Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

IGNACIO C. BAYA,
Petitioner,

-versus-

THE HONORABLE SANDIGANBAYAN (2ND DIVISION), THE OFFICE OF THE SPECIAL PROSECUTOR, and THE PEOPLE OF THE PHILIPPINES,
Respondents.

G.R. Nos. 204978-83

Present:

LEONEN, *Chairperson,*
HERNANDO*,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:
July 6, 2020

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DECISION

LEONEN, *J.*:

The right to speedy disposition of cases is a relative and flexible concept. It is also waivable and must be seasonably raised. When considered appropriate, the assertion of the right ultimately depends on the peculiar circumstances of the case; hence, citing *Tatad v. Sandiganbayan*[1] will not automatically result in a dismissal on the ground of inordinate delay.

This resolves the Petition for Certiorari[2] filed by Ignacio C. Baya (Board Member Baya), alleging grave abuse of discretion on the part of the

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* Designated additional Member per Raffle date July 1, 2020.
1 242 Phil. 563 (1988) [Per J. Yap, En Banc].
2 *Rollo*, pp. 3–39.

Sandiganbayan in denying[3] his Motion for Judicial Determination of Probable Cause[4] and eventually issuing a warrant for his arrest.[5]

Board Member Baya maintains that: (1) he was deprived of his right to due process when cases for malversation of public funds and violation of the Anti-Graft and Corrupt Practices Act were filed against him despite alleged lack of probable cause; and (2) the Sandiganbayan gravely abused its discretion in not dismissing the case against him, despite the violation of his right to speedy disposition of cases.[6]

Baya was a Board Member of the Sangguniang Panlalawigan of Zamboanga Sibugay.[7] In 2001, the provincial government implemented the "Aid to the Poor" program to grant financial assistance to its poor constituents.[8] Funds for the program came from the savings in Personnel Services (PS) and Maintenance and Other Operating Expenses (MOOE) of the province's regular budget.[9]

Claiming that the implementation of the "Aid to the Poor" program was marred with anomalies and irregularities, Provincial Accountant Venancio C. Ferrer filed before the Office of the Deputy Ombudsman for Mindanao criminal and administrative complaints against the Governor, Vice-Governor, and members of the Sangguniang Panlalawigan in 2003.[10] Provincial Governor George T. Hofer filed a complaint to question the legality of the realignment of funds for the "Aid to the Poor" program.[11]

Considering that the complaints involved the disbursement of public funds, in March 2003, the Office of the Deputy Ombudsman requested the Commission on Audit to conduct an audit investigation.[12] In the meantime, the complaints were dismissed without prejudice to their refiling depending on the Commission on Audit's findings.[13]

In an audit report submitted on February 19, 2004,[14] the Commission on Audit confirmed that there were anomalies in the implementation of the "Aid to the Poor" program. The scheme essentially consisted of the

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3 Id. at 40–46. The Resolution dated March 31, 2011 was penned by Associate Justice Teresita V. Diaz-Baldos, and concurred in by Associate Justices Edilberto G. Sandoval (Chairperson) and Samuel R. Martires (a former Justice of this Court) of the Second Division, Sandiganbayan, Quezon City.

4 Id. at 267–275.

5 Id. at 47–50. The Resolution dated May 4, 2012 was penned by Associate Justice Teresita V. Diaz-Baldos (Chairperson), and was concurred in by Associate Justices Napoleon E. Inoturan and Oscar C. Herrera, Jr of the Second Division, Sandiganbayan, Quezon City.

6 Id. at 27–33.

7 Id. at 6.

8 Id. at 8.

9 Id. at 62. July 10, 2006 Ombudsman Resolution.

10 Id. at 60.

11 Id.

12 Id. at 9.

13 Id. at 60.

14 Id. at 9.

Governor, Vice-Governor, and Zamboanga Sibugay's Board Members allegedly giving financial assistance from their own pockets, then seeking reimbursement of the amounts from the realigned funds.[15] Reimbursement forms were submitted thereafter, and the disbursement vouchers were approved either by the Governor or by the Vice-Governor.[16] In reality, however, the beneficiaries were nonexistent,[17] and the officials used the realigned funds for their own benefit.

Specifically with respect to Board Member Baya, he was found to have requested for the reimbursement of a total of ₱60,000.00. The amount was allegedly given to 18 named beneficiaries, 14 of whom were found to be fictitious. The 14 were not listed as residents of the area indicated in the application forms, and the Municipal Local Government Operations Officers deployed to the supposed residences of the beneficiaries did not find them there.[18]

The Office of the Deputy Ombudsman considered the submission of Commission on Audit Report as the docketing of the case.[19] It then required Board Member Baya and members of his staff[20] who had prepared the Brief Social Case Study Reports, Application Forms, and Reimbursement Expense Receipts to file their counter-affidavits.[21]

Board Member Baya first submitted a Counter-Affidavit and a Supplemental Counter-Affidavit to the Office of the Deputy Ombudsman. In his Counter-Affidavit, Board Member Baya alleged that members of his staff, namely: (1) Nelita Rodriguez; (2) Alice Libre; and (3) Rex Tago conducted the interview of the beneficiaries and prepared the Brief Social Case Study Reports.[22] He also chose to "[advance] the amounts to the clients to expeditiously meet their financial problems rather than follow the rigorous processing of vouchers and checks which would take days [and] would have defeated the purpose upon which the clients sought said financial assistance."[23]

However, in his Supplemental Counter-Affidavit filed on July 14, 2004,[24] Board Member Baya claimed that he himself conducted the preliminary interview of the intended beneficiary before giving the monetary

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15 Id. at 62.
16 Id.
17 Id. at 61.
18 Id. at 75.
19 Id. at 61.
20 Id. at 75. The members involved are Nelita R. Rodriguez, Alice B. Libre, and Rex P. Tago.
21 Id. at 75 and 97.
22 Id. at 113.
23 Id. at 100.
24 Id. at 196.

assistance.[25] He then left the gathering and completion of the other requirements to his staff.[26]

Further, Board Member Baya maintained that he extended financial assistance to existing beneficiaries, but that he "cannot point out with absolute accuracy the names and other personal circumstances of all those who availed assistance through. . . the 'Aid to the Poor' program[.]"[27] In any case, he allegedly gave his best efforts to locate those who had availed themselves of the financial assistance through him, instructing members of his staff to trace the whereabouts of these beneficiaries.[28] He found that some of the allegedly nonexistent beneficiaries held residence in the addresses indicated in their application forms, evidenced by either barangay certifications or affidavits from the beneficiaries themselves or persons who knew of their existence.[29]

As for the confirmation letters sent by the Commission of Audit to the alleged beneficiaries which were returned to senders, Board Member Baya argued that the returned letters, in themselves, do not prove that the intended recipients did not exist. He alleged that upon consultation with the barangay captain and other officials of Poblacion Diplahan in Zamboanga Sibugay, letters were oftentimes not delivered personally to the addressee especially in remote barangays. Instead, names of addressees were posted in the barangay bulletin board and, if the letters were not claimed after a few days, they were returned to senders. It could very well be that the addressees were unaware that they had letters awaiting them in the barangay hall. However, it does not mean that these beneficiaries do not exist. Therefore, the finding of the Commission on Audit that the beneficiaries who had availed themselves of financial assistance through him were fictitious was presumptuous.[30]

In a 136-page Resolution[31] dated July 10, 2006, the Office of the Ombudsman found probable cause to indict Board Member Baya, together with 31 other co-respondents, including the Provincial Governor, Vice-Governor, Board Members of the Province of Zamboanga Sibugay, and their respective staff who participated in the scheme,[32] for the commission of

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25 Id. at 113.
26 Id.
27 Id. at 197.
28 Id. at 198.
29 Id. at 198–199.
30 Id. at 199.
31 Id. at 59–194.
32 Id. at 59. Board Member Baya's co-respondents were Governor George T. Hofer, Vice-Governor Eugenio L. Famor, Board Members Olympio R. Mañalac, Eric Cabarios, George C. Castillo, Ma. Bella Chiong Javier, Edgar C. Gonzales, Fe F. Gonzales, Leonardo R. Lagas, Ares A. Modapil, and Galwas Musa, and employees Editha Quinte, Lucia T. Palang, Daylinda P. Balbosa, Erlinda D. Albelda, M.Y. Mañalac-Toledo, Gliceria D. Laquijon, Nelita R. Rodriguez, Alice B. Libre, Rex P. Tago, Michelle B. Navalta, James Ismael A. Reventad, Fe B. Pontanar, Wilfredo K. Duran, Arnold S. Bustillo, Juanito C. Taripe, Jr., Almabella C. Zambales, Esmeraldo S. Trapa, Fhadzrama A. Modapil, Rafael J. Quirubin, and Arnel Pague.

malversation of public funds[33] through falsification of public documents and violation of Section 3(e)[34] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

The Office of the Deputy Ombudsman for Mindanao found that Board Member Baya indeed caused the reimbursement of a total of ₱60,000.00 under three (3) disbursement vouchers for amounts he allegedly advanced to poor beneficiaries of the "Aid to the Poor" program. However, of the 18 beneficiaries that had allegedly availed of financial assistance, 14 could not be located. While Board Member Baya submitted affidavits from the alleged beneficiaries of the "Aid to the Poor" program, the Office of the Ombudsman said that these do not "sufficiently explain the inconsistency attending the grant of financial aid to the other beneficiaries whose existence remains doubtful."[35]

It thus concluded that "the documents, such as the [Brief Social Case Study Reports], Application Forms[,] and the Reimbursement Expense Receipts, submitted by [Baya and his co-respondents] to support the claims

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33 REV. PEN. CODE, art. 217, as amended by Republic Act Nos. 1060 and 10951, provides:
Article 217. *Malversation of public funds or property. – Presumption of malversation.* Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400.000).

