

MALACAÑANG
MANILA

ADMINISTRATIVE ORDER NO. 59

SUSPENDING PROVINCIAL PROSECUTOR PEDRO M. VICTORIANO, JR.
OF ROMBLON FOR A PERIOD OF SIX (6) MONTHS WITHOUT PAY

This is an administrative complaint filed by Mayor Manuel Arboleda of Looc, Mayor Ulysses Cawaling of San Jose and Mayor Leo Machon of Sta. Fe, all of Romblon, against respondent, Romblon Provincial Prosecutor Pedro M. Victoriano, Jr., for neglect of duty and harassment of public officials.

The case was initially heard by Acting Regional State Prosecutor Leon M. de Villa (Region IV) of the Department of Justice (DOJ) who dismissed the complaint on the grounds of failure to prosecute and lack of merit. Complainants filed a motion for reconsideration which, however, was overtaken by Department of Justice Order No. 254 (1989) designating State Prosecutor Bernelito R. Fernandez to conduct the formal investigation of the case. After the formal investigation, then DOJ Acting Sec. Eduardo G. Montenegro recommended to the Office of the President the suspension of respondent for a period of six (6) months without pay. Sec. Montenegro exonerated respondent from the charge of harassment of public officials but found him guilty of the charge of neglect of duty.

The charge against respondent of neglect of duty is grounded on the following sets of circumstances: (1) the dismissal of three (3) criminal cases pending before the RTC of Odiongan, Romblon due to the failure of the Office of Romblon Provincial Prosecutor to prosecute the cases; and (2) the delay in the resolution of the cases concerning the M/B JEM II sea disaster.

It appears, from the records, that the following cases were dismissed by the Regional Trial Court (RTC) of Odiongan, Romblon for the prosecutor's failure to prosecute the same: (1) People v. Noe Domingo (Crim. Case No. OD-237) for homicide; (2) People v. Dominador Montoya (Crim. Case No. OD-328) for homicide; and (3) People v. Romeo Torres, et. al. (Crim. Case No. OD-180) for frustrated homicide.

People v. Domingo was scheduled for hearing on August 1, 1989 but respondent failed to attend notwithstanding the fact that the notice of hearing was received by the Office of the Provincial Prosecutor on July 17, 1989. The circumstances of the dismissal of this case were explained in the following August 1, 1989 Order of the trial court:

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"When this case was called for hearing, the attention of this court was called by the interpreter as to the [radio] message sent by Prosecutor Pedro M. Victoriano, Jr. requesting for the postponement of this case. The defense counsel insisted for the trial of this case, claiming that the above-entitled case had been pending for two (2) years and that the accused is a detention prisoner. Going over the records, as well as the grounds manifested by the defense counsel, this Court, is of the impression that there is no reason for the government or its representative to be absent in this court since there are four (4) prosecutors for the Province of Romblon. It is very unusual to find that not one of the four Prosecutors is in the courtroom, notwithstanding that the notice of hearing of this case has been sent to the office of the Prosecutor on July 17, 1989 or a period of two weeks. This period could have afforded the Office of the Prosecutor enough time to adjust their calendar so as to assign one prosecutor for this court in order to prosecute the above-entitled case; knowing that the accused is a detention prisoner and that he is, pursuant to Art. 3 of 1987 Constitution, entitled to speedy and impartial trial.

x x x

WHEREFORE, in the interest of justice and considering that the accused is entitled to speedy trial, this court acting upon the oral manifestation made by counsel for the defense for the dismissal of this case, is constrained to have the above-entitled case dismissed. x x x" (Underscoring supplied).

The second case, People v. Montoya, which was scheduled for hearing also on August 1, 1989, was dismissed based on the same circumstances as People v. Domingo.

The third case, People v. Torres, was scheduled for hearing on August 2, 1989 and respondent was notified on July 24, 1989 of said hearing but failed to attend. The trial court dismissed the case with the following explanation in its Order dated August 2, 1989:

Considering the manifestation made by counsel for the accused for the dismissal of the above-entitled case claiming that this case has been pending since February 1986, and considering, after verifying from the records, that the notice of hearing was received by the office of the Provincial Prosecutor on July 24, 1989, thereby giving the latter ample time within which to adjust their calendar so as to avoid conflict of schedule of court trials because there are four of them in the province of Romblon who could easily handle cases assigned to each of them if properly scheduled, the reason manifested by [radio] message by the Provincial Prosecutor, for

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conflict of schedule, is not and could not be considered meritorious or justifiable to frustrate the right of the accused to speedy trial as provided for under Article 3 of the 1987 Constitution.

x x x

WHEREFORE, in the interest of justice, the above entitled case is hereby **DISMISSED**" (Underscoring supplied).

Respondent, in his Memorandum filed with the DOJ, explained his failure to attend to the hearings by stating that: (1) the notices of hearings were initially served on the Office of the Provincial Prosecutor of Romblon at the Odiongan office while respondent normally held office in Romblon, Romblon; (2) by the time the notices of hearings were transmitted to the Romblon office, respondent had left for Manila and didn't return until July 29, 1989, a Saturday; (3) respondent also had hearings elsewhere on August 1 and 2, 1989 and he couldn't send the only available prosecutor for hearings for the three cases in Odiongan, Prosecutor Rocero, due to the latter's physical disability and lack of familiarity with the cases; and (4) respondent sent a radio message to the trial court concerned requesting for postponements of hearings and assumed that the motions would be granted considering that at that stage, the prosecution had already rested in all the cases involved.

