



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 8, 2020 which reads as follows:

“G.R. No. 234187 (*Marlon E. Barillo v. Sandiganbayan (Third Division) and People of the Philippines*). - The case before the Court is a special civil action for *Certiorari* and Prohibition with Urgent Prayer for a *Status Quo* Order or Temporary Restraining Order, seeking the reversal of the Sandiganbayan’s Resolutions dated May 15, 2017¹ and September 4, 2017,² which respectively denied Marlon E. Barillo’s (*Barillo*) Motion to Quash Information, and Motion for Reconsideration of the former.

Barillo was charged before the Sandiganbayan with violation of Section 3(e) of Republic Act No. 3019 (*R.A. 3019*). Barillo asserts that the Office of the Ombudsman has lost its authority to file the Information due to the alleged inordinate delay of eleven (11) years and six (6) months that preceded the filing of the Information, which Barillo avers to have violated his right to speedy disposition of cases and due process.

Accused-Movant’s Alleged Procedural Antecedents, in His Motion to Quash

Summarized in the Sandiganbayan Third Division’s assailed May 15, 2017 Resolution, are Barillo’s chronicled alleged procedural antecedents:³

- over – twelve (12) pages ...

168-B

¹ The Resolution was penned by Presiding Justice Amparo M. Cabotaje-Tang, and concurred in by Associate Justices Sarah Jane T. Fernandez and Bernelito R. Fernandez, of the Third Division of the Sandiganbayan; *rollo*, pp. 36-63.

² *Id.* at 66-79.

³ *Id.* at 36-37-A. (Emphases ours)

[As] early as 2005, [Crisologo V.] Saavedra filed a **Complaint** with the Office of the Ombudsman-Visayas (*OMB-Visayas*) in Cebu City, docketed as OMB-V-C-06-0071-B, against the accused to complain against the alleged irregularities in the bidding for one (1) unit of ARFFV for [the Mactan-Cebu International Airport Authority] (*MCIAA*), which alleged irregularities [consisting] of the imposition of unnecessary and unrelated requirements to favor one bidder, abuse of discretion in rejecting the eligibility documents of one bidder in favor of another, and lack of transparency in the opening of bids.

On May 15, 2005, Sigfredo V. Dublin and Veronica Ordoñez filed their Counter-Affidavits. Marlon E. Barillo also filed his Counter-Affidavit.

On July 14, 2006, Saavedra filed another **Complaint** with the OMB-Visayas “bearing on the same issues”, adding accused Adelberto F. Yap and Ma. Venus B. Casas as respondents.

On August 4, 2006, a resolution of even date was issued in OMB-V-C-06-0071-B dismissing the Complaint.

On January 28, 2008, **the Resolution dismissing the case was approved** by Acting Ombudsman Orlando C. Casimiro.

On **September 2, 2008**, Saavedra filed another **Complaint** asking the OMB-Visayas to immediately investigate all the five (5) accused for violation of R.A. 9184 and R.A. 3019 in connection with the purchase of the same one (1) unit of ARFFV for MCIAA in 2006, which was the subject of his earlier Complaints in 2005 and 2006 that were previously dismissed in the OMB-Visayas Resolution dated August 4, 2006.

On **December 11, 2012**, Graft Investigation Officer I Lou Pagaran-Tila executed an **Affidavit** to file criminal charges against the accused for alleged violations of Section[s] 3(e) and 3(g) of R.A. 3019.

On April 22, 2014, another **Complaint** was filed/docketed with the Office of the Ombudsman for alleged violation of Sections 3(e) and 3(g) of R.A. 3019 against the five (5) accused and three (3) other persons to investigate the same purchase of one (1) unit of ARFFV for the MCIAA in 2006. This Complaint was filed by the Public Assistance & Corruption Prevention Office (*PACPO*) of the OMB-Visayas and Saavedra and was docketed as OMB-V-C-14-0123.

On July 28, 2016, a Resolution of even date was issued by the Office of the Ombudsman recommending the filing of an Information against the five (5) accused for alleged violation of Section 3(e) of R.A. 3019 and another Information against accused Yap alone for alleged violation of Section 3(g) of R.A. 3019.

- over -

168-B



On August 5, 2016, the Resolution dated July 28, 2016 was approved by Ombudsman Conchita Carpio Morales.

On November 8, 2016, the **Informations** in SB-16-CRM-1076 and SB-16-CRM-1077 were filed with the Sandiganbayan.