4. The penalty of *reclusion temporal,* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua.*

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

34 Republic Act No. 3019 (1960), sec. 3(e) provides:
Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

35 *Rollo*, p. 114.

under the different disbursement vouchers were false and merely fabricated to make it appear that the money was spent and given to the poor."[36]

Aside from the Provincial Governor, Vice-Governor, and the Provincial Board Members, the members of their respective staff who had prepared and signed the Brief Social Case Study Reports, Application Forms, and Reimbursement Expense Receipts were likewise indicted as principals because, according to the Ombudsman, "[t]he appropriation of the subject public funds would not have been carried out were it not for [their] indispensable and active participation[.]"[37]

Even granting that the funds were under the custody of the Provincial Social Welfare and Development Office, the Office of the Ombudsman held, nonetheless, that Board Member Baya and his co-respondents may still be held accountable and responsible since they participated in the misuse and misapplication of the funds.[38] Lastly, the undue haste and evident bad faith of the respondents were shown by the grant of financial assistance even before the enactment in 2002 of the ordinance providing for guidelines regulating the "Aid to the Poor" program.[39]

The dispositive portion of the July 10, 2006 Resolution of the Office of the Ombudsman partly read:

> **WHEREFORE, FOREGOING PREMISES CONSIDERED,** this Office after due consideration of the evidence on hand finds the existence of probable cause for the commission of the crimes of Malversation thru Falsification of Public Documents and violation of Sec. 3(e) of RA 3019 against the following respondents:
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> **IGNACIO BAYA, NELITA R. RODRIGUEZ, ALICE B. LIBRE** and **REX P. TAGO**
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> For violation of Sec. 3(e) of R.A. 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of ₱29,000.00 under **[Disbursement Voucher] No. 101-0201-91** and paid under Check No. 75448 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.
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> For violation of Sec. 3(e) of RA 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of

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36 Id. at 160.
37 Id.
38 Id.
39 Id. at 161–162.

₱10,000.00 under **[Disbursement Voucher] No. 101-0109-363** and paid under Check No. 59463 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.

For violation of Sec. 3(e) of RA 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of ₱21,000.00 under **[Disbursement Voucher] No. 101-0201-90** and paid under Check No. 75447 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0201-91** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱29,000.00 paid under Check No. 75448 dated 03 January 2002.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0109-363** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱10,000.00 paid under Check No. 59463 dated 04 September 2001.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0201-90** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱21,000.00 paid under Check No. 75447 dated 03 January 2002.

. . . .

ACCORDINGLY, THE SPECIAL PROSECUTION OFFICE is respectfully urged to cause the filing of the herewith attached Information(s) against the aforenamed accused. . .

. . . .

Moreover, as admitted by the members of the Audit Team, they sampled only forty-two (42) Disbursement Vouchers used in the alleged anomalous disbursement of funds appropriated for the "Aid to the Poor"

> program, due to lack of time. Hence, there are other Disbursement Vouchers which are not yet audited by the Audit Team.
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> For a comprehensive resolution of the issues involved, there is a need for the [Commission on Audit-Regional Office Number IX] to conduct an investigation touching on the alleged illegal reversions of public funds as presented in OMB-M-C-02-0496-I; and to complete its audit-investigation on the remaining Disbursement Vouchers used in the disbursement of public funds allocated for the "Aid to the Poor" program. To simplify matters, the issue presented in OMB-M-C-02-0496-I, and the remaining disbursements under the "Aid to the Poor" which are not yet audited by the [Commission on Audit], shall be redocketed separately was CPL cases.
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> . . . .
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> **LASTLY, THIS OFFICE** acknowledges with grateful appreciation the perseverance and dedication exemplified by the auditors of the Commission on Audit, Regional Office No. IX in the conduct of its investigation. This Office will continue to look forward with enthusiasm to the continued and unyielding support and assistance of the Commission on Audit to its endeavors and goals which are all geared for an honest and efficient government.
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> SO RESOLVED.[40] (Emphasis in the original)

On September 22, 2010, three (3) Informations for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act along with three (3) Informations for Malversation of Public Funds thru Falsification of Public Documents were filed before the Sandiganbayan against Board Member Baya, as well as Nelita R. Rodriguez, Alice B. Libre, and Rex P. Tago, the latter three (3) being members of his staff who had prepared or otherwise signed the Brief Social Case Study Reports, copies of Department of Social Welfare and Development Form 200, and the Reimbursement Expense Receipts used to reimburse amounts allegedly given to the inexistent beneficiaries. Considering that the crime charged against Board Member Baya was a complex crime and the amount involved was more than "₱22,000.00 or higher[,]" no bail was recommended pursuant to the 2000 Bail Bond Guide issued by the Department of Justice, National Prosecution Service.[41]

On October 6, 2010,[42] Board Member Baya filed a Motion for Judicial Determination of Probable Cause[43] with prayer for dismissal of the cases against him. He maintained that he was not furnished a copy of the July 10, 2006 Resolution of the Ombudsman and that there was no probable cause to hold him for the criminal charges against him.[44] He added that his right to

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40 Id. at 162–192.
41 Id. at 234 *citing* Department of Justice Circular No. 89 (2000).
42 Id. at 40.
43 Id. at 267–275.
44 Id. at 271–273.

speedy disposition of cases was seriously violated when it took the Office of the Ombudsman almost seven (7) years to finish the preliminary investigation.[45] As basis, he cited *Tatad v. Sandiganbayan*[46] where this Court held that a delay in the preliminary investigation that is close to three (3) years is violative of the right to speedy disposition of cases, leading to the dismissal of the criminal complaints against then Secretary of the Department of Public Information Francisco Tatad.

In its March 31, 2011 Resolution,[47] the Sandiganbayan held that during preliminary investigation, failure to furnish a copy of the resolution recommending the filing of information against the respondent does not invalidate the information already filed in court. The proper remedy of the respondent is to file, with leave of court, a motion for reconsideration with the prosecutor, which Board Member Baya failed to do.[48]

As to Board Member Baya's claim that his right to speedy disposition of cases was violated, the Sandiganbayan said that it is a "flexible concept"[49] and that "[d]ue regard must be given to the facts and circumstances surrounding each case."[50] According to the Sandiganbayan, the long period that took the Ombudsman to resolve the case, in itself, is not the measure of whether the right was violated, further explaining that:

> [The right to speedy disposition of cases] is deemed 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 his case tried. In the determination of whether or not this right has been violated the Supreme Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[51]

The Sandiganbayan noted that Board Member Baya raised his objection to his perceived delay in the resolution of the case during the preliminary investigation stage only until the information was filed in court. This, the Sandiganbayan said, was a belated assertion of the right. Further, the case involved numerous respondents and voluminous records, which justified the long period to resolve the case.[52]

Ultimately, the Sandiganbayan denied the Motion for Judicial Determination of Probable Cause but ordered the Office of the Ombudsman

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45 Id. at 271.
46 242 Phil. 563 (1988) [Per J. Yap, En Banc].
47 *Rollo*, pp. 40–46.
48 Id. at 44–45.
49 Id. at 45.
50 Id.
51 Id.
52 Id. at 45–46.

to reinvestigate the cases against Board Member Baya, nevertheless. The dispositive portion of the Sandiganbayan's March 31, 2011 Resolution reads:

> **WHEREFORE**, premises considered, the Court hereby ***DENIES*** the Motion for Judicial Determination of Probable Cause (With Prayer for Outright Dismissal) filed by the accused, but in the interest of justice treats this pleading as a motion for leave to file a motion for reinvestigation from the resolution of the Office of the Ombudsman. Accordingly, the Office of the Ombudsman is hereby directed to conduct a reinvestigation of these cases and to submit its Report/Resolution thereon, both within a given period of sixty (60) days from receipt hereof.
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> **SO ORDERED.**[53] (Emphases in the original)

Board Member Baya received a copy of the March 31, 2011 Resolution on April 15, 2011, through his counsel, Atty. Fernando M. Peña (Atty. Peña).[54]

For its part, the Office of the Ombudsman issued the April 14, 2011 Order[55] pursuant to the Sandiganbayan's directive to reinvestigate the case. It directed Board Member Baya to file a motion for reconsideration or reinvestigation within five (5) days from notice, warning him that failure to file the required motion shall be deemed a waiver, and that the cases shall be resolved based on the evidence on record.

The Order was served via registered mail to Board Member Baya's former counsel, Atty. Alberto P. Din (Atty. Din), and his collaborating counsel, Atty. Peña.[56]

Based on the registry return receipts, Atty. Din actually received a copy of the April 14, 2011 Order on April 29, 2011 while Atty. Peña, collaborating counsel, received his copy on April 28, 2011.[57] However, despite receipt of a copy of the April 14, 2011 Order, neither counsels filed a motion for reconsideration or reinvestigation before the Office of the Ombudsman.

In compliance with the order to reinvestigate the cases, the Office of the Ombudsman submitted[58] to the Sandiganbayan the June 1, 2011 Resolution.[59] The Resolution essentially reiterated the findings in the July 10, 2006 Resolution, since Board Member Baya failed to file a Motion for

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53 Id. at 46.
54 Id. at 54.
55 Id. at 280.
56 Id.
57 Id. at 219, Order dated July 13, 2011.
58 Id. at 281–283, Compliance dated July 4, 2011.
59 Id. at 284–299.

Reconsideration or Reinvestigation and the cases were resolved based on the evidence on record. In any case, the Office of the Ombudsman still considered the former submissions of Board Member Baya in resolving the case. The Office of the Ombudsman recommended as follows:

> **WHEREFORE**, premises considered, it is respectfully recommended by the undersigned prosecutors that the Resolution of the Office of the Ombudsman-Mindanao dated July 10, 2006 finding probable cause against the accused-movants be MAINTAINED.
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> RESPECTFULLY SUBMITTED.[60] (Emphasis in the original)

In the meantime, on June 7, 2011,[61] Board Member Baya, who is also a member of the Bar, filed on his own behalf and that of his co-respondents Rodriguez, Libre, and Tago a Motion for Reconsideration[62] *before the Sandiganbayan* of its March 31, 2011 Order, maintaining that there was no probable cause for the filing of the Informations against him in court. He alleged that despite receipt of the *Ombudsman*'s Order to file a motion for reconsideration and/or reinvestigation, his former counsel, Atty. Din, failed to file the required motion and subsequently "signified his intention to withdraw as counsel for the accused[.]"[63] He prayed that "the. . . Motion for Reconsideration be admitted and considered by the *Honorable Ombudsman* despite its delay."[64]

Realizing that the Motion for Reconsideration he had earlier filed before the Sandiganbayan was meant for the Office of the Ombudsman, Board Member Baya filed a Motion to Admit Motion for Reconsideration[65] before the Office of the Ombudsman. This was denied by the Office of the Ombudsman in the July 13, 2011 Resolution[66] for lack of merit.

