

[ADMINISTRATIVE ORDER NO. 59, June 17, 1993]

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

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

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

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

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

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

"When this case was called for hearing, the attention of this court was called by the interpreter as to the [radio] message sent by Prosecutor Pedro M. Victoriano, Jr. requesting for the postponement of this case. The defense counsel insisted for the trial of this case, claiming that the above-entitled case had been pending for two (2) years and that the

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

X X X

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

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

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

Considering the manifestation made by counsel for the accused for the dismissal of the above-entitled case claiming that this case has been pending since February 1986, and considering, after verifying from the records, ***that the notice of hearing was received by the office of the Provincial Prosecutor on July 24, 1989, thereby giving the latter ample time within which to adjust their calendar so as to avoid conflict of schedule of court trials because there are four of them in the province of Romblon who could easily handle cases assigned to each of them if properly scheduled***, the reason manifested by [radio] message by the Provincial Prosecutor, for conflict of schedule, is not and could not be considered meritorious or justifiable to frustrate the right of the accused to speedy trial as provided for under Article 3 of the 1987 Constitution.

X X X

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

Respondent, in his Memorandum filed with the DOJ, explained his failure to attend to the hearings by stating that: (1) the notices of hearings were initially served on the Office of the Provincial Prosecutor of Romblon at the Odiongan office while