According to Barillo, the alleged irregularity of the purchase of the Airport Rescue and Fire-fighting Vehicles (*ARFFV*) for the Mactan-Cebu International Airport Authority (*MCIAA*) was first investigated by the Office of the Ombudsman-Visayas (*OMB-Visayas*) in the early part of 2005, upon the filing of the complaint with the OMB-Visayas by private complainant Saavedra; that from 2005 until the filing of the Informations on November 8, 2016, it took eleven (11) years and six (6) months, which constituted inordinate delay in the resolution of the case.⁴ Further, Barillo argues that even if the third complaint filed on September 2, 2008 is the reckoning point, there exists an inordinate delay of eight (8) years and two (2) months.⁵

Prosecution's Opposition on Accused-Movant's Motion to Quash based on the Circumstances Allegedly Surrounding the Proceedings

On the other hand, the prosecution narrates the circumstances allegedly surrounding the proceedings before the Office of the Ombudsman which will purportedly show that the accused-movant's constitutional rights to speedy disposition of cases and due process were not violated:⁶

On February 6, 2006, Saavedra filed before the OMB-Visayas a **Complaint** for Misconduct against Yap, MCIAA General Manager, Ordoñez, Chairperson, MCIAA BAC Dublin, Legal Officer and Casas, OIC-MCIAA Accountant, Accounting Division. The complaint was docketed as OMB-V-C-06-0077-B. He also filed a criminal complaint for Violation of the Anti-Graft Law, docketed as OMB-V-C-06-0071-B, against the same respondents, including Barillo, President of Asia Borders Philippines.

On August 4, 2006, in two separate resolutions, the OMB-Visayas **dismissed the complaints** filed by Saavedra.

- over -
168-B

⁴ *Id.* at 37.

⁵ *Id.*

⁶ *Id.* at 46-50.

On September 2, 2008, Saavedra filed another **Complaint** before the OMB-Visayas against Yap, Ordoñez, Dublin, Casas, Barillo, del Bando, Cosego, involving the same transaction subject of his 2006 complaint.

On September 10, 2008, Saavedra filed an amended letter-complaint, impleading additional respondents and submitting additional documents in support of his complaint.

In a letter dated September 17, 2008, Assistant Ombudsman for Visayas Virginia P. Santiago requested Ms. Teresita N. Coscos, Regional Cluster Director of the Commission on Audit (COA) to submit an audit report on the subject matter of Saavedra's complaint docketed as CPL-V-08-0598.

On November 12, 2008, the OMB-Visayas received a letter dated November 5, 2008, addressed to then Deputy Ombudsman for Visayas Pelagio S. Apostol, from Deborah C. Montejo, SA IV/Audit Team Leader, COA-MCIAA, transmitting certified copies of audit communications. These letters showed that as early as 2006, the acquisition of the subject equipment, had been the subject of an audit examination of the COA, but the same had not been terminated as of 2008, as the COA was still gathering pertinent documents from the MCIAA.

On July 30, 2009, AO Santiago wrote a letter addressed to Deflin Aguilar, Regional Director, COA Regional Office VII, requesting [the] COA to submit an updated report on their audit examination.

On October 27, 2010, AO Santiago wrote another letter addressed to Director Aguilar reiterating her request as stated in her July 30, 2009 letter.

On February 16, 2011, AO Santiago wrote Director Aguilar for the third time to follow up her request as stated in her July 30, 2009 and October 27, 2010 letters.

On September 20, 2012, the OMB-Visayas received a letter dated September 14, 2012 from Sabiniano G. Cabatuan, Regional Director, COA Regional Office No. VII, transmitting the Affidavit of State Auditor IV Ma. Irma S. Purog, Audit Team Leader of the MCIAA, which contained the audit findings of the team on the subject matter of Saavedra's complaint docketed as CPL-V-08-0598. The transmittal letter likewise explained that the delay in the audit report was due to the reshuffling of auditors and difficulty in obtaining some of the documents attached to Ms. Purog's affidavit.

On **December 11, 2012**, Graft Investigation and Prosecution Officer I (GIPO-I) Lou Pagaran Tila prepared a **Final Evaluation Report**, recommending that CPL-V-08-0598 be upgraded into criminal cases for Violation of Sections 3(e) and (g)

- over -

168-B



of R.A. 3019, as amended, against Yap, Bersonda, Casas, Dublin, Ordoñez, Del Bando, Cosejo and Barillo, with corresponding administrative case for Grave Misconduct against the same respondents except for Barillo.