Furthermore, the Office of the Ombudsman rejected Board Member Baya's argument. Board Member Baya argued that by the time Attys. Din and Peña had received a copy of the April 14, 2011 Order directing Board Member Baya to file a motion for reconsideration and reinvestigation, Atty. Din had already signified his intention to withdraw as counsel, saying that it "[was] not a justifiable reason"[67] and, consequently, Atty. Din's negligence bound Board Member Baya.[68]

The Motion for Reconsideration merely rehashed the arguments made in the Supplemental Counter-Affidavit, arguments which were already

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60 Id. at 297.
61 Id. at 47, Resolution dated May 4, 2012.
62 Id. at 300–304.
63 Id. at 300.
64 Id.
65 Id. at 318–320.
66 Id. at 218–222.
67 Id. at 219.
68 Id. at 220.

considered when the Office of the Ombudsman resolved the criminal complaints against Board Member Baya and his co-respondents.[69]

Meanwhile, the Sandiganbayan admitted the Amended Informations, and then set Board Member Baya's arraignment on several instances. On February 28, 2012, the Sandiganbayan called Baya's case, but Atty. Joventino Diamante, acting as counsel for Board Member Baya, manifested that there was a pending Motion for Reconsideration before the court. Thus, the Sandiganbayan cancelled the arraignment and deferred it to April 26, 2012.[70]

Before April 26, 2012, however, Board Member Baya filed another Motion to Cancel Arraignment and Defer Enforcement Warrant of Arrest to reiterate the allegedly pending Motion for Reconsideration before the Sandiganbayan.[71]

On April 26, 2012, the Sandiganbayan called the case for Board Member Baya's arraignment once more. When Board Member Baya failed to appear and after finding that the alleged Motion for Reconsideration was not addressed to the court, it issued an Order[72] denying the Motion for Reconsideration and rescheduled Board Member Baya's arraignment to July 26, 2012.

Further, in the May 4, 2012 Resolution,[73] the Sandiganbayan again denied the Motion for Reconsideration of its March 31, 2011 Order. It noticed that the Motion for Reconsideration filed before it indeed bore the caption "Sandiganbayan." However, the Motion was "actually addressed to the Office of the Ombudsman and in fact [sought] relief from that Office for the dismissal of the cases for alleged lack of probable cause."[74]

Therefore, the Motion for Reconsideration was erroneously filed, and the Sandiganbayan treated it as a "mere scrap of paper, legally [nonexistent], [requiring] no action and is deemed never to have been filed."[75] In the end, the Sandiganbayan merely noted the Motion for Reconsideration, and issued a warrant for Board Member Baya's arrest. The dispositive portion of the Sandiganbayan's May 4, 2012 Resolution reads:

> **WHEREFORE**, in the [sic] light of the foregoing, the Court resolves merely to ***NOTE*** the Motion for Reconsideration dated May 27, 2011 filed by accused Ignacio C. Baya, Nelita R. Rodriguez, Alicia B.

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69 Id. at 220–221.
70 Id. at 345.
71 Id. at 238.
72 Id. at 346.
73 Id. at 47–50.
74 Id. at 48.
75 Id. at 50.

> Libre, and Rex P. Tago, as well as the Comment thereto, the Reply to the Comment, the Rejoinder and the Sur-Rejoinder attached to the records.
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> There being no other matter to be resolved, let a Warrant of Arrest be issued against the accused.
>
> **SO ORDERED**.[76] (Emphasis in the original)

On May 28, 2012, Board Member Baya filed a Motion for Reconsideration of the April 26, 2012 Order, insisting that the Sandiganbayan admit his Motion for Reconsideration of the March 31, 2011 Order as his Motion for Reconsideration of the Order denying his Motion for Judicial Determination of Probable Cause.[77] This was denied by the Sandiganbayan in the November 20, 2012 Resolution,[78] noting that it had granted Baya's previous prayer earlier to defer his arraignment.

Further, Board Member Baya had sufficient opportunity to file the proper Motion for Reconsideration, but failed to do so. According to the Sandiganbayan, to grant the Motion for Reconsideration of the April 26, 2012 Order "would be a travesty of court procedure."[79] It added that "the accused have already abused their penchant for delaying the implementation of the warrant of arrest issued against them as well as their arraignment."[80]

The dispositive portion of the November 20, 2012 Resolution read:

> **WHEREFORE**, in the [sic] light of all the foregoing, the Court hereby ***DENIES*** the instant motion for paucity of merit.
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> The PNP Provincial Command of Zamboanga Sibugay is hereby ordered to implement the Warrant of Arrest issued by this Court on May 8, 2012.
>
> **SO ORDERED**.[81] (Emphasis in the original)

As for the Amended Informations, Board Member filed a Comment, which the Sandiganbayan treated as a "mere scrap of paper"[82] in the Order[83] dated November 21, 2012. It then reset the arraignment to January 17, 2013.

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76 Id.
77 Id. at 51–52.
78 Id. at 51–57. The Resolution was penned by Associate Justices Teresita V. Diaz-Baldos (Chairperson), Napoleon E. Inoturan, and Oscar C. Herrera, Jr. of the Second Division, Sandiganbayan, Quezon City.
79 Id. at 56.
80 Id.
81 Id.
82 Id. at 58.
83 Id. The Order was issued by Associate Justices Teresita V. Diaz-Baldos, Napoleon E. Inoturan, and Oscar C. Herrera, Jr. of Second Division, Sandiganbayan.

ORDER

> Considering that the Court had already admitted the Amended Information in these cases and that the Comment on the Amended Information with Prayer to Adopt And Early Resolve the Pending Motion for Reconsideration of the Accused was belatedly filed by the accused only on November 16, 2012, the Court considers the latter pleading as a mere scrap of paper.
>
> Let the arraignment be reset to January 17, 2013 at 1:30 o'clock in the afternoon.
>
> SO ORDERED.[84]

On January 14, 2013, petitioner filed the Petition for Certiorari[85] under Rule 65 with Application for Preliminary Injunction and/or Temporary Restraining Order. Upon the directive of this Court, the Office of the Special Prosecutor, representing the Sandiganbayan and the People of the Philippines, filed a Comment,[86] to which petitioner replied.[87]

The issues raised in the Petition are the following:

First, whether or not the Sandiganbayan gravely abused its discretion in not dismissing the cases for malversation of public funds and the cases for violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act for lack of probable cause; and

Second, whether or not the Sandiganbayan erred in not dismissing the cases filed against petitioner for violation of his constitutional rights to due process and speedy disposition of cases.

Petitioner argues that he should not have been charged with malversation of public funds through falsification of public documents. He first enumerates the elements of Article 217 of the Revised Penal Code, which defines the felony of malversation of public funds or property. He then points out that three (3) of the four (4) elements are allegedly missing in this case. Specifically, apart from the element of the accused being a public officer, all the other elements are purportedly absent. He insists that: (1) he had no custody or control of funds or property by reason of the duties of his office; (2) he was not accountable for any public funds or property; and (3) he did not appropriate, take, misappropriate or consent or, through abandonment or negligence, permit another person to take public funds.[88]

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84 Id.
85 Id. at 3–39.
86 Id. at 228–266.
87 Id. at 363–370.
88 Id. at 27–28.

Petitioner alleges that the funds for the "Aid to the Poor" program was under the custody of the Provincial Social Welfare and Development Office. He maintains that he never misappropriated any of the funds for the "Aid to the Poor" program, especially since the money he had given to the poor beneficiaries came from his own pocket. All that petitioner sought was a reimbursement of the amounts he had given out from his personal funds, and whether his request for reimbursement will be granted was still subject to the discretion of the Provincial Social Welfare and Development Office. Therefore, there is no malversation of public funds on his part.[89]

Petitioner adds that he should not have been charged with violating Section 3(e) of Republic Act No. 3019 because no undue injury was caused to any party or to the government. Further, petitioner maintains that he did not benefit from the "Aid to the Poor" program since, as he has alleged repeatedly, the money he gave out came from his own funds.[90]

He also assailed the manner by which the Commission on Audit confirmed the existence of the beneficiaries. According to petitioner, it was error for the Commission on Audit and the Office of the Ombudsman to consider the confirmation letters that were returned to senders as proof of the nonexistence of beneficiaries. While it may be true that the addressees may no longer be found at the addresses they gave at the time they availed themselves of the "Aid to the Poor" program, it could very well be that they had already moved out of their old homes. In addition, the Office of the Ombudsman should have considered the affidavits he submitted in evidence, allegedly issued by the some of the beneficiaries of the "Aid to the Poor" program, proving that they indeed received aid from petitioner.[91]

Apart from the lack of probable cause, petitioner argues that the Sandiganbayan gravely abused its discretion for not dismissing the cases on the ground of violation of his rights to due process and speedy disposition of cases. Petitioner highlights how, from the time the crimes were allegedly committed in 2001 to the filing of the cases before the Sandiganbayan in 2010, the Office of the Ombudsman took a period of almost seven (7) years just to resolve the complaints.

Furthermore, petitioner argues that neither the number of the respondents nor the voluminous records of the case justify the delay in resolving the cases at the Ombudsman level. As basis, petitioner cites *Tatad v. Sandiganbayan*[92] and *Lopez, Jr. v. Office of the Ombudsman*,[93] where this Court ordered the dismissal of the cases for the delay in the resolution of the cases during the preliminary investigation stage.[94]

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89 Id. at 10–11.
90 Id. at 29.
91 Id. at 29–31.
92 242 Phil. 563 (1988) [Per J. Yap, En Banc].
93 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].
94 *Rollo*, pp. 31–33.

Countering petitioner, respondent People of the Philippines, represented by the Office of the Special Prosecutor, first assails his procedural lapses, alleging that the present Petition is "evidently calculated to delay the proceedings"[95] before the Sandiganbayan.

