Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Petitioner,

- *versus* -

HON. SANDIGANBAYAN, FIRST DIVISION & THIRD DIVISION, HERNANDO BENITO PEREZ, ROSARIO PEREZ, RAMON ARCEO and ERNEST ESCALER, Respondents.

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PEOPLE OF THE PHILIPPINES, Petitioner,

- *versus* -

HON. SANDIGANBAYAN, SECOND DIVISION, HERNANDO BENITO PEREZ, ROSARIO SALVADOR PEREZ, ERNEST DE LEON ESCALER and RAMON CASTILLO ARCEO, JR., Respondents.

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G.R. No. 188165

G.R. No. 189063

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

DEC 11 2013

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D E C I S I O N

BERSAMIN, *J.*:

The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted

by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.

The Case

The Court resolves the petitions for *certiorari* the State instituted to assail and nullify, in G.R. No. 188165, the Sandiganbayan's dismissal of Criminal Case SB-08-CRM-0265 entitled *People of the Philippine v. Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo*, for violation of Section 3 (*b*) of Republic Act No. 3019, as amended; and, in G.R. No. 189063, the Sandiganbayan's dismissal of SB-08-CRM-0266 entitled *People of the Philippine v. Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo*, for robbery under Article 293, in relation to Article 294, of the *Revised Penal Code*.

Common Factual and Procedural Antecedents

On November 12, 2002, Congressman Wilfrido B. Villarama of Bulacan (Cong. Villarama) delivered a privilege speech in the House of Representatives denouncing acts of bribery allegedly committed by a high ranking government official whom he then called the "2 Million Dollar Man."[1] In reaction, the Office of the President directed the Presidential Anti-Graft and Commission (PAGC) to conduct an inquiry on the exposé of Cong. Villarama. PAGC sent written communications to Cong. Villarama, Cong. Mark Jimenez, Senator Panfilo Lacson and respondent Secretary of Justice Hernando B. Perez inviting them to provide information and documents on the alleged bribery subject of the exposé.[2] On November 18, 2002, Cong. Villarama responded by letter to PAGC's invitation by confirming that Secretary Perez was the government official who "ha[d] knowledge or connection with the bribery subject of his expose."[3] In his own letter of November 18, 2002, however, Secretary Perez denied being the Million-Dollar Man referred to in Cong. Villarama's privilege speech.[4] On November 25, 2002, Cong. Jimenez delivered a privilege speech in the House of Representatives confirming Cong. Villarama's exposé, and accusing Secretary Perez of extorting US$2 Million from him in February 2001.[5]

On November 25, 2002, then Ombudsman Simeon Marcelo requested PAGC to submit documents relevant to the exposé.[6] On November 26, 2002, Ombudsman Marcelo formally requested Cong. Jimenez to submit a sworn

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1 *Rollo* (G.R. No. 189063, Vol. I), p. 9.
2 Id. at 9-10.
3 Id. at 10.
4 Id.
5 Id.
6 Id. at 10-11.

statement on his exposé.[7] Cong. Jimenez complied on December 23, 2002 by submitting his complaint-affidavit to the Office of the Ombudsman. The complaint-affidavit was initially docketed as CPL-C-02-1992. On the same day, the Special Action Team of the Fact Finding and Intelligence Research Office (FIRO) of the Office of the Ombudsman referred Cong. Jimenez's complaint-affidavit to the Evaluation and Preliminary Investigation Bureau and to the Administrative Adjudication Board, both of the Office of the Ombudsman, for preliminary investigation and administrative adjudication, respectively.[8]

The complaint-affidavit of Jimenez was re-docketed as OMB-C-C-02-0857L, for the criminal case in which the respondents were Secretary Perez, Ernest L. Escaler and Ramon C. Arceo, Jr.; and as OMB-C-A-02-0631L, for the administrative case involving only Secretary Perez as respondent.[9]

On January 2, 2003, a Special Panel composed of Atty. Evelyn Baliton, Atty. Mary Susan Guillermo and Atty. Jose de Jesus was created to evaluate and conduct an investigation of CPL-C-02-1992.

On even date, Secretary Perez, through counsel, requested Ombudsman Marcelo that the Office of the Ombudsman itself directly verify from the Coutt's Bank whether he (Secretary Perez) had ever held any account in that bank to which the sum of US$2 Million had been remitted by Cong. Jimenez.[10]

On January 15, 2003, Ombudsman Marcelo approved the recommendation of the Special Panel to refer the complaint of Cong. Jimenez to FIRO for a full-blown fact-finding investigation.[11]

On June 4, 2003, the Office of the Ombudsman received the letter dated May 30, 2003 from the counsel of Cong. Jimenez, submitting the supplemental complaint-affidavit dated April 4, 2003 of Cong. Jimenez.

In his letter dated July 3, 2003, Secretary Perez, through counsel, sought the dismissal of the complaint for lack of probable cause.[12]

On July 17, 2003, Assistant Ombudsman Pelagio S. Apostol informed Secretary Perez about the letter from Coutts Bank stating that "Hernando B.

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7 Id. at 11.
8 Id. at 12.
9 Id. at 12-13.
10 Id. at 13.
11 Id. at 14.
12 Id. at 14-15.

Perez" had no account with it, and assured that the letter would be considered in the final resolution of the case.[13]

On August 22, 2005, Ombudsman Marcelo created a new Special Panel to evaluate CPL-C-02-1992, and, if warranted, to conduct administrative and preliminary investigations, thereby superseding the creation of the Special Panel formed on January 2, 2003.[14]

On November 14, 2005, the Field Investigation Office (FIO) completed its fact-finding investigation and filed complaints against the following individuals, namely:

A. Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernesto L. Escaler, Ramon C. Arceo and John Does for violation of Section 3(b) of R.A. No. 3019;

B. Former Justice Secretary Hernando B. Perez for violation of the following: Section 8 in relation to Section 11 of R.A. No. 6713, Article 183 (Perjury) of the Revised Penal Code, and Article 171, par. 4 (Falsification) of the RPC; and

C. Former Justice Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler, Ramon C. Arceo and John Does for violation of the provisions of R.A. 1379.[15]

On November 23, 2005, the Special Panel directed Secretary Perez (who had meanwhile resigned from office), his wife Rosario S. Perez (Mrs. Perez), Escaler and Arceo to submit their counter-affidavits in OMB-C-C-02-0857-L, OMB-C-C-05-0633-K, OMB-C-C-05-0634-K and OMB-C-C-05-0635-K (criminal cases). In another order of the same date, the Special Panel directed former Secretary Perez to file his counter-affidavit in OMB-C-A-02-0631-L (administrative case).[16]

On November 29, 2005, the respondents filed an urgent motion for extension of time to file their counter-affidavits.

On December 2, 2005, the counsel for Escaler entered his appearance and sought the extension of the time to file Escaler's counter-affidavit.[17]

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13 Id. at 15.
14 Id. at 15.
15 Id. at 16.
16 Id. at 17.
17 Id. at 17.

On December 5, 2005, the Special Panel ordered the respondents to file their counter-affidavits within ten days from December 4, 2005, or until December 14, 2005.[18]

On December 7, 2005, Asst. Ombudsman Apostol issued PAMO Office Order No. 22, Series of 2005, creating a new team of investigators to assist in the preliminary investigation and administrative adjudication of OMB-C-C-02-0857L, OMB-C-A-02-0631L (administrative case), OMB-C-C-05-0633K to OMB-C-C-0635K (forfeiture proceedings under Republic Act No. 1379). The office order cancelled and superseded PAMO Office Order No. 01-2003, Series of 2003.[19]

On December 12, 2005, former Secretary Perez, Mrs. Perez and Arceo filed an urgent motion to be furnished copies of the complaints.[20] On December 13, 2005, they submitted a consolidated joint counter-affidavit dated December 12, 2005.[21]

On December 15, 2005, the respondents filed a manifestation to which they attached the affidavit of Atty. Chona Dimayuga.[22]

On December 20, 2005, Escaler, instead of filing his counter-affidavit, moved to disqualify the Office of the Ombudsman from conducting the preliminary investigation, and to require the Special Panel to turn over the investigation to the Department of Justice (DOJ).[23]

On December 22, 2005, the respondents submitted the affidavit of Chief State Prosecutor Jovencito Zuño.[24]

On December 29, 2005, the Special Panel denied the motion to disqualify the Office of the Ombudsman from conducting the preliminary investigation, and ordered Escaler to submit his counter-affidavit within five days from notice.[25]

On January 4, 2006, Cong. Jimenez filed an urgent motion for extension of the period to file his opposition to the motion earlier filed by Escaler, and to be granted a new period to reply to the consolidated joint counter-affidavit of the Perezes and Arceo.[26]

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18 Id. at 18.
19 Id.
20 Id.
21 Id. at 18-19.
22 Id. at 19.
23 Id.
24 Id.
25 Id.
26 Id. at 19-20.