On March 6, 2014, Deputy Ombudsman for the Visayas Pelagio S. Apostol approved GIPO Tila's Final Evaluation Report with her attached affidavit.

On **April 22, 2014**, GIPO Tila's **Final Evaluation Report** with her attached affidavit was docketed as OMB-V-C-14-0123.

On June 19, 2014, the OMB-Visayas, represented by Bacalso, Acting Director, EIO, issued an Order directing the respondents to file their Counter-Affidavits and controverting evidence to the complaint filed by PACPO and docketed as OMB-V-C-14-0123.

On July 10, 2014, the OMB-Visayas received the Counter-Affidavit dated July 10, 2014 executed by respondent Venus B. Casas.

On March 26, 2015, the OMB-Visayas received the Counter-Affidavit dated March 26, 2015, executed by respondent Romeo Bersonda.

On April 8, 2015, the OMB-Visayas received the Joint Counter-Affidavit dated April 8, 2015, executed by respondents Ordoñez and Dublin.

On **July 28, 2016**, Graft Investigation and Prosecution Officer IV Reyes issued a Resolution, finding probable cause to charge respondents Yap, Ordoñez, Dublin, Casas and Barillo for Violation of Section 3(e) of R.A. 3019 and respondent Yap for Violation of Section 3(g) of the same law. The said Resolution was approved by the Ombudsman on **August 5, 2016** and the corresponding Informations were filed on **November 8, 2016**.

Based on the said events, the prosecution avers the alleged delay in the termination of the fact-finding and preliminary investigation conducted by the Office of the Ombudsman relative to these cases was neither vexatious, capricious, nor oppressive.⁷ *First*, from the time Saavedra's first complaint was dismissed on August 4, 2006, up to the time Saavedra filed a another complaint on September 2, 2008, accused Barillo was neither under formal investigation nor was there any formal charge filed against him.⁸ *Second*, the fact-

- over -

168-B

⁷ *Id.* at 50.

⁸ *Id.*

finding investigation conducted in these cases was necessitated by the form, manner and nature of the allegation as well as the requirements of due process and thorough investigative work.⁹ *Third*, Barillo never raised the issue of undue delay before the Office of the Ombudsman.¹⁰

In addition, even if the OMB-Visayas repeatedly made follow-ups, it was only on September 20, 2012, that the Commission on Audit (COA) submitted the audit findings of its team on the subject matter of Saavedra's complaint.¹¹ According to the prosecution, the COA explained that the delay in the audit report was due to the reshuffling of auditors and difficulty in obtaining some of the documents attached to its report, particularly those obtained from MCIAA.¹² The prosecution points out that the COA report was crucial in the case since it involved highly technical matters.¹³

Further, the prosecution explains that because of the technical matters, it was only prudent that the OMB-Visayas has to await the report of the COA in order to accurately determine whether there are sufficient grounds to file formal charges against the respondents.¹⁴

In sum, the prosecution submits that the period of fact-finding investigation cannot be considered vexatious, capricious, or oppressive, but a process necessitated by the form, manner and nature of the allegation as well as the requirements of due process and through investigative work.¹⁵

Ruling of the Sandiganbayan

On May 15, 2017, the Sandiganbayan promulgated its Resolution, the decretal portion of which reads:

WHEREFORE, accused-movant Marlon E. Barillo's "*Motion to Quash Information*" dated November 23, 2016, accused-movant Adelberto Federico Yap's "*Motion to Dismiss*" dated December 20, 2016, and accused-movant Venus B. Casas' "*Motion to Quash Information*" dated February 17, 2017 are **DENIED** for lack of merit.

SO ORDERED.¹⁶

- over -

168-B

⁹ *Id.*
¹⁰ *Id.*
¹¹ *Id.*
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.* at 51.
¹⁵ *Id.*
¹⁶ *Id.* at 63.

As regards the Motion for Reconsideration of the May 15, 2017 Resolution, on September 4, 2017, the Sandiganbayan promulgated its Resolution, the decretal portion of which reads:

WHEREFORE, accused-movant Marlon E. Barillo's "Motion for Reconsideration (of the resolution dated 15 May 2017)" dated June 13, 2017, is **DENIED** for lack of merit.