First, petitioner failed to indicate the following material dates: (1) the date of receipt of the March 31, 2011 Resolution of the Sandiganbayan denying the Motion for Judicial Determination of Probable Cause; (2) the date of filing of the Motion for Reconsideration of the March 31, 2011 Resolution; and (3) the date of receipt of the resolution denying of the Motion for Reconsideration. These dates were omitted because petitioner knows that the Motion for Reconsideration erroneously filed before the Sandiganbayan was a mere scrap of paper and, therefore, was of no force and effect.[96]

Second, it seems that petitioner is assailing the following resolutions of the Sandiganbayan: (1) the May 4, 2012 Resolution that noted the Motion for Reconsideration intended for the Office of the Ombudsman; (2) the November 20, 2012 Resolution, which denied the Motion to Admit Motion for Reconsideration; and, (3) the November 21, 2012 Order, which denied the Motion for Resolution of Motion for Reconsideration.[97]

Nevertheless, respondent maintains that petitioner is mainly and solely assailing the March 31, 2011 Resolution denying his Motion for Judicial Determination of Probable Cause, the reason being that the Motion for Reconsideration subject of the May 4, 2012 Resolution, the November 20, 2012 Resolution, and the November 21, 2012 Order of the Sandiganbayan, merely reiterated the arguments in the Motion for Judicial Determination of Probable Cause.[98]

Considering that petitioner is truly assailing the March 31, 2011 Resolution, and he received a copy of the March 31, 2011 Resolution on April 15, 2011, he only had fifteen (15) days from that day to file a motion for reconsideration, or sixty (60) days from April 15, 2011, or until June 14, 2011, to file a petition for certiorari. The present Petition, which was filed on January 14, 2013,[99] was filed out of time and should accordingly be dismissed.[100]

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95 Id. at 239–240.
96 Id. at 240–242.
97 Id. at 243.
98 Id.
99 Id. The Office of the Special Prosecutor erroneously indicated February 4, 2013 as the date of filing of the Petition for Certiorari.
100 Id. at 242–244.

As for the May 4, 2012, November 20, 2012, and November 21, 2012 Resolutions and Order of the Sandiganbayan, they were only assailed to make it appear that a motion for reconsideration was timely filed when, in reality, it was belatedly and erroneously filed before the Sandiganbayan, not before the Office of the Ombudsman that conducted the reinvestigation.[101]

Third, petitioner still had a plain, speedy, and adequate remedy in the ordinary course of law, that is, to file a petition for bail before the Sandiganbayan instead of directly invoking this Court's certiorari jurisdiction.[102]

Respondent adds that the Sandiganbayan did not gravely abuse its discretion in proceeding with hearing the cases against petitioner. The rule is that the determination of probable cause for purposes of filing an information in court is a duty exclusively lodged to the prosecutory arm of government, which in this case is the Office of the Ombudsman. Once the case is filed before the Sandiganbayan, the latter acquires exclusive jurisdiction to determine the case before it. Here, after the Sandiganbayan granted reinvestigation and petitioner failed to avail himself of the remedies before the Office of the Ombudsman, the Sandiganbayan became duty-bound to proceed with determining probable cause for purposes of issuing a warrant of arrest.[103]

Respondent vehemently denies petitioner's claim that he was not given due process during reinvestigation. As shown by the registry return card of the April 14, 2011 Order directing petitioner to file a motion for reconsideration or reinvestigation, his counsel, Atty. Din, and his collaborating counsel, Atty. Peña, received a copy of the April 14, 2011 Order on April 29 and April 28, 2011,[104] respectively, yet they did not file any pleading on behalf of their client. Petitioner, therefore, is deemed to have failed to file a Motion for Reconsideration within five (5) days from the Order's date of receipt.[105]

Even assuming that petitioner's counsels had signified their intention to withdraw their services as petitioner alleged, this, according to respondents, does not justify his belated filing of the Motion for Reconsideration. The rule is that the negligence of counsel binds the client. In any case, the Motion for Reconsideration merely reiterates the allegations in the Supplemental Counter-Affidavit, which was considered in the conduct of reinvestigation.[106]

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101 Id. at 243.
102 Id. at 247–248.
103 Id. at 248–250.
104 Id. at 219.
105 Id. at 251–252.
106 Id. at 251.

There is also allegedly no truth to petitioner's claim that his Supplemental Counter-Affidavit was not considered in resolving the criminal complaints against him. The June 1, 2011 Resolution issued after the reinvestigation alludes to the Supplemental Counter-Affidavit and even discussed the Supplemental Counter-Affidavit's contents.[107]

Thus, respondent maintains that there is no reason to disturb the finding of probable cause against petitioner. Respondent reiterates the general rule that "the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court[.]"[108] Consequently, "courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor."[109]

On the merits, respondent contends that the Office of the Ombudsman correctly found probable cause to file charges for malversation of public funds against petitioner. The Disbursement Vouchers he signed, as well as the Brief Social Case Study Reports, Department of Social Welfare and Development Form 200, and Reimbursement Expense Receipts annexed to the vouchers, all show that petitioner participated in the release of public funds allegedly for beneficiaries of the "Aid to the Poor" program, beneficiaries who turned out be nonexistent. Having participated in the release of the funds, petitioner is accountable for the funds he had reimbursed pursuant to Section 340[110] of the Local Government Code. He cannot claim that he was not an accountable public officer just because he had no physical custody of the funds.[111]

Likewise, probable cause for violation of section 3(e) of Republic Act No. 3019 was correctly found against petitioner. By making it appear that he extended financial help to poor beneficiaries when, in truth, there were no such beneficiaries, he caused undue injury to the government in the form of misappropriated public funds.[112]

Finally, respondent argues that there was no violation of petitioner's right to speedy disposition of cases, maintaining that "[a] mere mathematical reckoning of the time involved is not sufficient."[113] Respondent points out

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107 Id. at 252.

108 Id. at 255, citing *People v. Castillo, et al.*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

109 Id.

110 LOCAL GOVT. CODE, sec. 340 provides:
SECTION 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

111 *Rollo*, pp. 256–257.

112 Id. at 256.

113 Id. at 258.

that petitioner had 31 co-respondents, including the Provincial Governor, Vice-Governor, and Board Members of the Province of Zamboanga Sibugay and their respective staff.[114]

The first complaint was filed on September 3, 2002, and the next two in 2003. The Office of the Ombudsman then requested the Commission on Audit to conduct an audit investigation in 2004, in the meantime provisionally dismissing the complaints. After the Commission on Audit had submitted its findings contained in a 7,225-page report, the Office of the Ombudsman conducted its own review of the findings of the Commission. These, according to respondent, show that there was no oppressive or capricious delay on the part of the Office of the Ombudsman.[115]

At any rate, petitioner never invoked the right to speedy disposition of cases during preliminary investigation. He slept on his right and invoked it only when the case was filed before the Sandiganbayan, unlike the accused in *Angchangco v. Ombudsman,*[116] the case cited by petitioner where the accused actively invoked the right by filing numerous motions for early resolution before the Ombudsman. In stark contrast with *Angchangco,* petitioner filed no such motion for early resolution during the preliminary investigation stage.[117]

The Petition for Certiorari is dismissed.

I

This Court first addresses the procedural issues raised by respondent. After a perusal of the Petition, this Court finds the following procedural errors: (1) it did not indicate the material dates required under Rule 65, Section 1 in relation to Rule 46, Section 3 of the Rules of Court; (2) the Petition was filed out of time; and (3) that the resort to certiorari was premature considering that petitioner still had a plain, speedy, and adequate remedy in the ordinary course of law.

Rule 65, Section 1 of the Rules of Court provides:

> SECTION 1. *Petition for Certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging

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114 Id. at 260–261.
115 Id.
116 335 Phil. 766 (1997) [Per J. Melo, Third Division].
117 *Rollo,* pp. 262–263.

> the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

Rule 46, Section 3, referred to in Rule 65, Section 1, partly states:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
>
> . . . .
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Rule 65, Section 1 in relation to Rule 46, Section 3 requires that a petition for certiorari indicate three (3) material dates, namely: (1) when the notice of the judgment or final order was received; (2) when the motion for new trial or reconsideration, if any, was filed; and (3) when notice of the denial of the motion for new trial or reconsideration was received. This is for the court or tribunal to easily assess whether the petition was timely filed.[118] Failure to indicate these material dates is sufficient ground for the dismissal of the petition.[119]

Petitioner assails four (4) issuances of the Sandiganbayan:

(1) the March 31, 2011 Resolution denying the Motion for Judicial Determination of Probable Cause;
(2) the May 4, 2012 Resolution merely noting the belatedly and erroneously filed Motion for Reconsideration of the March 31, 2011 Resolution and ordering the issuance of the warrant of arrest;
(3) the November 20, 2012 Resolution denying the Motion to Admit Motion for Reconsideration and ordering the Philippine

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[118] *Blue Eagle Management, Inc. v. Naval*, 785 Phil. 133, 148–152 (2016) [Per J. Leonardo-De Castro, First Division].

[119] RULES OF COURT, Rule 65, sec. 1 in relation to Rule 46, sec. 3.

National Police to implement the warrant of arrest issued in the May 4, 2012 Resolution; and

(4) the November 21, 2012 Order treating the Comment on the Amended Information as a mere scrap of paper and resetting petitioner's arraignment.

Yet, in the recital of material dates, petitioner only indicated his date of receipt of the November 20, 2012 Resolution.[120] This incomplete recital of the material dates is sufficient ground for the dismissal of the Petition.