Between January 9, 2006 and February 10, 2006, Cong. Jimenez filed urgent motions for time to file his opposition, the last of them seeking an extension until February 10, 2006.[27]

On February 21, 2006, the Perezes and Arceo reiterated their urgent motion to be furnished copies of the complaints.[28]

On February 22, 2006, Cong. Jimenez opposed Escaler's motion to disqualify the Office of the Ombudsman.[29] On the same date, Escaler asked for at least 20 days from February 17, 2006 (or until March 9, 2006) within which to reply to Cong. Jimenez's opposition to his motion.[30] On March 9, 2006, Escaler replied to Cong. Jimenez's opposition.[31] On March 28, 2006, Cong. Jimenez sought leave to file a rejoinder to Escaler's reply.[32]

On May 15, 2006, Escaler moved for the reconsideration of the order of December 29, 2005.[33]

On May 25, 2006, the Special Panel denied Escaler's motion for reconsideration; directed the FIO "to let respondent Escaler examine, compare, copy and obtain any and all documentary evidence described, attached to and forming part of the complaints" of the cases; and granted Escaler an extension of five days within which to submit his counter-affidavit.[34]

After Escaler failed to submit his counter-affidavit despite the lapse of the five day period given to him, the preliminary investigation was terminated.[35]

On August 23, 2006, Escaler commenced in this Court a special civil action for *certiorari* with application for a temporary restraining order (TRO) docketed as G.R. No. 173967-71.[36] On September 4, 2006, the Court required the Office of the Ombudsman to comment on the petition of Escaler.[37]

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27 Id. at 20.
28 Id.
29 Id. at 21.
30 Id. at 20-21.
31 Id. at 21.
32 Id.
33 Id.
34 Id. at 21-22.
35 Id. at 22.
36 *Rollo* (G.R. No. 173967-71, Vol. I), pp. 3-71.
37 Id. at 1082.

On November 6, 2006, the Special Panel issued a joint resolution, finding probable cause and recommending that criminal informations be filed against the respondents, as follows:

> 1) Former Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon S. Arceo, Jr. for Extortion (Robbery) under par. 5 of Article 294 in relation to Article 293 of the Revised Penal Code;
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> 2) Former Secretary Hernando B. Perez, Rosario S. Perez, Ernest L. Escaler and Ramon S. Arceo, Jr. for violation of Section 3 (b) of Rep. Act. 3019.
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> 3) Former Secretary Hernando B. Perez for Falsification of Public Documents under Article 171 par. 4 of the Revised Penal Code.
>
> 4) Former Secretary Hernando B. Perez for violation of Sec. 7, R.A. 3019 in relation to Section 8 of R.A. 6713.[38]

On January 5, 2007, Ombudsman Ma. Merceditas Gutierrez (Ombudsman Gutierrez), who had meanwhile replaced the resigned Ombudsman Marcelo, approved the joint resolution of the Special Panel.[39]

On January 11, 2007, the Perezes and Arceo sought the reconsideration of the joint resolution,[40] and supplemented their motion for that purpose with additional arguments on January 15, 2007.[41]

On January 17, 2007, Arceo filed an *ex parte* motion for leave to admit attached supplemental motion for reconsideration.[42]

On January 24, 2007, the Perezes and Arceo filed an urgent motion to suspend proceedings. On February 6, 2007, Escaler also filed a motion to suspend proceedings *ex abundanti ad cautelam*.[43]

On March 15, 2007, Cong. Jimenez asked for time to comment on the respondents' motion for reconsideration. He filed another motion for extension of the time to comment on April 27, 2007.[44]

On September 18, 2007, the Perezes prayed that the proceedings be held in abeyance to await the ruling on their application for intervention in

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38 *Rollo* (G.R. No. 189063, Vol. I), pp. 22-23.
39 Id. at 14-15.
40 Id. at 23.
41 Id.
42 Id.
43 Id. at 24.
44 Id.

Escaler's action in the Court. On October 1, 2007, they filed a motion to dismiss.[45]

On October 2, 2007, Cong. Jimenez submitted his affidavit of desistance.[46] Thus, on October 4, 2007, the Perezes filed an *ex parte* motion for resolution on the basis of the desistance by Cong. Jimenez.[47]

On January 25, 2008, the Special Panel issued an omnibus resolution denying the original and supplemental motions for reconsideration of the Perezes and Arceo; their motion to suspend the proceedings; Escaler's motion to suspend proceedings *ex abundanti ad cautelam*; and the Perezes' motion to dismiss.[48]

On April 18, 2008, the Perezes brought a petition for *certiorari* with an application for a writ of preliminary injunction in this Court (G.R. No. 182360-63).[49] In due time, the Court required the respondents in G.R. No. 182360-63 to file their comments on the petition.[50]

On April 18, 2008, the Office of the Ombudsman filed in the Sandiganbayan four informations against respondents, namely:

1. for violation of Sec. 3 (b) of Rep. Act 3019, as amended;

2. for Robbery (Art. 293, in relation to Art. 294, Revised Penal Code;

3. for Falsification of Public/Official Document under Art. 171 of the Revised Penal Code; and

4. for violation of Section 7, Rep. Act 3019, as amended, in relation to Section 8, Rep. Act 6713.[51]

Criminal Case No. SB-08-CRM-0265
[Violation of Section 3(b) of Republic Act No. 3019]

The information alleging the violation of Section 3(b) of Republic Act No. 3019, which was docketed as Criminal Case No. SB-08-CRM-0265 entitled *People v. Hernando Benito Perez, et. al.*, and was raffled to the First Division of the Sandiganbayan,[52] averred:

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45 Id.
46 Id.
47 Id. at 25.
48 Id. at 593-615.
49 Id. at 3-68.
50 Id. at 1247.
51 Id. at 25-26.
52 *Rollo* (G.R. No. 188165), p. 8.

> That during the month of February, 2001 and sometime prior or subsequent thereto in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused Hernando B. Perez, a high ranking public officer, being then the Secretary of the Department of Justice, while in the performance of his official function, committing the offense in relation to his office and taking advantage thereof, conspiring, confabulating and confederating with accused Ernest L. Escaler, Rosario S. Perez and Ramon C. Arceo, all private individuals, did then and there wilfully, unlawfully and criminally request and demand the amount of US TWO MILLION DOLLARS ($2,000,000.00) for himself and/or other persons from Mark Jimenez a.k.a. Mario B. Crespo, and thereafter succeeded in receiving from the latter the sum of US$1,999,965.00 in consideration of accused Hernando S. Perez's desisting from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against former President Joseph 'Erap' Estrada and in connection with the pending application of Mark Jimenez for admission into the Witness Protection Program of the government, over which transaction accused Hernando S. Perez had to intervene in his official capacity under the law, to the damage and prejudice of Mark Jimenez.
>
> CONTRARY TO LAW.[53]

On May 8, 2008, the Perezes moved to quash the information.[54] Escaler presented a similar motion to quash *ex abundanti ad cautelam* on May 12, 2008,[55] while Arceo adopted the motions of the Perezes and Escaler on May 13, 2008.[56] On June 4, 2008, the Office of the Ombudsman countered with a consolidated opposition.[57]

On July 17, 2008, the First Division of the Sandiganbayan promulgated its resolution denying the motions to quash,[58] disposing thusly:

> **WHEREFORE**, in view of the foregoing, the Motion to Quash of accused Hernando B. Perez and Rosario S. Perez and the urgent Ex-Abudanti Ad Cautelam Motion to Quash of accused Ernest Escaler are hereby **DENIED** for lack of merit.
>
> Accordingly, let the arraignment of the accused herein proceed on July 18, 2008 at 8:30 in the morning as previously set by the Court.
>
> **SO ORDERED**.

Respondents separately sought the reconsideration of the resolution of denial of their motions to quash.

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53 Id. at 37.
54 Id. at 8.
55 Id.
56 Id.
57 Id.
58 Id. at 76-84; penned by Associate Justice Diosdado M. Peralta (now a Member of the Court), with the concurrence of Associate Justice Rodolfo A. Ponferrada and Associate Justice Alexander G. Gesmundo.

On November 13, 2008, the Sandiganbayan First Division granted the motions for reconsideration,[59] rendering the following ratiocination, to wit:

> x x x x
>
> After a second hard look on the respective contentions of the parties, the Court is inclined to grant the Motions for Reconsideration of the accused and perforce grant their motion to quash the Information filed against them in this case.
>
> It is axiomatic that as a general rule prerequisite, a motion to quash on the ground that the Information does not constitute the offense charged, or any offense for that matter, should be resolved on the basis of the factual allegations therein whose truth and veracity are hypothetically admitted; and on additional facts admitted or not denied by the prosecution. If the facts in the Information do not constitute an offense, the complaint or information should be quashed by the court.
>
> x x x x
>
> It is clear that the ambit of Section 3 (b) of RA 3019 is specific. It is limited only to contracts or transaction involving monetary consideration where the public officer has authority to intervene under the law. Thus, the requesting or demanding of any gift, present, share, percentage, or benefit covered by said Section 3(b) must be in connection with a "contract or transaction" involving "monetary consideration" with the government wherein the public officer in his official capacity has to intervene under the law. In this regard, the Supreme Court in *Soriano, Jr. vs. Sandiganbayan* construed the term "contract" or "transaction" covered by Section 3(b) of RA 3019, as follows –
>
> > "It is obvious that the investigation conducted by the petitioner was not a *contract*. Neither was it a *transaction* because this term must be construed as analogous to the terms which precedes it. **A transaction like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner."** (Emphasis supplied)
>
> Thus, applying the above construction of the Supreme Court in the case at bench, the Court believes and so holds that the alleged desistance of accused Hernando B. Perez *"from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against former President Joseph 'Erap' Estrada and in connection with the pending application of Mark Jimenez for admission into the WPP of the government"*, cannot, by any stretch of the imagination, be considered as *"contract"* or *"transaction"* as defined within the ambit of the fourth element of the offense under Section 3(b) of RA 3019 because no *"monetary consideration"* as in credit transaction is involved.
>
> The Court finds untenable the prosecution's contention that the execution by Mark Jimenez of the affidavits in connection with his

[59] Id. at 37-41; penned by Associate Justice Peralta, with the concurrence of Associate Justice Ponferrada and Associate Justice Gesmundo (italicized and underlined portions are part of the original text).

pending application for admission in the WPP (and not the alleged desistance of accused Hernando B. Perez from pressuring Mark Jimenez to execute affidavits implicating target personalities involved in the plunder case against President Estrada) is the very contract or transaction required by the offense charged in this case; and that all the elements of a contract contemplated therein are present as there is allegedly consent between the government and Mark Jimenez, object or subject matter which is the execution of affidavits in connection with his application for admission in the WPP, and a cause or consideration which consists of security and monetary benefits to be given by the government to Mark Jimenez in exchange for his participation as a witness under the WPP.