SO ORDERED.¹⁷

The Sandiganbayan denied Barillo's Motion to Quash the Information, and the Motion for Reconsideration, with respect to the former, for lack of merit.

According to the Sandiganbayan, it is only when the proceedings are attended by vexatious, arbitrary, capricious and oppressive delays, or when without cause or justifiable motive, a long period of time is allowed to elapse, would there be a violation of the right to speedy disposition of cases.¹⁸ As a consequence, a mere mathematical reckoning of the time involved would not be sufficient.¹⁹

Further, the Sandiganbayan ruled that the computation of the length of delay should not be reckoned from the dismissed 2005 and 2006 complaints because the cases lodged before the Court are not based on these dismissed complaints.²⁰

On the issue that there was no genuine need to refer the matter to the COA because these do not involve technical matters, and have "no special circumstances that would warrant the delay in the resolution of the complaint as the present case involves a single transaction," the Sandiganbayan found Barillo's argument as unmeritorious.

The Sandiganbayan found the prosecution's explanation regarding the delay in the termination of the preliminary investigation in the present case sufficient. The prosecution explained that it referred the letter-complaint filed by Saavedra to the COA, considering that it involved highly technical matters, and this was

- over -

168-B

¹⁷ *Id.* at 78.

¹⁸ *People v. The Sandiganbayan (First Division), et al.*, G.R. Nos. 233557-67, June 19, 2019.

¹⁹ *Id.*

²⁰ *Rollo*, p. 72.

indispensably essential in determining the veracity of the said complaint.²¹ In justifying the delay in the termination of the preliminary investigation, the prosecution cited the case of *Valencia v. Sandiganbayan*,²² wherein the Supreme Court ruled that the delay in the fact-finding investigations in this case was not inordinate considering that the prosecutors exercised extreme care in verifying, evaluating and assessing the charges against the petitioners before making a finding of probable cause:

By way of explanation for the perceived delay, the Special Prosecutor, in his Comment to the petition, enumerated the chronology of events beginning from the receipt of the letter-complaint to the filing of the Information. It appears therefrom that in most cases the extended periods of time were devoted to verifications and investigations, first by the National Bureau of Investigation and then by the Ombudsman. Within the Office of the Ombudsman, the complaint had to undergo separate investigations by the Fact-Finding Investigation Bureau and the Evaluation and Preliminary Investigation Bureau. During the preliminary investigation itself, petitioners sought extensions of time before they filed their counter-affidavits.

Thus, the ruling in *Tatad* does not apply here. In that case, the delay was exacerbated by the fact that the charges against petitioner were found to be politically motivated. In the case at bar, there is no indication that the complaint against petitioners was filed to serve political ends. Neither is the delay vexatious, capricious or oppressive. On the contrary, what appears is that the prosecutors exercised extreme care in verifying, evaluating and assessing the charges against petitioners before making a finding of probable cause.²³

As regards the issue that Barillo was prejudiced by the delay because he cannot adequately defend himself, the Sandiganbayan held that, since the prejudice alleged was unsubstantiated, it has no weight in law.²⁴

Further, the Sandiganbayan was not convinced that Barillo did not waive his right to speedy disposition of his case. Barillo argued that he immediately asserted in his Motion to Quash Information dated November 23, 2016, the right to a speedy disposition of his case, upon learning of the filing of the Information in the present

- over -

168-B

²¹ *Id.* at 73.

²² 477 Phil. 103, 119 (2004).

²³ *Id.* at 118-199.

²⁴ *Rollo*, p. 73.

case.²⁵ Barillo pointed out that he never had an earlier opportunity to assert his right to speedy disposition of his case, because as far as he knew, the two (2) previous complaints against him were already dismissed by the Office of the Ombudsman.²⁶ In ruling that Barillo waived his right to a speedy disposition of his case, the Sandiganbayan considered the following circumstances:

x x x [T]he records show that in its Order dated June 16, 2014, the Office of the Ombudsman-Visayas directed the accused-movants to file their counter-affidavits to the complaint-affidavit filed by the Public Assistance & Corruption Prevention Office (PACPO). Respondent Luz O. Cosejo, accused-movant Venus B. Casas, respondent Romeo Bersonda, accused Veronica Ordoñez and accused Sigfredo Dublin filed their *counter-affidavits* on July 8, 2014, July 10, 2014, March 26, 2015 and April 8, 2015, respectively. Based on the Office of the Ombudsman's Resolution dated July 16, 2016, accused-movants Yap and Barillo did not file their counter-affidavits.