Furthermore, this Court agrees that the present Petition was filed beyond the sixty-day reglementary period for filing a petition for certiorari. Petitioner fundamentally assails the March 31, 2011 Resolution wherein, to recall, the Sandiganbayan denied his Motion for Judicial Determination of Probable Cause. Through counsel, Atty. Peña, petitioner received a copy of the March 31, 2011 Resolution on April 15, 2011, and with the 15th day falling on a Saturday, he had until May 2, 2011, the next working day, to file a motion for reconsideration.[121] No motion for reconsideration of the March 31, 2011 Resolution was filed from April 15, 2011 to May 2, 2011. Instead, a Motion for Reconsideration was belatedly filed on June 7, 2011[122] and which, upon perusal, is actually meant for the Office of the Ombudsman.[123]

Petitioner blames former counsel, Atty. Din, for not filing a motion for reconsideration. According to petitioner, Atty. Din had earlier "signified his intention to withdraw"[124] as petitioner's counsel. Nevertheless, this does not explain why petitioner's other lawyer, Atty. Peña, who also received a copy of the March 31, 2011 Resolution, did not file a motion for reconsideration for him. It being petitioner's assertion that the resolution of his case was taking too long, he should have been more "vigilant in respect of his interests by keeping himself up-to-date on the status of the case."[125]

Hiring the services of counsel does not relieve a litigant of the duty to monitor the status of his or her cases. This was the ruling in *Ong Lay Hin v. Court of Appeals*,[126] where petitioner Ong Lay Hin, claiming that his counsel did not appeal his conviction despite receipt of the adverse judgment against him, was nevertheless declared bound by his counsel's actions:

> The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."

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120 *Rollo*, p. 7.
121 RULES OF COURT, Rule 22, sec. 1.
122 *Rollo*, p. 47.
123 Id. at 300.
124 Id.
125 *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011) [Per J. Bersamin, Third Division].
126 752 Phil. 15 (2015) [Per J. Leonen, Second Division].

The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.

It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.

The [S]tate does not guarantee to the client that they will receive the kind of service that they expect. Through this [C]ourt, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the [S]tate is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This [C]ourt will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.

But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

Thus, in *Bejarasco, Jr. v. People*, this [C]ourt reiterated:

> For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

In *Bejarasco, Jr.*, Peter Bejarasco, Jr., failed to file a Petition for Review before the Court of Appeals within the extended period prayed

> for. The Court of Appeals then dismissed the Appeal and issued an Entry of Judgment. His conviction for grave threats and grave oral defamation became final, and a warrant for his arrest was issued.
>
> In his Petition for Review on Certiorari before this [C]ourt, Peter Bejarasco, Jr. argued that his counsel's negligence in failing to file the Appeal deprived him of due process.
>
> This [C]ourt rejected Peter Bejarasco, Jr.'s argument, ruling that "[i]t is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case[.]" "[T]o merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough."
>
> This [C]ourt noted the 16 months from the issuance of the Entry of Judgment and the 22 months from the issuance of the trial court's Decision before Peter Bejarasco, Jr. appealed his conviction. According to this [C]ourt, "[h]e ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the [trial court] handed down the dismissal of his appeal without [his counsel] having updated him on the developments[.]"
>
> In the present case, petitioner took almost seven (7) years, or almost 84 months, from the Court of Appeals' issuance of the Resolution denying his Motion for Reconsideration to file a Petition before this court. As this [C]ourt ruled in Bejarasco, Jr., petitioner ought to have been sooner alerted of the "unreasonably long time" the Court of Appeals was taking in resolving his appeal. Worse, he was arrested in Pasay City, not in Cebu where he resides. His failure to know or to find out the real status of his appeal "rendered [petitioner] undeserving of any sympathy from the Court *vis-a-vis* the negligence of his former counsel."
>
> We fail to see how petitioner could not have known of the issuance of the Resolution. We cannot accept a standard of negligence on the part of a client to fail to follow through or address counsel to get updates on his case. Either this or the alternative that counsel's alleged actions are merely subterfuge to avail a penalty well deserved.[127] (Citations omitted)

With no timely motion for reconsideration filed, the March 31, 2011 Resolution may no longer be assailed. The Motion for Reconsideration belatedly filed on June 7, 2011 was correctly treated as mere scrap of paper in the November 20, 2012 Resolution and November 21, 2012 Order. Consequently, the present Petition for Certiorari, which was filed almost two (2) years after the lapse of the 15-day period to file a motion for reconsideration of the March 31, 2011 Resolution, was filed out of time.

This Court sees no denial of due process. Petitioner was given several opportunities to explain his side and file a motion for reconsideration. Even the Sandiganbayan gave him the privilege of a reinvestigation, yet he all wasted these opportunities. In any case, there were no new arguments in the Motion for Reconsideration, which merely echoed the arguments in the

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[127] Id. at 23–26.

Supplemental Counter-Affidavit. Petitioner was not prejudiced by his failure to file a timely motion for reconsideration.

Apart from failing to indicate the material dates and belatedly filing the present Petition for Certiorari, petitioner still had several remedies available to him, remedies which were plain, speedy, and adequate in the ordinary course of law. With the amended informations having been filed in court, the Sandiganbayan had acquired exclusive jurisdiction to dispose of the case,[128] and petitioner's remedy was to proceed to trial and allow the exhaustive presentation of evidence of the parties.[129] Before entering his plea, petitioner could have availed himself a motion to quash information[130] or a motion for bail.[131]

II

Petitioner's argument that his right to speedy disposition of cases was violated should likewise fail.

The Constitution in Article III, Section 16 provides:

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

First appearing in the 1973 Constitution,[132] the right to speedy disposition of cases protects citizens from vexatious, capricious, and oppressive delays in the conduct of any case filed against them, whether the case be judicial, quasi-judicial, or administrative.[133] The importance of the right is more pronounced in criminal proceedings, where not only property but also the life and liberty of the respondent, or the accused once the case is filed in court, is at stake.[134] It is for this reason that, apart from the right to speedy disposition of cases, an accused is guaranteed the right to speedy trial in the Constitution,[135] the Speedy Trial Act,[136] and the Revised Rules of Criminal Procedure.[137]

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128 *See Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].
129 *See Napoles v. De Lima*, 790 Phil. 161 (2016) [Per J. Leonen, Second Division].
130 RULES OF COURT, Rule 117, secs. 1 and 3.
131 RULES OF COURT, Rule 114, secs. 4 and 5.
132 CONST. (1973), Art. IV, sec. 16.
133 CONST., art. III, sec. 16.
134 *Cabarles v. Maceda*, 545 Phil. 210 (2007) [Per J. Quisumbing, Second Division].
135 CONST., art. III, sec. 14(2) provides:
Section 14.
. . . .
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Violation of the right to speedy disposition of cases has a serious consequence: it results in the dismissal of the case.[138] Particularly for criminal cases, the dismissal is with prejudice, and the accused may no longer be indicted for the same offense on the ground of right against double jeopardy.[139] Thus, dismissal on speedy disposition grounds has been characterized as a "radical relief."[140]

What constitutes "vexatious, capricious, and oppressive"[141] delay is determined *not* by mere mathematical reckoning but in an *ad hoc*, case-to-case basis.[142] Specifically for the Office of the Ombudsman, though constitutionally mandated to act promptly on complaints,[143] it is given no specific time period the lapse of which would unequivocally establish delay in its conduct of preliminary investigations.[144] Therefore, factors to determine inordinate delay had to be laid down, first introduced in this jurisdiction in *Martin v. Ver*.[145] These factors, in turn, were derived from the balancing test formulated in *Barker v. Wingo*,[146] an American case on the right to speedy trial. This shows that the right to speedy disposition of cases

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136 Republic Act No. 8493 (1998).

137 RULES OF COURT, Rule 115, sec. 1(h) provides:

SECTION 1. *Rights of accused at the trial.* — In all criminal prosecutions, the accused shall be entitled to the following rights:

. . . .

(h) To have speedy, impartial and public trial.

138 *See People v. Anonas*, 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division]; *Tatad v. Sandiganbayan*, 242 Phil. 563 (1988) [Per J. Yap, En Banc].

139 *See Condrada v. People,* 446 Phil. 635 (2003) [Per J. Callejo, Sr., Second Division].

140 *Tatad v. Sandiganbayan*, 242 Phil. 563, 573 (1988) [Per J. Yap, En Banc].

141 *Salcedo v. Sandiganbayan,* G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division]; *See also People v. Sandiganbayan (Fifth Division),* 791 Phil. 37 (2016) [Per J. Peralta, Third Division]; *Tello v. People,* 606 Phil. 514 (2009) [Per J. Carpio, First Division]; *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004) [Per J. Callejo, Sr., Second Division]; *Bernat v. Sandiganbayan,* 472 Phil. 869 (2004) [Per J. Azcuna, First Division]; *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per J. Kapunan, First Division]; *Lopez, Jr. v. Office of the Ombudsman,* 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division]; *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per C.J. Davide, Jr., En Banc].

142 *Corpuz v. Sandiganbayan,* 484 Phil. 899, 917 (2004) [Per J. Callejo, Sr., Second Division], *citing Barker v. Wingo,* 407 U.S. 514 (1972) [Per J. Powell, Supreme Court of the United States].

143 CONST., Art. XI, sec. 12 provides:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Republic Act No. 6770 (1989), sec. 13 provides:

SECTION 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

144 *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

145 208 Phil. 658 (1983) [Per J. Plana, En Banc].

146 407 U.S. 514 (1972) [Per J. Powell, Supreme Court of the United States].

and right to speedy trial are akin to each other given their similar rationale: to prevent inordinate delay.[147]

The first of these factors is the length of delay, the "triggering mechanism[,]"[148] so to speak, for invoking the right to speedy disposition of cases. However, length of time, in itself, is insufficient if it is justified by the peculiar circumstances of the case, such as the complexity of the issues involved or of the crime charged.[149] Political motivation may likewise affect the determination, such that three (3) years from the submission of all the necessary pleadings before the Tanodbayan up to the filing of case in court was considered oppressive,[150] whereas criminal cases where the Ombudsman took more than that time to conduct preliminary investigation were not dismissed.[151]

This goes to the second factor to determine inordinate delay: the reason for the delay. As discussed, "extraordinary complications such as the degree of difficulty of the questions involved"[152] affect the finding of inordinate delay. Other reasons that may justify delay include the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record.[153] In criminal prosecutions, the burden of justifying the reason for the delay in the conduction of preliminary investigation rests on the prosecution.[154]

Acts attributable to the respondent may also affect the finding of delay. This goes to the third factor: the respondent's assertion of the right. This Court has ruled that the right to speedy disposition of cases may be waived if raised belatedly.[155] This is to prevent respondents from invoking the right only when an adverse resolution is rendered against them.

