

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. 0-225

For: Violation of Section 3601
the TCCP in relation to
Executive Order 156

- versus -

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

**REYNALDO A. PAZCOGUIN and
RODELITO M. BIAG,**
Accused.

Promulgated:

MAY 16 2012

✓ 4:01 p.m.

X -----X

RESOLUTION

For resolution is accused Rodelito M. Biag's "**MOTION TO DISMISS**" filed on March 27, 2012, with prosecution's "**JOINT COMMENT/OPPOSITION [To the Accused Motion to Dismiss']**" filed on April 2, 2012.

In the said Motion, accused Biag stated that more than five months have elapsed and he still had not been brought for arraignment for failure on the part of the prosecution to appear on the scheduled dates of arraignment. He asked the Court that the case against him be dismissed for failure to prosecute. In support thereof, accused Biag cited the provisions of Section 1(g), Rule 116 of the Revised

Rules on Criminal Procedure, Republic Act No. 8493, Circular No. 38-98 of the Supreme Court in conjunction with his constitutional right to due process and speedy disposition of case.

The prosecution, on the other hand, vehemently opposes accused's motion on the ground that there was no capricious or oppressive delays that would justify the dismissal of the case. The prosecution explains that a structural reorganization at the Department of Justice (DOJ), National Prosecution Service (NPS) Task Force on Anti-Smuggling occurred which led to the replacement of the handling trial prosecutor of the case, and that there was a temporary hiatus on the trial prosecutor who will continuously handle the prosecution of the case due to work pressure and heavy volumes of assignment at the NPS. Furthermore, the prosecution contends that even assuming there was delay, the same did not prejudice the accused for he had already posted bail and that the accused contributed to the protracted proceedings such as by his filing of a *Motion to Suspend Proceedings*.

The determination on whether or not the accused right to speedy trial is violated, several factors are considered. In the case of *Federico Miguel Olbes vs. Hon. Danilo A. Buemio*,¹ the Supreme Court held:

"In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant."

Applying the abovementioned jurisprudence in the instant case, We find that the accused right to speedy trial was violated.

¹ G.R. No. 173319, December 4, 2009 *quoting the ruling in People vs. Hernandez, G.R. Nos. 154218 & 154372, August 28, 2006*

We noted that accused Biag's arraignment, which were set for (4) four times, specifically on December 14, 2011, January 18, 2012, February 15, 2012 and March 14, 2012 did not take place due to the prosecution's failure to appear on the said scheduled dates of arraignment. In fact, We ordered the public prosecutor to explain, within fifteen days from receipt of the February 15, 2012 Resolution, the reason for his absence during the scheduled arraignment but the Court did not receive any response from the prosecution.

In its Joint Comment/Opposition, the prosecution finally and belatedly explained the alleged structural reorganization at the DOJ, NPS Task Force on Anti-Smuggling which led to the replacement of the handling trial prosecutor of the case. To our mind, the reason offered by the prosecution is self-serving without any proof. The prosecution failed to establish the fact of existence of said reorganization and when the reorganization actually took place. If there was indeed a reorganization at the DOJ, NPS Task Force on Anti-Smuggling, respect and courtesy to the Court and due consideration to accused Biag's rights to speedy trial should have prompted the prosecution to file a manifestation before the Court with regard to the delay that said reorganization could bring about. Also, while the prosecution attached a copy of Office Order No. 246 dated March 26, 2012 to its Joint Comment/Opposition, the Court finds the same insufficient to establish the existence of said reorganization. The said Office Order merely indicates that a new lawyer is designated to handle this case in lieu of Assistant State Prosecutor Michael A. Vito Cruz, who is no longer a member of the DOJ Task Force on Anti-Smuggling.

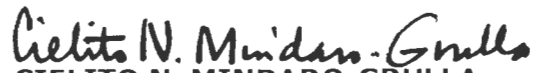
Finally, while accused Biag was not detained on account of the bail he posted, however, the posting of bail does not necessary mean that he was not prejudiced by the delay in the arraignment of his case. As held in the case of *Jacob vs. Sandiganbayan*,² “[e]ven if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.”

WHEREFORE, premises considered, accused **MOTION TO DISMISS** is hereby **GRANTED**. **ACCORDINGLY**, CTA Crim. Case No. O-225, with respect to accused Rodelito M. Biag, is hereby **DISMISSED** with prejudice for failure to prosecute.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

² G.R. No. 162206, November 17, 2010, citing Corpuz vs. Sandiganbayan, G.R. No. 162214, November 11, 2004