For even assuming for the sake of argument that the pending application of Mark Jimenez for admission in the WPP can be considered as a contract or transaction, it bears stressing that the principal consideration for the said application of Mark Jimenez is the latter's obligation to testify as a witness under the WPP on one hand and his entitlement to the protection granted to a witness in the WPP on the other hand and as such, does not entail any money consideration. Certainly, this is not the (monetary) consideration which is essential or involved in credit transactions. Any pecuniary or monetary expense that may be incurred by the Government as a result of the implementation of the program in favour of Mark Jimenez is purely incidental. Such alleged monetary benefit is definitely not the reason that impelled Mark Jimenez to allegedly avail of the WPP of the government.

More precisely, however, what appears as the main consideration of the alleged demand or receipt of accused Hernando B. Perez of the sum of US$2,000,000.00 from Mark Jimenez is the former's alleged desistance from pressuring the latter to execute affidavits implicating targeted personalities in the plunder case against former President Estrada. In the light of the ruling of the Supreme Court in *Soriano vs. Sandiganbayan, supra*, such alleged desistance of accused Hernando B. Perez (and even the application of Mark Jimenez for admission into the WPP as argued by the prosecution) can hardly be considered as a "contract" or "transaction" that is contemplated in Section 3(b) of RA 3019, as amended.

Moreover, the Court takes note of the admission made by the prosecution in its Memorandum that the transaction involving Mark Jimenez's execution of affidavits for his admission to the WPP is not yet a perfected contract between the Government and Mark Jimenez since it is still in its "*negotiation phase*" because of the refusal of Mark Jimenez to execute the affidavits against certain individuals. This admission is another indication that there is indeed no contract or transaction to speak of that is covered under the fourth element of the offense of violation of Section 3(b) of RA 3019.

Finally, it may be argued that while the material allegations in the subject information may not constitute the offense of violation of Section 3(b) of RA 3019, as amended, the same material/factual allegations nevertheless constitute Direct Bribery or another felony which is necessarily included in the offense charged herein so that the subject information in this case should not be quashed. It is believed, however, that the filing of the Information charging the accused with Robbery in SB-08-CRM-00266 pending before the Second Division of this Court on the basis of the same acts complained of in this case, constitutes a bar

> against the information for said lesser felony as it would result into two differently charged felonies from a single act and thus, would unnecessarily or unjustifiably expose the accused to the danger of suffering two penalties for a single offense if the subject information is not quashed. If a single act results into two or more offenses, they should not be charged and/or punished separately unless the other offense with different elements is penalized under a special law. To do so would violate, if not the principle of double jeopardy, the rule against splitting a single act into various charges. It is settled that a defendant should not be harassed with various prosecutions upon the same act by splitting the same into various charges, all emanating from the same law violated, when the prosecution could easily and well embody them in a single information because such splitting of the action would work unnecessary inconvenience to the administration of justice in general and to the accused in particular, for it would require the presentation of substantially the same evidence before different courts.
>
> All told, with the absence of the fourth element, the Court finds that the factual/material allegations in the subject Information do not constitute the offense of violation of Section 3(b) of RA 3019, as amended, and therefore, It is constrained to quash the said Information. In this regard, the Court deems it unnecessary to discuss/resolve the other issues raised in the subject motions for reconsideration of the herein accused and/or disturb the other findings contained in the Resolution sought to be reconsidered.
>
> **WHEREFORE,** the instant Motions for Reconsideration of the herein accused are resolved accordingly and the subject Information for violation of Section 3(b) of R.A. 3019, as amended, is hereby **QUASHED.**
>
> **SO ORDERED.**

The State moved for the reconsideration of the resolution quashing the information in Criminal Case No. SB-08-CRM-0265.

During the pendency of the State's motion for reconsideration, Criminal Case No. SB-08-CRM-0265 was re-raffled to the Third Division of the Sandiganbayan.

On April 21, 2009, the Third Division denied the Ombudsman's motion for reconsideration,[60] holding thusly:

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> The core issue raised in the submission of the parties relates to the meaning of the word "transaction" as it is used in Sec. 3 (b) of RA 3019 to constitute an element of the offense. More particularly, has the meaning

[60] Id. at 42-51; penned by Associate Justice Francisco H. Villaruz, Jr. (later Presiding Justice, but already retired), joined by Associate Justice Efren N. De la Cruz and Associate Justice Alex L. Quiroz.

of the term "transaction" as enunciated in the Soriano case been modified by subsequent rulings of the Supreme Court?

The meaning of "transaction" in Sec. 3 (b) of RA 3019 was enunciated in the Soriano case when the Supreme Court stated:

> As stated above, the principal issue is whether or not the investigation conducted by the petitioner can be regarded as a "contract or transaction" within the purview of Sec. 3 (b) of R.A. No. 3019. On this issue the petition is highly impressed with merit.
>
> The afore-mentioned provision reads as follows:
>
> SEC. 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:
>
> (a) …
>
> (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.
>
> The petitioner states:
>
> Assuming in *gratia argumenti*, petitioner's guilt, the facts make out a case of Direct Bribery defined and penalized under the provision of Article 210 of the Revised Penal Code and not a violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended.
>
> The evidence for the prosecution clearly and undoubtedly support, if at all the offense of Direct Bribery, which is not the offense charged and is not likewise included in or is necessarily included in the offense charged, which is for violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended. The prosecution showed that: the accused is a public officer; in consideration of P4,000.00 which was allegedly solicited, P2,000.00 of which was allegedly received, the petitioner undertook or promised to dismiss a criminal complaint pending preliminary investigation before him, which may or may not constitute a crime; that the act of dismissing the criminal complaint pending before petitioner was related to the exercise of the function of his office. Therefore, it is with pristine clarity that the offense proved, if at all is Direct Bribery. (Petition, p. 5.)
>
> Upon the other hand, the respondents claim:

> A reading of the above-quoted provision would show that the term 'transaction' as used thereof is not limited in its scope or meaning to a commercial or business transaction but includes all kinds of transaction, whether commercial, civil or administrative in nature, pending with the government. This must be so, otherwise, the Act would have so stated in the "Definition of Terms", Section 2 thereof. But it did not, perforce leaving no other interpretation than that the expressed purpose and object is to embrace all kinds of transaction between the government and other party wherein the public officer would intervene under the law. (Comment, p. 8.)
>
> **It is obvious that the investigation conducted by the petitioner was not a *contract*. Neither was it a *transaction* because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.** (Emphasis Supplied)

The argument of the Prosecution that the interpretation of the term "transaction" defined in the Soriano case has been modified by the Mejia, Pelegrino and Chang cases does not persuade.

A review of the Mejia, Peligrino and Chang cases reveals that the main issue adjudicated in those cases involved an interpretation of the element of Sec. 3 (b) of RA 3019, namely: the right to intervene of the public officer in the contract or transaction and not the element of what is a contract or transaction with the government.

Thus, in the Mejia case, the Supreme Court ruled:

> Under the sixth assigned error petitioner alleges that she does not intervene in the setting of the hearing of cases and she does not formulate resolutions thereof. The branch clerk of court is the administrative assistant of the presiding judge whose duty is to assist in the management of the calendar of the court and in all other matters not involving the exercise of discretion or judgment of the judge. It is this special relation of the petitioner with the judge who presumably has reposed confidence in her which appears to have been taken advantage of by the petitioner in persuading the complainants to give her money in consideration of a promise to get a favorable resolution of their cases.

In the Peligrino case, the Supreme Court ruled:

> Petitioner is a BIR Examiner assigned to the Special Project Committee tasked "xxx to undertake verification of tax liabilities of various professionals particularly doctors within the jurisdiction of Revenue Region 4-A, Manila xxx" Since the subject transaction involved the reassessment of taxes due from private complainant, **the right of petitioner to intervene in his official capacity is undisputed.**

> Therefore, elements (1), (4) and (5) of the offense are present. (Emphasis Supplied)

In the Chang case, the Supreme Court ruled:

> San Mateo's justification behind such refusal- that he had no authority to accept an amount less than the assessment amount- is too shallow to merit belief, he being the Chief Operations, Business Revenue Examination, Audit Division of the Treasurer's Office, who had, on those various meetings, gone out of his way to negotiate the settlement of the assessed deficiency tax.