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147 *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

148 *Barker v. Wingo,* 407 U.S. 514, 530 (1972) [Per J. Powell, Supreme Court of the United States].

149 *Magante v. Sandiganbayan,* G.R. No. 230950-51, July 23, 2018, http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64382 [Per J. Velasco, Jr., Third Division].

150 *See Tatad v. Sandiganbayan,* 242 Phil. 563 (1988) [Per J. Yap, En Banc].

151 *See Salcedo v. Sandiganbayan,* G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division], where the Ombudsman took four (4) years and three (3) months to terminate the preliminary investigation. In *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc], the Ombudsman took seven (7) years to file the informations in court.

152 *Magante v. Sandiganbayan,* G.R. No. 230950-51, July 23, 2018, 873 SCRA 420 [Per J. Velasco, Jr., Third Division].

153 Id.

154 *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

155 *Salcedo v. Sandiganbayan,* G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division]; *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc]; *Tello v. People,* 606 Phil. 514 (2009) [Per J. Carpio, First Division]; *Dimayacyac v. Court of Appeals,* 474 Phil. 139 (2004) [Per J. Austria-Martinez, Second Division]; *Bernat v. Sandiganbayan,* 472 Phil. 869 (2004) [Per J. Azcuna, First Division].

Invocation of the right should not be a mere afterthought, and the respondent should not have employed "delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case."[156] He or she cannot be allowed to benefit from his or her cunning. For the third factor, the respondent in the criminal case has the burden of proving that he had timely asserted the right.[157]

It is true that in *Coscolluela v. Sandiganbayan*,[158] this Court said that a respondent in a preliminary investigation has no "duty to follow up on the prosecution of [his or her] case"[159] and that it is "the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it."[160] As basis, *Coscolluela* cited *Barker*, where the United States Supreme Court said that "[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process."[161]

The statement in *Coscolluela* is, at best, obiter dictum. The criminal cases against Coscolluela and his co-respondents were dismissed, first, because it took the Ombudsman eight (8) years to resolve the criminal complaints against them and, second, they were unaware that the investigation against them was still on going. Here, there is no indication that petitioner was unaware that the investigation against him and his co-respondents was still on going.

Further, *Coscolluela* directly cited *Barker*, an American case and, therefore, is not binding precedent. While *Barker* served as basis for this Court's adoption of the balancing test, it must be highlighted that *Barker* involved the right to speedy trial which, though akin to the right to speedy disposition of cases, is an entirely different right nonetheless.

Barker, though providing that "[a] defendant has no duty to bring himself to trial[,]"[162] followed with "[t]his does not mean, however, that the defendant has no responsibility to assert his right [to speedy trial]."[163] Precisely, assertion of the defendant's right was made one of the factors to consider in determining whether an accused's right to speedy trial was violated. For the United States Supreme Court, the acceptable test was "a

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156 *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].
157 Id.
158 714 Phil. 55 (2013) [Per J. Perlas-Bernabe, Second Division].
159 Id. at 64.
160 Id.
161 *Barker v. Wingo*, 407 U.S. 514, 527 (1972) [Per J. Powell, Supreme Court of the United States].
162 Id.
163 Id. at 528.

balancing test, in which conduct of both the prosecution and the defendant are weighed."[164] *Barker* explains:

> The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, but that fact does not argue for placing the burden of protecting the right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest.
>
> It is also noteworthy that such a rigid view of the demand-waiver rule places defense counsel in an awkward position. Unless he demands a trial early and often, he is in danger of frustrating his client's right. If counsel is willing to tolerate some delay because he finds it reasonable and helpful in preparing his own case, he may be unable to obtain a speedy trial for his client at the end of that time. Since under the demand-waiver rule no time runs until the demand is made, the government will have whatever time is otherwise reasonable to bring the defendant to trial after a demand has been made. Thus, if the first demand is made three months after arrest in a jurisdiction which prescribes a six-month rule, the prosecution will have a total of nine months—which may be wholly unreasonable under the circumstances. The result in practice is likely to be either an automatic, *pro forma* demand made immediately after appointment of counsel or delays which, but for the demand-waiver rule, would not be tolerated. Such a result is not consistent with the interests of defendants, society, or the Constitution.
>
> We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely *pro forma* objection.[165] (Citations omitted; underscoring provided)

In any case, the 2018 *en banc* case of *Cagang v. Sandiganbayan*[166] already settled the rule that, in this jurisdiction, the right to speedy disposition of cases must be seasonably invoked; otherwise, it is deemed waived.

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[164] Id. at 530.
[165] Id. at 527–529.
[166] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

The fourth and last factor of the balancing test is prejudice to the respondent, either in the form of oppressive pre-trial incarceration, anxiety and worry, or impairment of respondent's defense.[167] It is said that the most serious of these is the last, because:

> [T]he 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.[168] (Citations omitted)

There are instances when a respondent does *not* want a speedy disposition of his or her case as a way to, albeit counterproductively, ease his or her anxiety. Thus, a respondent may resort to "delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case."[169] He or she may also deliberately fail to object to continuances obtained by the prosecution during preliminary investigation. Then, only when a case is filed in court, will the respondent invoke the right to speedy disposition of cases.

Courts, therefore, perform a delicate balancing act in determining whether or not a person's right to speedy disposition of cases is violated. The four (4) factors—(1) the length of the delay; (2) the reason for the delay; (3) the respondent's assertion of the right, and (4) prejudice to the respondent—are to be considered together, not in isolation. The interplay of these factors determine whether the delay was inordinate. Thus, it said that the right to speedy disposition of cases is a relative and flexible concept.[170] This fluidity, however, gives rise to possible subjectivity and inconsistency in determining whether a case was disposed within an acceptable period of time.

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[167] *Corpuz v. Sandiganbayan,* 484 Phil. 899, 918 (2004) [Per J. Callejo, Sr., Second Division], *citing Barker v. Wingo,* 407 U.S. 514 (1972) [Per J. Powell, Supreme Court of the United States].

[168] Id. at 918 *citing Barker v. Wingo,* 407 U.S. 514 (1972) [Per J. Powell, Supreme Court of the United States].

[169] *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

[170] *Magante v. Sandiganbayan,* G.R. No. 230950-51, July 23, 2018, 873 SCRA 420, 445 [Per J. Velasco, Jr., Third Division]. *See also Almeda v. Ombudsman,* 791 Phil. 129 (2016) [Per J. Del Castillo, Second Division]; *People v. Sandiganbayan (Fifth Division),* 791 Phil. 37 (2016) [Per J. Peralta, Third Division]; *Corpuz v. Sandiganbayan,* 484 Phil. 899 (2004) [Per J. Callejo, Sr., Second Division]; *Dela Peña v. Sandiganbayan,* 412 Phil. 921 (2001) [Per C.J. Davide, Jr., En Banc]; *Caballero v. Alfonso,* 237 Phil. 154 (1987) [Per J. Padilla, En Banc].

Addressing this, this Court in *Cagang* directed the Office of the Ombudsman to promulgate specific time periods for resolving complaints for preliminary investigation. The party with the burden of justifying the delay would then depend on when the delay occurred, that is, before or after the lapse of the time periods set. If the perceived delay occurred within the time periods, the defense has the burden of proving that the delay was inordinate.[171] If the delay occurred after the time periods set, the prosecution has the burden of justifying the delay. Courts are now mandated to apply *Cagang* on the mode of analysis for resolving claims of violation of the right to speedy disposition of cases:

> This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.
>
> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
>
> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.
>
> *Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.
>
> If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.
>
> Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

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[171] Id.

> *Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.
>
> An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.
>
> Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.
>
> In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.
>
> *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.[172] (Citations omitted; emphasis in the original)

The subsequent case of *Salcedo v. Sandiganbayan*,[173] decided in 2019, reiterated that "the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and failure to do so even when he or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right."[174] *Revuelta v. People*[175] and *People v. Sandiganbayan (First Division)*,[176] also decided in 2019, affirm the applicability of *Cagang* in cases where the right to speedy disposition of cases is invoked.

Taking the foregoing into consideration, we find no violation of petitioner's right to speedy disposition of cases. The preliminary investigation lasted six (6) years, six (6) months, and three (3) days, beginning on February 19, 2004, when the Ombudsman docketed the Commission on Audit's audit report as a formal charge, up to September 22, 2010, when the informations were filed before the Sandiganbayan. The time the Commission on Audit took to conduct its audit investigation from March 2003 to February 19, 2004, which was about 11 months, is not considered

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172 Id.

173 G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division].

174 Id.

175 G.R. No. 237039, June 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65191> [Per J. Peralta, Third Division].

176 G.R. No. 240776, November 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65928> [Per J. Perlas-Bernabe, Second Division].

part of the proceedings for preliminary investigation but only for fact-finding purposes. The audit investigation was merely preparatory for the filing of the formal complaint before the Ombudsman should the Commission on Audit find anomalies in the transactions.[177]

The six-and-a-half years it took the Ombudsman to resolve the criminal complaints was not vexatious, capricious, or oppressive. As explained by respondent Office of the Special Prosecutor, petitioner was indicted together with 31 other co-respondents for malversation of public funds and for allegedly violating the Anti-Graft and Corrupt Practices Act. The alleged criminal act consisted of disbursing funds from the coffers of Zamboanga Sibugay through a sham financial aid program.

To establish a *prima facie* case, the Ombudsman, with the help of the Commission on Audit, investigated the public officers, including petitioner, who had requested for reimbursements from the provincial government for amounts allegedly advanced to give financial aid. The identities of the supposed beneficiaries were verified, but it was found that the numerous beneficiaries indicated in the reimbursement requests were nonexistent.

These findings were detailed in the 7225-page audit report of the Commission on Audit, which was reviewed by the Office of the Deputy Ombudsman for Mindanao before docketing the case and directing the 32 respondents to file their respective counter-affidavits. After the submission of the complaints and counter-affidavits, the Deputy Ombudsman for Mindanao found probable cause against the respondents through a 136-page Resolution. The Resolution was further reviewed before finally approved by the Ombudsman.