Respondent's explanations cannot excuse him from responsibility for the dismissal of the three (3) criminal cases. The notices of hearings were received by respondent's office at Odiongan on July 17 and 24, 1989 while by respondent's own account, he did not leave for Manila until the afternoon of July 24, 1989. His failure to become aware of these notices cannot be validly attributed to the fact that he normally held office in Romblon, Romblon instead of at the Odiongan office. This failure was due to the fact that respondent did not institute a mechanism which would have enabled him to immediately take cognizance of the papers sent at the Odiongan office. In short, there was an administrative failure which prevented him from performing his duties properly.

In any case, respondent did become aware of the notices of hearing on July 31, 1989. Although he could not have attended the hearings in Odiongan on August 1 and 2, 1989 because of a conflict of schedules, respondent could have sent Prosecutor Rocero, who by his own admission, was available for the hearings of the three (3) cases in Odiongan. Instead, respondent chose to remedy the situation by sending a radio message to the trial court in Odiongan asking for a postponement of the hearings and assuming that the motions for postponement would be granted since the prosecution had already rested in the three (3) cases.

The rule, however, is well-settled that lawyers should not presume that courts would grant their motions for extension or

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postponement and act on the presumption that said motions were granted (Roxas v. Court of Appeals, G.R. No. 76549, December 10, 1987, 156 SCRA 252). Respondent, therefore, by deciding not to attend the hearings on the presumption that his motions for postponement were granted, clearly neglected his duty to the State to prosecute individuals accused with the commission of crimes.

That the prosecution had already rested its case at the time respondent failed to attend the hearings is of no moment for as the DOJ noted, "[a]t every stage of the proceeding, the presence of the respondent-prosecutor is required and indispensable. Considering that the accused in the cases were detention prisoners and that these cases had already been pending for one year, further delay of the proceedings could no longer be tolerated or countenanced" (DOJ Report and Recommendations, p.8).

The charge against respondent of neglect of duty is bolstered by the delay in the resolution of two cases handled by respondent. After the sinking of a watercraft called M/B JEM II, which resulted in the drowning of about twenty-three (23) people, two criminal complaints were filed with the Romblon Provincial Prosecutor's Office against the people responsible for the sinking of the boat.

The first complaint, for multiple homicide thru reckless imprudence, was filed with the Provincial Prosecutor on January 15, 1989 but it was not until May 8, 1989 that a resolution was issued recommending the filing of the information. The information was filed in court only on June 20, 1989 or more than six (6) months after the filing of the complaint.

The second complaint, for violation of the Public Service Law, was filed with respondent on February 24, 1989. Respondent issued the resolution recommending the filing of the information on May 23, 1989 and the information was filed only on June 20, 1989.

Respondent contends that both cases were resolved within the one hundred twenty (120) day period within which prosecutors were, in 1989, required by the Department of Justice to finish a preliminary investigation. Respondent argues that the delay occurred in the filing of information. According to him, "when there was delay in the filing of the two informations for Violation of the Public Service Law and for Multiple Homicide thru reckless Imprudence before Branch 82 of the RTC of Odiongan, Romblon, the members of the support staff should assume responsibility. This should be for the physical act of filing informations in Court is already left with them" (Respondent's Memorandum, p. 27).

The responsibility for the delay in the filing of the informations cannot be passed on by respondent to his subordinates. His responsibility over cases pending with him does not end with the issuance of a resolution recommending the filing of a information. In cases where there is a finding of probable cause sufficient to cause the filing of an information against the accused, the prosecutor's responsibility over the case extends not

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only during the preliminary investigation but also during trial of the case in court. Necessarily, the expeditious filing of the information after the resolution of the preliminary investigation as the initiation of the court proceedings of the case is within the realm of the prosecutor's responsibility over the case. (See University of the Phils. v. City Fiscal of Quezon City, G.R. No. L-18567, July 31, 1962, 2 SCRA 980).

The delay in the filing of the informations in the two cases involving the M/B JEM II sinking, which is attributable to respondent, coupled by the dismissal of three (3) cases, discussed above, on the ground of failure to prosecute by respondent, constitute neglect of duty.

Complainants also charged respondent with harassment, claiming that the latter committed acts of malicious prosecution against one of the mayors in Romblon. From the records, it appears that respondent conducted a preliminary investigation against one of the complainants, Mayor Ulysses Cawaling of San Jose, Romblon, for estafa thru falsification of public document. In addition, respondent was the trial prosecutor in the murder case against Mayor Cawaling.

To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person and it was initiated deliberately with the knowledge that the charges were false and groundless (Manila Gas Corp. v. CA, G.R. No. L-44190, October 30, 1980, 100 SCRA 602). In short, malice must be proved (Rehabilitation Finance Corp. v. Koh, G.R. No. L-15512, February 28, 1962, 4 SCRA 535). No such evidence was presented to prove the charge of harassment through malicious prosecution.

WHEREFORE, in view of the foregoing and in accordance with the recommendations of the Department of Justice, Provincial Prosecutor Pedro M. Victoriano, Jr. is found guilty of neglect of duty and is suspended from office for a period of six (6) months without pay, effective upon receipt of a copy of this Administrative Order.

DONE in the City of Manila, this 17th day of June in the year of Our Lord, Nineteen Hundred and Ninety-Three. /s/



By the President:



ANTONIO T. CARPIO

Chief Presidential legal Counsel