In the recent case of Merencillo vs. People, the Supreme Court identified the issues raised in the Petition as follows: (1) the Sandiganbayan's refusal to believe petitioner's evidence over that of the prosecution and (2) the Sandiganbayan's failure to recognize that Petitioner was placed in double jeopardy.

In addressing the second issue, the Supreme Court ruled:

> Clearly, the violation of Section 3(b) of RA 3019 is neither identical nor necessarily inclusive of direct bribery. While they have common elements, not all the essential elements of one offense are included among or form part of those enumerated in the other. Whereas the mere request or demand of a gift, present, share, percentage or benefit is enough to constitute a violation of Section 3(b) of RA 3019, acceptance of a promise or offer or receipt of a gift or present is required in direct bribery. **Moreover, the ambit of Section 3(b) of RA 3019 is specific. It is limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law.** Direct bribery, on the other hand, has a wider and more general scope: (a) performance of an act constituting a crime; (b) execution of an unjust act which does not constitute a crime and (c) agreeing to refrain or refraining from doing an act which is his official duty to do. Although the two charges against petitioner stemmed from the same transaction, the same act gave rise to two separate and distinct offenses. No double jeopardy attached since there was a variance between the elements of the offenses charged. The constitutional protection against double jeopardy proceeds from a second prosecution for the same offense, not for a different one. (Emphasis Supplied)

Prosecution's argument that the statement of the Supreme Court above-quoted is an *obiter dictum* is specious.

An *obiter dictum* is a "judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)." In the Merencillo case, one issue raised by Petitioner was precisely the issue of double jeopardy which the Supreme Court resolved by distinguishing the elements of violation of Sec. 3 (b) of RA 3019 and Direct Bribery. As one of the elements of the offense of violation of Sec. 3 (b) of RA 3019,

the Court adopted the meaning given to the term "transaction" in the Soriano case. The above-quoted resolution was not a mere *obiter dictum* but the *ratio decidendi* which is defined as:

> "1. the principle or rule of law on which a court's decision is founded; 2. The rule of law on which a later court thinks that a previous court founded its decision xx"

The Prosecution argued that it is a maxim in statutory construction that a law must be read in its entirety and no single provision should be interpreted in isolation with respect to the other provisions of the law. The Prosecution further argued that a close examination of RA 3019 in its entirety would show that the term "transaction" appears several times and was never confined to transactions involving monetary consideration. Suffice it to say that a maxim in statutory construction cannot be superior to an express interpretation of the law made by the Supreme Court. Furthermore, the provisions in RA 3019 cited by Prosecution constitute different offenses with their own different elements, with their own different modalities of commission.

The reference to the Congressional record by the Prosecution does not disprove the fact that for violation of Sec. 3 (b) of RA 3019, the transaction must involve monetary consideration. As pointed out earlier, no less than the Supreme Court has interpreted the meaning of the term "transaction" as an element of violation of the said section. Likewise, as admitted by the Prosecution, the reference to the deliberations of Congress which it cited involved deliberations on Sec. 5 of RA 3019 and not on Sec. 3 (b) of RA 3019. The two sections, i.e. Sec. 5 and Sec. 3 (b) of RA 3019 are different offenses with their own different elements.

Having resolved the core issue in the Motion For Reconsideration of the Prosecution, there is no further need to discuss the other arguments of the Prosecution in its Motion.

WHEREFORE, Prosecution's Motion for Reconsideration of the Resolution of the First Division dated November 13, 2008 is **DENIED**.

SO ORDERED.

On June 22, 2009, the Office of the Special Prosecutor (OSP) assailed in this Court via petition for *certiorari* the resolution of the Sandiganbayan promulgated on July 17, 2008 quashing the information in Criminal Case No. SB-08-CRM-0265 and the resolution promulgated on April 21, 2009 denying the State's motion for reconsideration.

On November 18, 2009, the Court denied the Perezes' urgent motion for leave to file a motion to dismiss for being a prohibited pleading, and instead required the respondents to comment on the petition, among other things.[61]

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[61] Id. at 98.

Criminal Case SB-08-CRM-0266
[Robbery under Art. 293, in relation to Art. 294, *Revised Penal Code*]

The information charging robbery under Article 293, in relation to Article 294, *Revised Penal Code* was raffled to the Second Division (Criminal Case No. SB-08-CRM-0266).[62]

On May 6, 2008, Escaler filed a motion to quash *ex abundanti ad cautelam*, alleging that the facts charged did not constitute an offense.[63] On May 2, 2008, the Perezes filed their own motion to quash the information.[64] On May 6, 2008, Arceo filed an *ex parte* motion to adopt the Perezes motion as well as Escaler's motion to quash.[65]

On June 26, 2008, the Second Division of the Sandiganbayan denied the respective motions to quash of respondents.[66]

On June 30, 2008, Escaler moved to reconsider the denial.[67] On July 10, 2008, Arceo also moved to reconsider the denial.[68] The Perezes filed their own motion for reconsideration on July 11, 2008.[69]

On November 20, 2008, the Second Division of the Sandiganbayan granted the motions for reconsideration, quashed the information charging respondents with robbery, and dismissed Criminal Case No. SB-08-CRM-0266,[70] holding as follows:

> x x x x
>
> The Court after a careful perusal of the issue and the record on hand, is persuaded. Extant in the record and which the prosecution admits or at least does not deny are the following:
>
> 1. The alleged Robbery (extortion) was committed on February 13, 2001 (Joint Resolution signed by members of the Special Panel composed of Orlando Ines, Adoracion Agbada, Mary Susan Geronimo, Jose de Jesus Jr., signed by Asst. Ombudsman Pelagio Apostol, and approved by Ombudsman Mr. (sic) Merceditas N.

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62 *Rollo* (G.R. No. 189063, Vol. I), p. 620.
63 *Rollo* (G.R. No. 189063, Vol. II), p. 1069.
64 Id. at 2209.
65 Id. at 2209.
66 Id. at 2209-2213.
67 Id. at 1070.
68 *Rollo* (G.R. No. 189063, Vol. I), p. 86.
69 Id.
70 Id. at 86-95; penned by Associate Justice Edilberto G. Sandoval (later Presiding Justice, but already retired), with Associate Justice Teresita V. Diaz-Baldos and Associate Justice Samuel R. Martires concurring.

Gutierrez.) (pp. 4-69, Vol. 1, Records; pp. 70-88, Complaint-Affidavit of Mark Jimenez, Vol. 1, Records)

2. On February 23, 2001 the amount of US $1,999,965.00 was transferred to Coutts Bank Hongkong in favour of the beneficiary of Account No. HO 13706, from Trade and Commerce Bank, Cayman Island through the Chase Manhattan Bank in New York. Subsequently from March 6, 2001 to May 23, 2001 funds were transferred from Coutts Bank to other accounts, among them a $250,000.00 bank draft/cheque issued to Ramon C. Arceo (pp. 10-11 Records).

3. On December 23, 2002 Congressman Mark Jimenez filed his complaint with the Ombudsman charging Hernando Perez, Ernest Escaler, Ramon Arceo and several John Does (Mrs. Rosario Perez was not among those charged) with criminal offenses of Plunder, Extortion, Graft and Corruption, Obstruction of Justice, Violation of the Penal Provision of the Code of Conduct and Ethical Standards R.A. 6713, and Administrative Offenses of Dishonesty, Grave Misconduct, Oppression, Committing acts Punishable under the Anti-Graft Law, Conduct Prejudicial to the Best Interest of the service, and Violation of Section 5 (2) of R.A. 6713. It was subscribed and sworn to on (the) 23rd day of December 2002 (Complaint-Affidavit of Mario Mark (MJ) Jimenez B. Crespo – pp. 70-88 Records).

4. On December 23, 2002, the FIRO (Fact Finding and Intelligence Research Office) recommended that the case be referred to the Evaluation and Preliminary Investigation Bureau and the Administrative Adjudication Bureau (p. 6 of the Records)

5. The information was filed with this Court only on April 18, 2008.

Having established, or at least as claimed by Complainant Mark Jimenez, that the Robbery (extortion) took place on February 13, 2001, the Ombudsman should have demanded a reasonable explanation from the complainant who was then a Congressman, wealthy and influential and in whose house the alleged intimidation took place, why he was filing the complaint only on December 23, 2002 a matter of more than eighteen (18) months. This should have cautioned the Ombudsman as to the possible motive in filing the complaint.

At any rate, the Field Investigation Office (FIO) of the office of the Ombudsman as nominal complainant filed a complaint with the Ombudsman on November 14, 2005 charging Hernando Benito Perez, Rosario Salvador Perez, Ernest L. Escaler, Ramon Antonio C. Arceo Jr. and John Does with Violation of Sec. 3(b) R.A. 3019, Sec. 8 in relation to Sec. 11 of R.A. 6713, Perjury (Art. 183 RPC) and Art. 171 par. 4 Falsification, RPC and violation of R.A. 1379. (Pp. 132 to 170 of Records) Robbery is NOT one of the charges.