These reasons—(1) number of persons charged; (2) the degree of review needed to unravel the scheme; (3) the numerous pleadings filed; (4) the voluminous documents and testimonies for review; and (5) the participation of petitioner—justify the time it took the Ombudsman to finally file the information in court.

Notably, during the preliminary investigation, petitioner never filed any kind of motion or manifestation to speedily resolve the complaints against him. Only when the six (6) informations were filed in the Sandiganbayan did petitioner file his Motion for Judicial Determination of Probable Cause, raising as one of the grounds the alleged violation of his right to speedy disposition of cases. To our mind, the right was invoked belatedly, and that petitioner acquiesced to the delay in the conduct of preliminary investigation.

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[177] *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per J. Leonen, En Banc].

Considering that petitioner never asserted his right to speedy disposition of cases at the prosecutor level, We conclude that he was not prejudiced by the six (6) years of preliminary investigation. No allegations of threats to liberty, loss of employment or compensation, or any other kind of prejudice were made, leading this Court to believe that petitioner actually welcomed the delay.

While the preliminary investigation in this case took more time than the three (3) years of preliminary investigation in *Tatad v. Sandiganbayan*,[178] the latter case does not apply here. In *Tatad*, a formal report for alleged violations of the Anti-Graft and Corrupt Practices Act was filed against then Minister of Public Information Francisco S. Tatad as early as 1974. It was only in 1979, when Minister Tatad resigned from his position after he had a falling out with President Marcos, that the Presidential Security Command resurrected the 1974 report and filed it as a formal complaint before the Tanodbayan. Circuitously, the Tanodbayan referred the complaint back to the Presidential Security Command for fact-finding investigation. By 1982, all the complaint-affidavits and counter-affidavits were with the Tanodbayan for final disposition, with the resolution approved and the case filed in court in 1985.

The peculiar circumstances in *Tatad* show that, though not in its technical sense, a "case" has been built against Minister Tatad as early as 1974 and its disposition was inordinately delayed to deliberately prejudice Minister Tatad.

The government, then controlled by a dictator, deviated from established procedure for preliminary investigation. Instead of directly filing a case before the Tanodbayan, a formal report was made to sleep in the Presidential Security Command. After the falling out in 1979, only then was the formal report revived and converted into a formal complaint. The Tanodbayan referred the complaint back to the Presidential Security Command, the very office that had received the initial report, for fact-finding investigation.

Three (3) years after, the Tanodbayan had the complaint and all the counter-affidavits. It then took another three (3) years to file cases before the Sandiganbayan. These circumstances were patently impelled by political motivations, and this Court rightly concluded that Minister Tatad's right to speedy disposition of cases was violated.

Petitioner's prosecution was not similarly colored by political motivations. Nothing in the facts show that petitioner's prosecution was done in retaliation for offending a powerful person in government. As

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[178] 242 Phil. 563 (1988) [Per J. Yap, En Banc].

opposed to *Tatad,* the proceedings done here were in accord with established procedure for preliminary investigation, including the referral of the complaint to the Commission on Audit. It is the accepted practice in the Ombudsman to refer to the Commission on Audit complaints involving the alleged illegal disbursement of public funds in view of the Commission's authority to examine and audit expenditures and uses of government funds and property.[179] This is to ensure that no more State funds are wasted by filing unmeritorious cases in court.

Lopez, Jr. v. Ombudsman,[180] likewise cited by petitioner, also does not apply here. In *Lopez*, a former official of the Department of Education, Culture, and Sports (now Department of Education) was charged with violating the Anti-Graft and Corrupt Practices Act for his involvement in an overpricing scheme and lack of public bidding for the procurement of laboratory apparatus and school equipment. After a four (4)-year conduct of the preliminary investigation, cases were filed before the Sandiganbayan. This Court considered the four (4) years too long a delay, finding that the cases filed against respondent Lopez were "not sufficiently complex to justify the length of time for their resolution."[181] There was also "no statement that voluminous documentary and testimonial evidence were involved."[182]

In contrast with the overpricing scheme in *Lopez*, the nature of the "Aid to the Poor" program, coupled with the sheer number of respondents, justifies the six (6) years it took the Office of the Ombudsman to file cases in court. Numerous persons were named as beneficiaries of financial aid, so numerous that the Commission on Audit issued a 7225-page report. To establish a *prima facie* case, the identities of these various persons had to be verified. The allegations of the parties here also establish that voluminous and testimonial evidence were involved.

In sum, this Court finds that petitioner's right to speedy disposition of cases was not violated.

III

Even on the merits, this Court finds that the Sandiganbayan did not gravely abuse its discretion in denying petitioner's Motion for Judicial Determination of Probable Cause.

Probable cause is understood in two (2) senses: (1) the executive; and (2) the judicial. The executive determination of probable cause is done

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179 CONST., art. ix(D), sec. 2(1).
180 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].
181 Id. at 50.
182 Id.

during preliminary investigation where the prosecutor ascertains whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[183] The executive determination of probable cause is within the exclusive domain of the prosecutor and, absent grave abuse of discretion, this determination cannot be interfered with by the courts.[184]

On the other hand, the judicial determination of probable cause is done by a judge to determine whether a warrant of arrest should issue. In the words of the Constitution, "no. . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may be produce[.]"[185] The Rules of Court in Rule 112, Section 5(a) reiterates that "the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence" for purposes of issuance of an arrest warrant.

While denominated as "Motion for Judicial Determination of Probable Cause," the motion filed before the Sandiganbayan was, in reality, a motion for the judge to make an *executive* determination of probable cause. Petitioner makes no mention of any grave abuse of discretion in relation to the issuance of a warrant of arrest. Instead, he argues that the Sandiganbayan gravely abused its discretion in "not dismissing the instant cases despite the obvious lack of probable cause,"[186] assailing the filing of informations in court.

But as discussed, a court, including this Court, cannot interfere with the executive determination of probable cause absent grave abuse of discretion on the part of the prosecutor. There is grave abuse of discretion when power is exercised "arbitrarily or despotically by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law."[187] No such grave abuse of discretion exists here.

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183 RULES OF COURT, Rule 112, sec. 1 provides:
SECTION 1. *Preliminary investigation defined; when required.* — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial[.]

184 *Alberto v. Court of Appeals*, 711 Phil. 530, 550 (2013) [Per J. Perlas-Bernabe, Second Division]. *See also Napoles v. De Lima*, 790 Phil. 161 (2016) [Per J. Leonen, Second Division].

185 CONST., Art. III., sec. 2 provides:
SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

186 *Rollo*, p. 7.

187 *Valencia v. Sandiganbayan*, 477 Phil. 103, 119 (2004) [Per J. Ynares-Santiago, First Division].

Petitioner was charged with malversation of public funds[188] and violating section 3(e)[189] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

As for the first charge, the elements of malversation of public funds are: (1) that the offender is a public officer; (2) that he [or she] had custody or control of funds or property by reason of the duties of his [or her] office; (3) that those funds or property were public funds or property for which he [or she] was accountable; and (4) that he [or she] appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[190]

As for the second charge, the elements of violation of section 3(e) of the Anti-Graft and Corrupt Practices Act are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[191]

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188 REV. PEN. CODE, art. 217, as amended by Republic Act Nos. 1060 and 10951, provides:

ART. 217. *Malversation of public funds or property. – Presumption of malversation.* Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any person other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400.000).

4. The penalty of *reclusion temporal,* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua.*

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

189 Republic Act No. 3019, sec. 3(e) provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared unlawful:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

190 *See Cantos v. People*, 713 Phil. 344 (2013) [Per J. Villarama, Jr., First Division].

191 *See Garcia v. Sandiganbayan*, 730 Phil. 521 (2014) [Per J. Carpio, Second Division].

The presence of these elements are evident in the Ombudsman's Resolution dated July 10, 2006 and June 1, 2011, thereby confirming probable cause for filing the informations in the Sandiganbayan. Relevant portions of the July 10, 2006 Resolution stated:

FINDINGS/RECOMMENDATIONS

RESPONDENTS FACE the herein criminal charges for causing the disbursement of the funds intended for the Aid to the Poor Program to alleged inexistent beneficiaries. That while respondents maintain that the funds were extended and granted to the people who personally came to their respective offices and the funds were properly expended, the documents availing and the questionable existence of the said beneficiaries, however, subject the disbursements of said funds to suspicion.

As declared, the funds used as aid to the poor came from the funds of the province which were earlier realigned by way of resolutions issued by the [Sangguniang Panlalawigan] of Zamboanga Sibugay. The funds were placed under the budget of the [Provincial Social Welfare and Development Office] but were used exclusively by the respondents.

. . . .

4) BOARD MEMBER IGNACIO C. BAYA

Respondent BM BAYA caused the reimbursement of the amount of ₱60,000.0[0] under the three (3) vouchers which amount was allegedly spent as financial assistance to the people of Zamboanga Sibugay under the Aid to the Poor Program. That out of the alleged eighteen (18) beneficiaries of said financial assistance, fourteen (14), however, could not be located.

Reiterating the same averments of his co-respondents, respondent Baya maintained his participation as being limited to referrals, also stressing the possible misrepresentation employed by beneficiaries. On the contrary, the members of his staff, namely, Nenita Rodriguez, Alice Libre and Rex Tago, who claimed to have personally seen the beneficiaries, are firm on their belief that the beneficiaries would not lie as to their names and addresses. Respondent Baya's allegations as to procedure claimed to have been undertaken in the release of the funds appears inconsistent, hence dubious. In his reply-affidavit, respondent Baya was quick to point responsibility to the [Provincial Social Work and Development Office], therein claiming that it was the [Provincial Social Work and Development Office] who prepared the [Brief Social Case Study Reports] and that payments to the beneficiaries were only made after the approval by the [Provincial Social Work and Development Office]. In his counter-affidavit, however, respondent Baya alleged that it was his personnel, namely, Nelita Rodriguez, Alice Libre and Rex Tago who conducted the interview, gathered data and filled-up the [Brief Social Case Study Reports]. In his supplemental counter-affidavit, respondent Baya claimed that he conducted preliminary interview of the client before giving the monetary assistance, after which he left everything to his staff including the gathering and completion of requirements.