x x x [A]s early as 2014, the accused-movants were already aware that there was a pending case against them before the Office of the Ombudsman. However, they conspicuously failed to assert their right to speedy disposition of cases. In fact accused-movant Barillo ignored the opportunity to answer the charges against him. Thus, they should be deemed to have waived their right to speedy disposition of cases.²⁷

On the issue that the Rules of Court provides that the preliminary investigation proceedings before the Office of the Ombudsman should not have taken more than ninety (90) days to be resolved, the Sandiganbayan found Barillo's argument bereft of merit.²⁸ The said period is merely directory.²⁹

On October 3, 2017, Barillo filed the instant Petition for *Certiorari* and Prohibition with Urgent Prayer for a *Status Quo* Order or Temporary Restraining Order, before this Court.

- over -

168-B

²⁵ *Id.* at 74-75.

²⁶ *Id.* at 75.

²⁷ *Id.*

²⁸ *Id.* at 77.

²⁹ *Id.*, citing *Raro v. Sandiganbayan*, 390 Phil. 917, 948 (2000), where the Court discussed:

x x x Recently, the Court held that while the Rules of Court provides a ten-day period from submission of the case within which an investigating officer must come out with a resolution, that period of time is merely directory. Thus:

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman."

However, the present case is already considered moot due to the Decision³⁰ of the Sandiganbayan dated February 14, 2020, the dispositive portion of which, reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

1. In SB-16-CRM-1076, *ACCUSED Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum; and to suffer perpetual disqualification to hold public office; and*
2. In SB-16-CRM-1077, accused Adelberto Yap is found **GUILTY** beyond reasonable doubt of violation of Section 3(g) of R.A. No. 3019, and is sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and to suffer perpetual disqualification to hold public office.

SO ORDERED.³¹

Issue

The issue raised for the Court's consideration is whether the period spent from the filing of the complaint before the Office of the Ombudsman up to the time of filing of the Information in the Sandiganbayan transgressed accused-movant Barillo's constitutional right to a speedy disposition of his case.

The Court's Ruling

We dismiss the case at bar for having become moot and academic.

- over -
168-B

³⁰ *People of the Philippines v. Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo, Crim. Case No. SB-16-CRM-1076 and Crim. Case No. SB-16-CRM-1077, February 14, 2020. The Decision was penned by Associate Justice Ronald B. Moreno, and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.*

³¹ *Rollo*, pp. 39-40.

A moot and academic case ceases to present a justiciable controversy by virtue of supervening events.³² Its adjudication would be of no practical value or use.³³ In such case, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition.³⁴ In general, courts will decline jurisdiction over such case or dismiss it on the ground of mootness.³⁵ The judgment on the said case will not serve any useful purpose or have any practical legal effect because it cannot be enforced.³⁶

In this case, the supervening event was the Decision of the Sandiganbayan in Crim. Case No. SB-16-CRM-1076, convicting Marlon E. Barillo for violation of Section 3(e) of R.A. No. 3019.³⁷ The Sandiganbayan has rendered a final judgment over the aforementioned case. Ruling on Barillo's Petition filed before this Court, seeking the reversal of the Sandiganbayan's denial of Barillo's Motion to Quash Information and Motion for Reconsideration of the former in Crim. Case No. SB-16-CRM-1076, would not afford Barillo any substantial relief or have any practical legal effect on the case.

On the basis of the foregoing, the Court finds it appropriate to abstain from passing upon the merits of the case where legal relief is no longer needed.

WHEREFORE, premises considered, the Petition is **DISMISSED** for being moot and academic.

- over -

168-B

³² *Majestic Plus Holding International, Inc. v. Bullion Investment and Development Corp.*, 801 Phil. 883, 908 (2016).

³³ *Id.*

³⁴ *Id.*

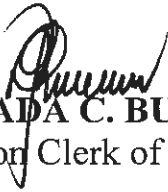
³⁵ *Id.*

³⁶ *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, G.R. No. 208660, March 5, 2014.

³⁷ *People of the Philippines v. Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo*, Crim. Case No. SB-16-CRM-1076 and Crim. Case No. SB-16-CRM-1077, February 14, 2020. The Decision was penned by Associate Justice Ronald B. Moreno, and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
168-B

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