With the Ombudsman's finding that the extortion (intimidation) was perpetrated on February 13, 2001 and that there was transfer of Mark Jimenez US $1,999,965.00 to Coutts Bank Account HO 133706 on February 23, 2001 in favour of the accused, there is no reason why within a reasonable period from these dates, the complaint should not be resolved. The act of intimidation was there, the asportation was complete as of February 23, 2001 why was the information filed only on April 18, 2008. For such a simple charge of Robbery there is nothing more to consider and all the facts and circumstances upon which to anchor a resolution whether to give due course to the complaint or to dismiss it are on hand. The case is more than ripe for resolution. Failure to act on the same is a clear transgression of the constitutional rights of the accused. A healthy respect for the constitutional prerogative of the accused should have prodded the Ombudsman to act within a reasonable time.

The long wait of the accused is without valid cause or justifiable motive and has unnecessarily trampled upon their constitutional prerogatives to a speedy disposition of the case. This is an impermissible course of action that our fundamental law loathes.

As Justice Laurel said, the government should be the last to set an example of delay and oppression in the administration of justice. It is the moral and legal obligation of the Court to see that criminal proceedings come to an end (People vs. Calamba 63 Phil 496).

The Constitution of the Philippines provides:

> Art. 3 Sec. 16: All persons shall have a right to a speedy disposition of their cases before all judicial(,) quasi-judicial or administrative bodies.

Thus under our present fundamental law, all persons are entitled to a speedy resolution of their cases be it civil, administrative or criminal cases. It is, in criminal cases however where the need to a speedy disposition of their cases is more pronounced. It is so, because in criminal cases, it is not only the honor and reputation but even the liberty of the accused (even life itself before the enactment of R.A. 9346) is at stake.

The charge is a simple case for Robbery. Certainly it does not involve complicated and factual issues that would necessitate painstaking and gruelling scrutiny and perusal on the part of the Ombudsman. It may have its novel, and to it, valid reason for departing from the established procedure and rules, but virtually in doing so, it has failed to discharge its duty as mandated by the Constitution to promptly act on complaints filed in any form or manner against public officers and employees.

The totality of the facts and the surrounding circumstances bears unmistakably the earmarks of inordinate delay, making the applicability of the doctrine enunciated in Anchangco Jr. and Duterte cases cited in the parties' pleadings irrefragable.

Accordingly, there being a clear violation of the constitutional right of the accused, the prosecution is ousted of any authority to file the information and we hereby order the quashing of the information and the consequent dismissal of this case.

> While the ground upon which the Court banked and relied this dismissal order was not invoked in the motions for reconsideration of accused Escaler and Arceo, since they are similarly situated with their co-accused spouses Perez, this resolution applies to them with equal force and effect.
>
> On the basis of the foregoing disquisition, We hereby consider the Motion for Reconsideration of our resolution denying the motion for consolidation moot and academic; even as, We rule that the said motion lacks persuasiveness considering that, per Manifestation of accused Escaler he is not in any way a party to all the cases pending, the accused in each of the cases were charged with different offenses, and the different cases are already at different stages of the proceedings, and considering the argument of the prosecution that the different offenses in the four (4) cases consist of different elements necessitating presentation of different proofs and evidence for each case.
>
> Accused'(s) bonds are ordered cancelled and the Hold-Departure Order issued against them in this case is lifted and set aside.
>
> So ordered.

The State moved to reconsider the resolution of November 20, 2008,[71] but the Second Division of the Sandiganbayan denied the motion for reconsideration on June 19, 2009,[72] stating thusly:

> This resolves the Motion for Reconsideration of the People of the Philippines dated December 8, 2008 seeking to reconsider the Resolution of this Court promulgated on November 20, 2008 dismissing the case, as well as accused-spouses Perez Opposition dated December 22, 2008, accused Arceo's Comment/Opposition of even date, and the Opposition dated January 5, 2009 of accused Ernest L. Escaler.
>
> On record too, are the Plaintiff's Consolidated Reply dated January 19, 2009 to the three (3) Opposition/Comment of the accused, the three (3) Rejoinders of the accused of different dates, the plaintiff's sub-rejoinder dated February 9, 2009, accused Perezes(') Manifestation and Plaintiff's Comment dated February 16, 2009 to Perezes(') Manifestation.
>
> All these shall be considered and taken up by the Court in seriatim.
>
> The first issue brought up by the accused is a supposed procedural lapse of the plaintiff's motion for reconsideration in that the same was filed in violation of Sec. 4 Rule 15 of the Rules of Court which provides in substance that in every written motion required to be heard, the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing.
>
> Of course, it is not disputed that the accused-spouses received through registered mail their copy of plaintiff's motion only on December

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71 Id. at 96.

72 Id. at 96-104; penned by Associate Justice Sandoval, joined by Associate Justice Diaz-Baldos and Associate Justice Martires (who filed a separate concurring opinion).

16, 2008 while it set the date of hearing on December 12, 2007 thus the motion was set for hearing before the other party received it. Accused Ramon Arceo received his copy of the motion only on December 17, 2008 while accused Ernest Escaler received his copy after December 18, 2008 giving the same situation as accused Perezes. It must be taken note of that the Court set the hearing of the plaintiff's motion on December 18, 2008, as on December 12, 2008 the date specified on plaintiff's motion, no accused has received his copy of the said motion.

Considering thus, the situation, there seems plausibility for the accused claim of transgression of the aforecited provision of the Rules of Court.

Nonetheless, considering the transfer of the date of hearing, and that all the parties were given ample time to file and submit their respective pleadings which at the time the issue was to be resolved had grown voluminous, the Court is not inclined to give due consideration for this procedural impropriety.

The Court takes note however that the plaintiff's motion for reconsideration was filed only on December 8, 2008 beyond the fifteenth day period within which it should be filed, since it received a copy of the Resolution of this Court on November 21, 2008. Thus, the fifteenth day fell on December 6, 2008 after which the said Resolution has become final and executory. The Resolution in question therefore which finally disposes of the case is not only final but executory as well which is virtually beyond the reach of the motion for reconsideration belatedly filed.

We will now tackle the merits of the grounds invoked by the People.

The first ground cited in the People's motion was that the filing of complaint against former secretary Hernando B. Perez was not attended by ill motive since it reasoned out that it was the intimation of the Court when it stated in its Resolution the Ombudsman xxx "should have demanded a reasonable explanation from the complainant who was then a congressman, wealthy and influential and in whose house the alleged intimidation took place, why he was filing the complaint only on December 23, 2002 a matter of more than eighteen (18) months. This should have cautioned the Ombudsman as to the possible motive in filing the complaint. xxx "We take note of the response of the prosecution "Jimenez thought that after the pay-off, Secretary Perez would stop threatening him and would leave him in peace for good. This was the reason why Jimenez did not immediately file a complaint against Secretary Perez and his co-accused."

The first and foremost impression We can gather is that the alleged about two million dollars which supposedly was the result of accused Perez' alleged extortion was delivered already to the accused. All along therefore, if the claim of the prosecution is to be believed, Robbery has long been committed that was on or about February 2001 as alleged in the information. With or without ill-motive, the Ombudsman should have acted within a reasonable time. Certainly eighteen (18) long months from the filing of the complaint can not be considered within a reasonable time.

The movant then argued that the filing of the information only on April 18, 2008 were due to legal impediments which were beyond the control of the office of the Ombudsman.

The Court can not understand those alleged "legal impediments" in the prosecution for Robbery. Here is the prosecution claiming strongly that the filing of the complaint was not attended by ill-motive and that after the pay-off even if a crime has been committed against complaint Congressman Mark Jimenez, the latter delayed his filing of the complaint because he thought the accused would leave him in peace. This is the only impediment we can think of, and this definitely is not a legal impediment; certainly too this is not beyond the control of the Office of the Ombudsman.

But the Court shall keep track of the movant's argument about this supposed legal impediment. Admitting that the asportation was complete on February 23, 2001, the prosecution reasoned out that the case can not be filed in Court at that time due to insufficiency of evidence. As averred in the Opposition of accused Ernest Escaler, "xxx the plaintiff's duty is to determine whether there exists probable cause to hold the accused for trial for simple robbery", and those documents which the prosecution so capitalized it exerted so much offer to obtain, are mere evidentiary matters. This is even admitted in the prosecution's motion for reconsideration.

Consider these facts all explicitly admitted by the prosecution:

> On February 13, 2001 accused former Justice Secretary Hernando Perez accompanied by accused Ernest Escaler supposedly threatened complainant Congressman Mark Jimenez to send him to jail where he will die of boil *(Putang ina mo, sinasalsal mo lang ako. Hindot ka. Ipakukulong kita sa Quezon City Jail. Doon mamamatay ka sa pigsa).* On February 23, 2001 the amount of US $1,999,965 owned by Congressman Mark Jimenez was transferred to Coutts Bank, Hongkong in favour of Account Number 13706 in the name of Ernest Escaler (confirmed by Trade and Commerce Bank Payment Detail Report dated February 23, 2001)

Congressman Mark Jimenez did not file my complaint against the accused in any Court or prosecutor office. This, despite his claim in his counter-affidavit that:

> "12. Meanwhile, Pres. Estrada stepped down as President after the Armed Forces of the Philippines withdrew its support to him, and the Arroyo Administration was installed on January 19, 2001. The new Secretary of Justice, Hernando B. Perez, was appointed by Pres. Arroyo. Soon after his appointment. Sec. Perez sent feelers that I am his first target for inclusion in the criminal cases that he will file against Pres. Estrada. He also threatened and intimidated me and my family with bodily harm and incarceration in a city jail with hardened criminals and drug addicts unless I execute damaging affidavits against Pres. Estrada and his cronies and associates. Because of the intense pressure upon me and my

> family, I was forced to come across with US $2.0 Million. (Page 73 of the Records)

It was only on December 23, 2002 as stated in our Resolution that Congressman Mark Jimenez filed his complaint with the Ombudsman, even if the said offense was alleged to have been committed on Feb. 13, 2001 and it was only on April 18, 2008 that the Ombudsman presented the information with this Court.