In an effort to prove the existence of the beneficiaries, respondent submitted affidavits of people who attested to the whereabouts of the beneficiaries, especially those of Oliver Alvarico, Romeo dela Cerna, Erlinda Yecla, Rogelyn Mejorada and Ramon Chavez. The statements of the affiants may show their association with the earlier named beneficiaries, however, the same do not in any way show that said alleged beneficiaries received the amounts claimed to have been extended to them by respondent Baya. While the affidavits of Emeliana Sueno and Cecille Ceballos may show that financial aid were extended to them by [Board Member] Baya, these confirmations do not sufficiently explain the inconsistency attending the grant of financial to aid to the other beneficiaries whose existence remains doubtful. A peculiar case is that of Erlinda Yecla who is listed as one of the beneficiaries for the amount of ₱4,000.00. In the confirmation letter dated 10 June 2003, **Erlinda Yecla** denied having received any cash aid from [the Provincial Social Work and Development Office] nor of having known [Board Member] Baya, further claiming that while she formerly resided at Malangas, she has since. . . transferred to Ipil [in 1977]. While respondents impress on this Office the existence of another beneficiary likewise named **Erlinda Yecla**, such assertion, however, does not in any way establish the existence of said Erlinda Yecla as alleged recipient of the cash aid.[192] (Emphasis in the original)

The Resolution dated June 1, 2011, issued after the reinvestigation, provides:

THE RULING

The undersigned prosecutors examined all pertinent documents in these cases which consist of the three [Disbursement Vouchers] and all its annexes, the Audit-Investigation Report, the sworn statements of accused-movants, and the Affidavits of alleged beneficiaries of the Aid to the Poor Program, among others.

A careful scrutiny of the Disbursement Vouchers and the annexes thereto, consisting of the Brief Social Case Study Reports (BSCSR), DSWD Form 200, and Reimbursement Expense Receipts (RERs) revealed that all of the accused-movants participated in the release of public funds through reimbursement of expenses allegedly incurred for the "Aid to the Poor" program. Thus:

A. For [Disbursement Voucher] No. 101-0201-90 amounting to ₱21,000.00:

Accused-movant **Ignacio C. Baya** signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I hereby certify that I personally paid the Client under the Aid to the Poor Program." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed the Request for Obligation Allotment (ROA) and the [Brief Social Case Study Reports] dated October

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192 *Rollo*, pp. 104–114.

15, 16, 19 and 26, 2001 and November 5, 7, and 26, 2001 for the clients which commonly state, among others, that:

i. the case situation pertains to the need of medical assistance to purchase the prescribed medicines;
ii. the relative (mother, father, husband, wife or daughter) of the client came to the office of [Board Member] Ignacio C. Baya seeking for medical assistance to purchase the needed medicines of the client;
iii. a thorough interview was made and
iv. the family is truly in need of medical assistance. . . of certain amount.

Accused-movant **Rex P. Tago** attested in all the [Reimbursement Receipts] that financial assistance for the purchase of medicines were given and received by the payee from accused-movant Baya.

On the other hand, accused-movant **Nelita R. Rodriguez** prepared and signed all the [Brief Social Case Study Reports] attached [Disbursement Voucher] No. 101-0201-90 together with accused-movant Baya. She also stated in all the six (6) DSWD/PSWDO Form No. 2000 that financial assistance were given to the clients mentioned therein.

B. For [Disbursement Voucher] No. 101-0201-91 amounting to P29,000.00:

Accused-movant **Ignacio C. Baya** also signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I HEREBY CERTIFY that I personally paid the Client under the Aid to the Poor Program under the office of the undersigned." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed the Request for Obligation Allotment (ROA) and the [Brief Social Case Study Reports] dated November 26, 2011 for client Efraim Lumokso which states, among others, that:

i. the wife of a client came to the residence of [Board Member] Ignacio C. Baya seeking for medical assistance to purchase the needed medicines of her husband who is suffering from peptic ulcer;
ii. a thorough interview was made; and
iii. the family is truly in need of medical assistance hence, the client was extended medical assistance of P3,000.00

Accused-movant Baya also signed all the other [Brief Social Case Study Reports] for the other clients attached to this [Disbursement Voucher] which similarly stated the above data.

Accused-movant **Alice B. Libre** attested in all the [Reimbursement Receipts] that financial assistance for the purchase of medicines were given and received by the payee from accused-movant Baya. She also stated in all the eight (8) [Provincial Social Work and Development Office] Form No. [200] that financial assistance were given to the clients mentioned therein.

For her part, accused-movant **Nelita R. Rodriguez** prepared and signed all the [Brief Social Case Study Reports] attached to [Disbursement Voucher] No. 101-0201-91 together with accused-movant Baya.

C. For [Disbursement Voucher] No. 101-0109-363 amounting to P10,000.00:

Accused-movant **Ignacio C. Baya** similarly signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I HEREBY CERTIFY that I personally paid the Client under the Aid to the Poor Program." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed all the [Brief Social Case Study Reports] attached to this [Disbursement Voucher] which states, among others, that he gave financial assistance to the clients mentioned in these [Brief Social Case Study Reports].

Accused-movant **Nelita R. Rodriguez** also attested in all the [Reimbursement Receipts] attached to this [Disbursement Voucher] that financial assistance were given and received by the payee from accused-movant Baya. She also signed all the DSWD Form [2000] and all the [Brief Social Case Study Reports][sic], thereby attesting that financial assistance were given to the clients mentioned therein.

Based on their sworn statements, accused-movants do not dispute their participation in the release of public funds through the three above-stated reimbursement Disbursement Vouchers. They insist, however, that they actually paid the clients mentioned in the [Reimbursement Receipts], [Provincial Social Work and Development Office] Form 200 [sic] and [Brief Social Case Study Reports]. In support of this claim, they submitted the Affidavits of Barangay Captain Edison Ybañez, Emeliana Sueño, Barangay Captain Jonathan Acalendo, Cecile Gomez Ceballos, Lowell Lalican, Alan B. Tolorio, Roger Mejorada, Albani Maut and Dr. Carlos L. Gemarino, Jr.

. . . .

Likewise, the Certification of Dr. Carlos L. Gemarino, Jr. anent Erlinda Yecla states that:

> "This is to certify that Mrs. Erlinda Yecla was confined at this Hospital for Medical Check-up. This is to certify further that she was different Erlinda Yecla from the Erlinda Yecla whom I know as an employee of the DSWD, Ipil, Zamboanga Sibugay.
> X x x x."

The above-stated Certification does not state that the Erlinda Yecla who was confined at the Gemarino Hospital for medical check-up received financial assistance from accused-movant Baya.

On the other hand, Allan Tolorio's Affidavit that Erlinda Yecla received financial assistance from accused-movant Baya is hearsay, not being executed by Erlinda Yecla herself. More importantly, this is belied by the Confirmation letter dated June 10, 2003 of Erlinda Yecla which

> expressly states that she did not receive financial aid from accused-movants.
>
> The affirmation of Emelyn Sueño, Cecile Gomez Ceballos and Roger Mejorada that accused-movant Baya gave them financial assistance, including their defense of good faith are also matters of evidence which are best threshed out in the trial of these cases. Besides, the [Brief Social Case Study Reports] and [Provincial Social Work and Development Office] Form 200 [sic] show that accused-movants allegedly gave financial assistance to nineteen (19) clients and they have not submitted any proof as regards the other sixteen (16) alleged clients.
>
> Significantly, accused-movant Libre did not sign any document attached to [Disbursement Voucher] Nos. 101-0201-90 and 101-0109-363 while accused-movant Tago did not sign any document attached to [Disbursement Voucher] Nos. 101-0201-91 and 101-0109-363. However, there is prima facie evidence that all the accused-movants conspired in all of these cases. They expressly admitted in their respective Sworn Statements that they personally witnessed Board Member Baya actually paying the clients listed in the AOL and that they personally met the individual clients, despite the finding in the audit investigation report of the "Aid to the Poor Program" were found to be fictitious or non-existing.
>
> **WHEREFORE**, premises considered, it is respectfully recommended by the undersigned prosecutors that the Resolution of the Office of the Ombudsman-Mindanao dated July 10, 2006 finding probable cause against the accused-movants be MAINTAINED.[193] (Emphasis in the original)

We reject petitioner's argument that he cannot be charged with malversation because he was not an accountable officer who had custody of the funds appropriated by him. Section 340 of the Local Government Code on persons accountable for local government funds provides:

> SECTION 340. ***Persons Accountable for Local Government Funds***. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

It is clear that not only those with actual possession or custody of the local government funds are considered accountable persons. Local government officials become accountable public officers either: (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds.[194]

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[193] *Rollo*, pp. 291–297.

[194] *See Zoleta v. Sandiganbayan*, 765 Phil. 39 (2015) [Per J. Brion, Second Division]; *Frias, Sr. v. People*, 561 Phil. 55, 64 (2007) [Per J. Corona, En Banc].

Despite not having actual custody of the municipality's funds, petitioner participated in their use or application by directing how the funds should actually be applied. In petitioner's case, his certification that the supposed beneficiaries were indigent and in need of financial assistance led to the use of the funds for the "Aid to the Poor" program.

Petitioner cannot pass blame to the Provincial Social Work and Development Office, the office that allegedly had actual custody of the funds and approved of his reimbursement requests. Were it not for his certification in the Disbursement Vouchers and Reimbursement Expense Receipts, the Provincial Social Work and Development Office would not have approved the application for reimbursement.

This Court will not pass upon petitioner's contention that the manner by which the Commission on Audit confirmed the existence of the beneficiaries was "very much insufficient to establish probable cause."[195] Again, this goes into the exclusive domain of the prosecution, and this Court sees nothing capricious, whimsical, arbitrary, or despotic in sending out confirmation letters to the addresses indicated by the beneficiaries in their respective application forms. On the contrary, it was the logical way of confirming the beneficiaries' existence.

All told, there is no grave abuse of discretion in the finding of probable cause against petitioner, both for malversation of public funds and violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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[195] *Rollo*, p. 30.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

NOV 20 2020