informations* were filed in Court, the accused no longer had access to documents and other pieces of evidence. As such, the retrieval and examination thereof has already become very difficult. Moreover, witnesses may no longer recall accurately the events and transactions which have transpired more than sixteen (16) years ago.

In sum, the prejudice and pernicious effect of the inordinate delay that attended the investigation into these cases against the accused becomes manifest.

**WHEREFORE**, in light of the foregoing, the *Motions to Quash / Dismiss (on the ground of inordinate delay)* respectively filed by accused Lionson Cribbe and Eleno U. Colinares, Jr. on 17 September 2018 and 18 September 2018 are **GRANTED**. Accordingly, CRIMINAL CASE NO. SB-18-CRM-0244 is hereby **DISMISSED** as regards said accused for violation of their constitutional right to speedy disposition of cases.


The hold departure order issued by the Court against the abovenamed accused is hereby **LIFTED** and **SET ASIDE**, and the cash bond they posted is ordered **RELEASED**, subject to the usual accounting and auditing procedures.

**SO ORDERED.**

Quezon City, Philippines.

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

**We concur:**

  
**OSCAR O. HERRERA, JR.**  
Associate Justice  
Chairperson

  
**LORIFEL L. PAHIMNA**  
Associate Justice