The complainant had hesitated into filing his complaint for about eighteen (18) months while the Ombudsman with double hesitation dilly-dallied for about six (6) years. All in all, the delay from the supposed commission of such a simple offense of Robbery took more than seven years – that is from February 13, 2001 to April 18, 2008. It is clear the so-called legal impediments are but empty assertion to belatedly justify an impermissible action.

Taking exception to our ruling that the totality of facts and surrounding circumstances bear unmistakably the earmarks of inordinate delay, the movant made a comparison of those cases dismissed by the Supreme Court for violation of the Constitutional right of the accused to speedy disposition of cases, and this case, and wrongfully conclude there was no delay in their handling of the case at bar.

We have already resolved and passed upon rather adequately this issue in our Resolution with the observation that not anyone of the cases cited involved the charge of Robbery. The movant's discussion asserted no new and substantial reason and argument to persuade us to reverse or modify our considered opinion. We however pose this question to the prosecution. If Asst. Ombudsman Pelagio Apostol recommended the filing of the information against the accused on November 7, 2006 why did it take the Ombudsman only on January 5, 2007 to approve the recommendation. And if, on January 11, 2007 the accused submitted their Motion for Reconsideration, why did it take the Ombudsman up to April 15, 2008 – a matter of about fifteen (15) months to resolve the same when there was NO OPPOSITION nor comment from the other party?

The argument that "the authority of the Ombudsman is not divested by the claimed delay in filing the information as this authority is vested by law" is a reckless reasoning that only shows that while admitting there was undue delay in the disposition of the case, it could still proceed with its information to charge the accused.

The prosecution need not be reminded of the uniform ruling of the Honorable Supreme Court dismissing the cases of Tatad, Angchangco, Duterte and other cases for transgressing the constitutional rights of the accused to a speedy disposition of cases. To argue "that the authority of the Ombudsman is not divested by the claimed delay in filing the information xxx" is to limit the power of the Court to act on blatant transgression of the constitution.

As to fact-finding investigation, the Court finds it so baseless for the movant to capitalize on what it supposedly did in the process of the fact-finding stance; and then reasoning out as if clutching on straws that the sequences of events should excuse it from lately filing the information. But it took the movant six (6) years to conduct the said fact-finding

investigation, and then unabashedly it argues that is not part of the preliminary investigation.

Determining probable cause should usually take no more than ninety (90) days precisely because it only involves finding out whether there are reasonable grounds to believe that the persons charged could be held for trial or not. It does not require sifting through and meticulously examining every piece of evidence to ascertain that they are enough to convict the persons involved beyond reasonable doubt. That is already the function of the Courts.

As argued by accused Ramon Arceo, the claim of the movant that the preliminary investigation of the instant case commenced only on November 14, 2005 when the Field Investigation Office (FIO) filed its complaint, and not on December 23, 2002 when Mark Jimenez filed his complaint-affidavit, is rather specious and does not hold water as Robbery was not among the offenses included in the charge of the FIO. As such, it is not correct to say that the counting of the period for delay should commence only in November 2005.

The conclusion thus, that the long waiting of six (6) years for the Office of the Ombudsman to resolve the simple case of Robbery is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases, easily commands assent. This Court, it must be made clear, is not making nor indulging in mere mathematical reckoning of the time involved.

In its sixth ground the movant argued that the First, Third and Fourth Divisions all junked the claimed inordinate delay of the accused and asked that the Second Division should "xxx co-exist not work on cross-purposes with the other Court's Division xxx". The argument begs the question! Suppose if and when the incident reaches the Supreme Court, the highest Court of the land ruled that it is the Second Division which is correct, and the other Divisions in error, what would happen now to the argument of the movant that "xxx there is rhyme or reason for the Sandiganbayan, Second Division to co-exist xxx with the other Court's Division xxx".

Moreover, the information in the first division charges the accused of Violation of Sec. 3 (b) of R.A. 3019, in the third division the accusation was for Falsification of Public Document under Art. 171 of the Revised Penal Code, while the accused have been indicted for violating Sec. 7 R.A. 3019 in relation to Sec. 8 of R.A. 6713 before the Fourth Division. The Court can not say whether there is need for paper trail or monitoring of documents in those cases, as the Divisions concerned can competently resolve and pass upon it but certainly in this instant case of Robbery, to indulge in a prolonged fact-finding process is not a boon but a bane on the part of the prosecution

In a distasteful exhibition of unsavoury language, bordering on derision and contempt, the prosecution argued that "xxx the assailed resolution is a wanton display of arrogance, contemptuous and outright illegal for it mooted the same issue of inordinate delay pending with the Honorable Supreme Court xxx". This only goes to show that the prosecution is totally ignorant of the hierarchy of Courts in our judicial system.

> xxx It must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained.
>
> WHEREFORE, premises considered, the prosecution's Motion for Reconsideration dated December 8, 2008 is denied for lack of merit.
>
> So ordered.

On August 24, 2009, the State assailed the resolutions of the Second Division of the Sandiganbayan in this Court (G.R. No. 189063).[73]

Consolidation of the petitions

On October 26, 2009, the Court directed that G.R. No. 189063 be consolidated with G.R. No. 182360-63 (entitled *Hernando B. Perez and Rosario S. Perez v. The Ombudsman, Field Investigation Officer of the Ombudsman and Mario B. Crespo a.k.a. Mark Jimenez*) and G.R. No. 173967-71 (*Ernest B. Escaler v. The Office of the Ombudsman, et al*.).[74]

On April 7, 2010, the Court consolidated G.R. No. 188165 with G.R. Nos. 173967-71, G.R. Nos. 182360-63 and G.R. No. 189063 (*People of the Philippines v. Hon. Sandiganbayan, 2nd Division, et al*.).[75]

G.R. No. 173967-71 and G.R. No. 182360-63 were special civil actions for *certiorari* to prevent the filing of the criminal informations against the respondents.

Deconsolidation and dismissal of G.R. No. 173967-71 and G.R. No. 182360-63 on the ground of their intervening mootness

On February 11, 2013, the Court deconsolidated G.R. No. 173967-71 and G.R. No. 182360-63 from G.R. No. 188165 and G.R. No. 189063 on the ground that the intervening filing of the informations in Criminal Case No.

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73 Id. at 2-82
74 Id. at 1037.
75 *Rollo* (G.R. No. 188165), p. 321.

SB-08-CRM-0265 and Criminal Case No. SB-08-CRM-0266 had rendered the petitions in G.R. No. 173967-71 and G.R. No. 182360-63 moot.[76]

Issues

In G.R. No. 188165, the State raises the following issues:

I.
WHETHER RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN QUASHING THE INFORMATION IN CRIMINAL CASE SB-08-CRM-265, BY CONFINING THE DEFINITION OF THE WORD "TRANSACTION" IN SECTION 3(B) OF R.A. 3019 AS TRANSACTIONS INVOLVING MONETARY CONSIDERATION.

II.
WHETHER RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RELYING SOLELY ON THE CASE OF SORIANO, JR. VS. SANDIGANBAYAN AND DISREGARDED JURISPRUDENCE THAT SHOWS SECTION 3 (B) OF RA 3019 EXTENDS TO ANY DEALING WITH THE GOVERNMENT.

III.
WHETHER RESPONDENT COURT ACTED WTH GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED THE MOTIONS TO QUASH (ON THE GROUND THAT THE ALLEGATIONS IN THE INFORMATION DO NOT CONSTITUTE AN OFFENSE) BY GOING BEYOND THE ALLEGATIONS IN THE INFORMATION AND CONSIDERING SUPPOSED FACTS WITHOUT ANY BASIS.[77]

In G.R. No. 189063, the State submits the following issues:

A. WHETHER OR NOT PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN QUASHING THE INFORMATION IN CRIMINAL CASE SB-08-CRM-0266 BY HOLDING THAT "THERE BEING A CLEAR VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED, THE PROSECUTION IS OUSTED OF ANY AUTHORITY TO FILE THE INFORMATION."

B. WHETHER OR NOT PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THE TOTALITY OF THE FACTS AND THE SURROUNDING

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76 *Rollo* (G.R. No. 173967-71, Vol. II), p. 2702.
77 *Rollo*, (G.R. No. 188165), pp. 11-12.

CIRCUMSTANCES BEARS UNMISTAKABLY THE EARMARKS OF INORDINATE DELAY, MAKING THE APPLICABILITY OF THE DOCTRINE ENUNCIATED IN ANGCHONGCO JR. AND DUTERTE CASES CITED IN THE PARTIES' PLEADINGS IRREFRAGABLE.[78]

The foregoing issues are restated thuswise:

I.

Whether or not it was the Office of the Solicitor General, not the Office of the Ombudsman, that had the authority to file the petitions to assail the Sandiganbayan resolutions.

II.

Whether the State, as the petitioner in G.R. No. 188165 and G.R. No. 189063, resorted to the wrong remedy in assailing the resolutions of the Sandiganbayan dismissing the criminal charges against the respondents through petitions for *certiorari* instead of petitions for review on *certiorari*.

Specific Issue in G.R. No. 188165

Whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction in quashing the information by applying the definition of *transaction* in *Soriano, Jr. v Sandiganbayan*, 131 SCRA 188.

Specific Issue in G.R. No. 189063

Whether or not the Sandiganabayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it dismissed the criminal case due to the inordinate delay of the Office of the Ombudsman in bringing the criminal action against respondents as to violate their constitutional right to the speedy disposition of cases.

Ruling

The petitions for *certiorari* are devoid of merit.

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78 *Rollo* (G.R. No. 189063, Vol. I), pp. 26-27.

I.
The Office of the Ombudsman is empowered to file an appeal or *certiorari* from the Sandiganbayan to the Supreme Court.

Respondents contend that the Office of the Ombudsman has no authority to file the petitions for *certiorari* because only the Solicitor General could file the petitions in this Court pursuant to Section 35, Chapter 12, Title III, Book IV of the *Administrative Code* as amended by E.O. No. 292 ,which pertinently states:

> Section 35. *Powers and Functions.*—The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceedings, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
>
> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
>
> x x x x

The contention of the respondents is grossly erroneous.

That only the Solicitor General may represent the People on appeal or *certiorari* in the Supreme Court and the Court of Appeals in all criminal proceedings is the general rule,[79] but the rule admits the exception concerning "all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986." More specifically, Section 4(*c*) of Republic Act No. 8249 authorizes the exception, *viz*:

> x x x x
>
> c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

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[79] *Bernardo v. Court of Appeals*, G.R. No. 82483, September 26, 1990, 190 SCRA 63, 67.

x x x x

> The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. **In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines,** except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986. (Bold emphasis provided)

x x x x

Consequently, the filing of the petitions in these cases by the Office of the Ombudsman, through the OSP, was authorized by law.

II.
Petitioner did not establish grave abuse of discretion on the part of the Sandiganbayan

The petitions for *certiorari* brought by the State must nonetheless be dismissed for failure to show any grave abuse of discretion on the part of Sandiganbayan in issuing the assailed resolutions.

A special civil action for *certiorari* is an independent action based on the specific grounds provided in Section 1, Rule 65 of the *Rules of Court*, and can prosper only the jurisdictional error, or the grave abuse of discretion amounting to lack or excess of jurisdiction committed by the inferior court or judge is alleged and proved to exist.

In *De los Santos v. Metropolitan Bank and Trust Company*,[80] the Court has expounded on the nature and reach of the extraordinary remedy of *certiorari*, to wit:

> We remind that the writ of *certiorari* – being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (*i.e.*, acts that courts have no power or authority in law to perform) – is not a general utility tool in the legal workshop, and cannot be issued to correct every error committed by a lower court.
>
> In the common law, from which the remedy of *certiorari* evolved, the writ *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of

[80] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 420-423.

a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.

The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:

> 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, or 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 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 third paragraph of section 3, Rule 46. (1a)

Pursuant to Section 1, *supra*, the petitioner must show that, *one*, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, *two*, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.

Considering that the requisites must concurrently be attendant, the herein petitioners' stance that a writ of *certiorari* should have been issued even if the CA found no showing of grave abuse of discretion is absurd. The commission of grave abuse of discretion was a fundamental requisite for the writ of *certiorari* to issue against the RTC. Without their strong showing either of the RTC's lack or excess of jurisdiction, or of grave abuse of discretion by the RTC amounting to lack or excess of jurisdiction, the writ of *certiorari* would not issue for being bereft of legal and factual bases. We need to emphasize, too, that with *certiorari* being an extraordinary remedy, they must strictly observe the rules laid down by law for granting the relief sought.

> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (citations omitted)

Did the petitioner show grave abuse of discretion that would warrant the issuance of the writ of *certiorari* prayed for?

A.
G.R. No. 188165
The Sandiganbayan correctly applied the restrictive meaning of the term *transaction* as used in Section 3 (b) of Republic Act No. 3019 adopted in *Soriano, Jr. v. Sandiganbayan*

In its questioned resolution dismissing Criminal Case No. SB-08-CRM-0265, the Sandiganbayan relied on the ruling in *Soriano, Jr. v. Sandiganbayan*,[81] in which the principal issue was whether or not the preliminary investigation of a criminal complaint conducted by petitioner Soriano, Jr., then a Fiscal, was a "contract or transaction" as to bring the complaint within the ambit of Section 3 (b) of Republic Act No. 3019, which punished any public officer for "[d]irectly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any *contract or transaction* between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law." The *Soriano, Jr.* Court ruled in the negative, and pronounced:

> It is obvious that **the investigation conducted by the petitioner was not a contract. Neither was it a transaction because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions** and this element (consideration) is absent in the investigation conducted by the petitioner.
>
> In the light of the foregoing, We agree with the petitioner that it was error for the Sandiganbayan to have convicted him of violating Sec. 3 (b) of R.A. No. 3019. (Emphasis supplied)

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[81] No. L-65952, July 31, 1984, 131 SCRA 184, 188.

The State now argues, however, that the Sandiganbayan thereby committed grave abuse of discretion resulting to lack or in excess of jurisdiction for applying the interpretation of the term *transaction* in *Soriano, Jr.* considering that the term *transaction* should be construed more liberally, and positing that *Soriano, Jr.* was already abandoned by the Court, citing for that purpose the rulings in *Mejia v. Pamaran,*[82] *Peligrino v. People,*[83] and *Chang v. People.*[84]

We disagree with the petitioner, and find for the respondents.

First of all, the interpretation in *Soriano, Jr.* of the term *transaction* as used in Section 3(*b*) of Republic Act No. 3019 has not been overturned by the Court.

In *Mejia v. Pamaran*, decided *en banc* on April 15, 1988, Mejia had demanded and received money from some persons involved in certain cases in a trial court where Mejia was then serving as the branch clerk of court in consideration of a promise that she would help in getting a favorable judgment for them. The issue was whether or not Mejia could be convicted under the information that alleged that she had demanded a certain amount, although the Sandiganbayan found that the amount was different from that charged in the information. The Court dismissed her petition, and ruled that "[i]n a prosecution under the foregoing provision of the Anti-Graft Law the value of the gift, money or present, etc. is immaterial xxx [w]hat is penalized is the receipt of any gift, present, share, percentage, or benefit by a public officer in connection with a contract or transaction with the Government, wherein the public officer has to intervene in his official capacity." The Court nowhere ruled on the proper interpretation of the term *transaction*.

In *Peligrino v. People*, decided on August 13, 2001, Peligrino, an examiner of the Bureau of Internal Revenue, was convicted of violating Section 3(b) of Republic Act No. 3019 for demanding the amount of ₱200,000.00 from the complainant in connection with the latter's tax liabilities. Peligrino's defense was that he did not "demand" the money, but the money was just given to him. He argued that he had only informed the complainant of his tax deficiencies, and that the complainant had then requested the reduction of the amount claimed as his tax deficiencies. The Court found no merit in Peligrino's argument. The ruling had nothing to do with the interpretation of the term *transaction.*

Chang v. People, decided on July 21, 2006, was a case in which two persons – Chang and San Mateo – were convicted of violating Section 3(b)

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82 Nos. L-56741-42, April 15, 1988, 160 SCRA 457.
83 G.R. No. 136266, August 13, 2001, 362 SCRA 683.
84 G.R. No. 165111, July 21, 2006, 496 SCRA 321.

of Republic Act No. 3019 after being found to have received ₱125,000.00 in consideration of their issuance of a Certificate of Examination to the effect that the complainant had "no tax liability" in favour of the municipality, notwithstanding that it had not settled with them on their assessed deficiency tax of ₱494,000.00. Chang and San Mateo contended that the charge had resulted from an involuntary contact whereby complainant Magat had simply tossed to them the brown envelope; that there had been no conspiracy between them; and that what had transpired had been an instigation, not an entrapment. In affirming their conviction, the Court did not touch on the proper interpretation of the term *transaction* as used in Section 3(b) of Republic Act No. 3019.

The three rulings the State has cited here did not overturn the interpretation made in *Soriano, Jr.* of the term *transaction* as used in Section 3(b) of Republic Act No. 3019 because the proper interpretation of the term was clearly not decisive in those cases. On the contrary, in the later ruling in *Merencillo v. People*,[85] promulgated in 2007, the Court reiterated the restrictive interpretation given in *Soriano, Jr.* to the term *transaction* as used in Section 3(b) of Republic Act No. 3019 in connection with a differentiation between bribery under the *Revised Penal Code* and the violation of Section 3(b) of Republic Act No. 3019 by holding that the latter is "limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law."

And, secondly, it does not help the State any that the term *transaction* as used in Section 3(b) of Republic Act No. 3019 is susceptible of being interpreted both restrictively and liberally, considering that laws creating, defining or punishing crimes and laws imposing penalties and forfeitures are to be construed strictly against the State or against the party seeking to enforce them, and liberally against the party sought to be charged.[86]

Clearly, the Sandiganbayan did not arbitrarily, or whimsically, or capriciously quash the information for failing to properly state the fourth element of the violation of Section 3(b) of Republic Act No. 3019.

B.
G.R. No. 189063
The Sandiganbayan did not commit any grave abuse of discretion in finding that there had been an inordinate delay in the resolution against respondents of the charge in Criminal Case No. SB-08-CRM-0266

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85 G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 46.
86 *People v. Gatchalian*, 104 Phil. 664 (1958).

Upon its finding that the Office of the Ombudsman had incurred inordinate delay in resolving the complaint Cong. Jimenez had brought against the respondents, the Sandiganbayan dismissed Criminal Case No. SB-08-CRM-0266 mainly to uphold their constitutional right to the speedy disposition of their case.

But now comes the State contending that the delay in the resolution of the case against the respondents was neither inordinate nor solely attributable to the Office of the Ombudsman. Citing *Mendoza-Ong v. Sandiganbayan*,[87] in which the Court held that speedy disposition of cases was also consistent with reasonable delays, the State supported its contention by listing the various incidents that had caused the delay in the investigation, and then laying part of the blame on the respondents themselves.

The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares:

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

The constitutional right to a speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.[88] While the concept of speedy disposition is relative or flexible, such that a mere mathematical reckoning of the time involved is not sufficient,[89] the right to the speedy disposition of a case, like the right to speedy trial, is deemed violated 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.[90]

According to *Angchonco, Jr. v. Ombudsman*,[91] inordinate delay in resolving a criminal complaint, being violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, warrants the dismissal of the criminal case.[92]

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87 G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.
88 *Cadalin v. POEA's Administrator*, G.R. Nos. 105029-32, December 5, 1994, 238 SCRA 722, 765.
89 *De la Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485.
90 *Gonzales v. Sandiganbayan***,** G.R. No. 94750, July 16, 1991, 199 SCRA 298, 307.
91 G.R. No. 122728, February 13, 1997, 268 SCRA 301.
92 Id. at 304.

Was the delay on the part of the Office of the Ombudsman vexatious, capricious, and oppressive?

We answer in the affirmative.

The acts of the respondents that the Office of the Ombudsman investigated had supposedly occurred in the period from February 13, 2001 to February 23, 2001. Yet, the criminal complaint came to be initiated only on November 25, 2002 when Ombudsman Marcelo requested PAGC to provide his office with the documents relevant to the exposé of Cong. Villarama. Subsequently, on December 23, 2002, Cong. Jimenez submitted his complaint-affidavit to the Office of the Ombudsman. It was only on November 6, 2006, however, when the Special Panel created to investigate Cong. Jimenez's criminal complaint issued the Joint Resolution recommending that the criminal informations be filed against the respondents. Ombudsman Gutierrez approved the Joint Resolution only on January 5, 2007.[93] The Special Panel issued the second Joint Resolution denying the respondents' motion for reconsideration on January 25, 2008, and Ombudsman Gutierrez approved this resolution only on April 15, 2008. Ultimately, the informations charging the respondents with four different crimes based on the complaint of Cong. Jimenez were all filed on April 15, 2008, thereby leading to the commencement of Criminal Case No. SB-08-CRM-0265 and Criminal Case No. SB-08-CRM-0266. In sum, the fact-finding investigation and preliminary investigation by the Office of the Ombudsman lasted nearly five years and five months.

It is clear from the foregoing that the Office of the Ombudsman had taken an unusually long period of time just to investigate the criminal complaint and to determine whether to criminally charge the respondents in the Sandiganbayan. Such long delay was inordinate and oppressive, and constituted under the peculiar circumstances of the case an outright violation of the respondents' right under the Constitution to the speedy disposition of their cases. If, in *Tatad v. Sandiganbayan*,[94] the Court ruled that a delay of almost three years in the conduct of the preliminary investigation constituted a violation of the constitutional rights of the accused to due process and to the speedy disposition of his case, taking into account the following, namely: (*a*) the complaint had been resurrected only after the accused had a falling out with former President Marcos, indicating that political motivations had played a vital role in activating and propelling the prosecutorial process; (*b*) the Tanodbayan had blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (*c*) the simple factual and legal issues involved did not justify the delay, there is a greater reason for us to hold so in the respondents' case.

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93 *Rollo* (G.R. No. 189063, Vol. I), pp. 22-23.

94 G.R. No. 72335-39, March 21, 1988, 159 SCRA 70, 82-83.

To emphasize, it is incumbent for the State to prove that the delay was reasonable, or that the delay was not attributable to it. In both regards, the State miserably failed.

For one, the State explains that the criminal cases could not be immediately filed in court primarily because of the insufficiency of the evidence to establish probable cause, like not having a document showing that the funds (worth US$1,999,965.00 as averred in the complaint of Cong. Jimenez) had reached Secretary Perez;[95] and that it could not obtain the document, and to enable it to obtain the document and other evidence it needed to await the ratification of the Agreement Concerning Mutual Legal Assistance in Criminal Matters with the Hongkong Special Administrative Region (RP-HKSAR Agreement),[96] and the Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of the Philippines and the Swiss Confederation (RP-Swiss MLAT).[97]

To us, however, the State's dependence on the ratification of the two treaties was not a sufficient justification for the delay. The fact-finding investigation had extended from January 15, 2003, when Ombudsman Marcelo approved the recommendation of the Special Panel and referred the complaint of Cong. Jimenez for fact-finding investigation, until November 14, 2005, when the FIO completed its fact-finding investigation. That period accounted for a total of two years and 10 months. In addition, the FIO submitted its report only on November 14, 2005, which was after the Department of Justice had received on September 8, 2005 the letter from Wayne Walsh, the Deputy Government Counsel of the Hongkong Special Administrative Region in response to the request for assistance dated June 23, 2005,[98] and the reply of the Office of Justice of Switzerland dated February 10, 2005 and a subsequent letter dated February 21, 2005 from Liza Favre, the Ambassador of Switzerland, to Atty. Melchor Arthur Carandang, Acting Assistant Ombudsman, FIO, together with documents pertaining to the bank accounts relevant to the investigation.[99] For the Office of the Ombudsman to mark time until the HKSAR Agreement and the Swiss-RP MLAT were ratified by the Senate before it would proceed with the preliminary investigation was oppressive, capricious and vexatious, because the respondents were thereby subjected to a long and unfair delay.

We should frown on the reason for the inordinate delay because the State would thereby deliberately gain an advantage over the respondents during the preliminary investigation. At no time should the progress and success of the preliminary investigation of a criminal case be made dependent upon the ratification of a treaty by the Senate that would provide

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95 *Rollo* (G.R. No. 189063, Vol. I), pp. 31-32.
96 Id. at 47-48.
97 Id. at 120.
98 Id. at 48-49.
99 Id. at 49-50.

to the prosecutorial arm of the State, already powerful and overwhelming in terms of its resources, an undue advantage unavailable at the time of the investigation. To allow the delay under those terms would definitely violate fair play and nullify due process of law – fair play, because the field of contest between the accuser and the accused should at all times be level; and due process of law, because no less that our Constitution guarantees the speedy disposition of the case.

The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter;[100] and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.

The argument cannot pass fair scrutiny.

The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.

There was really no sufficient justification tendered by the State for the long delay of more than five years in bringing the charges against the respondents before the proper court. On the charge of robbery under Article 293 in relation to Article 294 of the *Revised Penal Code*, the preliminary investigation would not require more than five years to ascertain the relevant factual and legal matters. The basic elements of the offense, that is, the intimidation or pressure allegedly exerted on Cong. Jimenez, the manner by which the money extorted had been delivered, and the respondents had been identified as the perpetrators, had been adequately bared before the Office of the Ombudsman. The obtention of the bank documents was not indispensable to establish probable cause to charge them with the offense. We thus agree with the following observation of the Sandiganbayan, *viz*:

> With the Ombudsman's finding that the extortion (intimidation) was perpetrated on February 13, 2001 and that there was transfer of Mark Jimenez US $1,999,965.00 to Coutts Bank Account HO 133706 on February 23, 2001 in favor of the accused, there is no reason why within a reasonable period from these dates, the complaint should not be resolved. The act of intimidation was there, the asportation was complete as of

[100] Id. at 53.

> February 23, 2001 why was the information filed only on April 18, 2008. For such a simple charge of Robbery there is nothing more to consider and all the facts and circumstances upon which to anchor a resolution whether to give due course to the complaint or dismiss it are on hand. The case is more than ripe for resolution. Failure to act on the same is a clear transgression of the constitutional rights of the accused. A healthy respect for the constitutional prerogative of the accused should have prodded the Ombudsman to act within reasonable time.[101]

In fine, the Office of the Ombudsman transgressed the respondents' right to due process as well as their right to the speedy disposition of their case.

WHEREFORE, the Court **DISMISSES** the petitions for *certiorari* for their lack of merit.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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[101] Id. at 93.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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

MARIA LOURDES P. A. SERENO
Chief Justice