

OEA/Ser.L/V/II
Doc. 309
8 November 2022
Original: English

REPORT No. 304/22
PETITION 2548-18
REPORT ON INADMISSIBILITY

JERRY NEIL ALFRED
UNITED STATES OF AMERICA

Approved electronically by the Commission on November 8, 2022.

Cite as: IACHR, Report No. 304/22, Petition 2548-18. Inadmissibility. Jerry Neil Alfred. United States of America. November 8, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jerry Neil Alfred
Alleged victim:	Jerry Neil Alfred
Respondent State:	United States of America ¹
Rights invoked:	Articles I ((Right to life, liberty and personal security), II (Right to equality before law), VI (Right to a family and to protection thereof), VIII (Right to residence and movement), XVIII (Right to a fair trial), and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 15, 2018
Additional information received at the stage of initial review:	April 17, 2019, June 18, 2019, September 30, 2019, March 4, 2020
Notification of the petition to the State:	August 31, 2021
State's first response:	December 31, 2021
Additional observations from the petitioner:	February 10, 22, 2022, March 4, 2022, May 24, 2022

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. This petitioner principally complains that he was denied due process during his trial for murder. In summary, he alleges that the trial court wrongly admitted into evidence an inaccurate transcript of a previous statement made by a prosecution witness. The petitioner indicates that this testimony contributed to his ultimate conviction for second degree murder. The petitioner states that he was ultimately sentenced to a term of life imprisonment. The petitioner complains that this alleged failure of due process led to breaches

¹ Hereafter "United States", "U.S." or "the State".

² Hereinafter "Declaration" or "American Declaration."

³ The observations submitted by each party were duly transmitted to the opposing party.

of other rights, including the right to personal liberty, freedom of movement, family, and to equal protection of the law.

2. The petitioner indicates that in or about October 1998, he was charged with murdering an individual by firearm. According to the petitioner, between June and July 2001, he was tried for murder before the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. He indicates that court-appointed counsel represented him. The petitioner alleges that prior to the trial, the police had conducted a recorded interview with a witness called Carmen Font Rivera ("Ms. Rivera"). According to the petitioner, there were ultimately two transcripts generated of the interview. The petitioner refers to them as the "original" transcript and the "amended" transcript and alleges that there was a material discrepancy between these transcripts, which ultimately contributed to an alleged lack of due process at the time of trial.

3. The petitioner states that according to the original transcript, Ms. Rivera denied that another witness (called "Tina") had told her that the petitioner⁴ had shot the murder victim.⁵ The petitioner alleges that an amended transcript was subsequently generated in which recorded Ms. Rivera as stating that the same witness had in fact told her that the petitioner shot the murder victim⁶. The petitioner states that he brought this discrepancy to the attention of his defense counsel. The petitioner further indicates that prior to the trial, his defense counsel promised to listen to the audio recording of the interview with Ms. Rivera to determine which transcription was accurate. According to the petitioner, his defense counsel took the original transcript, but never returned it to the petitioner. At the trial, the petitioner states that the issue of the conflicting transcripts was raised at the trial during a side-bar conference between the trial judge, prosecutor, and defense counsel. According to the petitioner, during this side-bar conference, his defense counsel agreed to the accuracy of the amended transcript, which was ultimately entered into evidence by the trial court. He complains that this was done without the trial judge reviewing the audio recording of the interview. Mr. Jerry Alfred maintains that the amended transcript was inaccurate and that that his defense counsel failed to object to its admission into evidence (to the detriment of the petitioner). According to the petition, Ms. Rivera gave evidence that coincided with the amended transcript; that is that she had been told that the petitioner had shot the murder victim.

4. Mr. Jerry Alfred states that he was ultimately convicted of second-degree murder on July 12, 2001 and was subsequently sentenced to a term of life imprisonment on October 12, 2001. He indicates that he is currently incarcerated by the Florida Department of Corrections.

5. Following his conviction, the petitioner states that he invoked and pursued several appellate and post-conviction remedies, but without success. Based on the record, it appears that the petitioner initially appealed his conviction on the ground of ineffectiveness of counsel. However, on July 17, 2002, the District Court of Appeal of Florida in the Third District affirmed the trial court's decision. The petitioner filed a second appeal, and the District Court of Appeal of Florida in the Third District again affirmed the trial court's decision in 2006.

6. From the record, it appears that in 2007, the petitioner filed a petition for habeas corpus in federal court, which was denied on the merits. The petitioner then sought relief from the United States Court of Appeals for the Eleventh Circuit, but this court denied a certificate of appealability.

⁴ According to the petitioner he is also known as "Larry", and that this name was mentioned in the original and amended transcripts.

⁵ According to the petitioner, the relevant portion of the original transcript indicated the following:

Question: Did Tina tell you who shot him?

Answer: No, she sure didn't.

⁶ According to the petitioner, the amended transcript contained the following exchange:

Question: Did Tina tell you who shot him?

Answer: Larry, she sure did.

Question: Did she say Larry shot him?

Answer: Yep.

7. According to the record, in May 2010, the petitioner filed a motion before the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to vacate his sentence on the grounds that he had recently discovered inconsistent transcripts. According to the record, the petitioner admitted during the hearing that he had been aware of the transcripts at the time of the trial and that he had lied in his motion to be granted a hearing. According to Mr. Jerry Alfred, he had misled the court because he considered that was the only means by which he could get his case before the court. The Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida found the petitioner in contempt of Court and dismissed the motion on April 18, 2011.

8. According to the record between 2015 and 2017, the petitioner filed multiple applications for habeas corpus relief before the Supreme Court of Florida, which were all dismissed. The petitioner also filed an application for certiorari before the United States Supreme Court which was dismissed in April 2018.

9. In 2019, the petitioner then filed another petition for habeas corpus relief in federal court alleging that “the state violated his due process rights by using purportedly false evidence and testimony against him at trial.” The federal court dismissed the petition as “unauthorized and successive,” given that the petitioner had previously filed a similar petition in 2007. This ruling was upheld by the United States Court of Appeals for the Eleventh Circuit in June 2020. The petitioner subsequently applied to the United State Supreme Court for a writ of certiorari, but this was denied on April 26, 2021. According to the record, in May 2021, Mr. Jerry Alfred filed another petition for habeas corpus relief before the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The court dismissed this petition on July 15, 2021, on the ground that it was untimely, unauthorized, and successive.

10. The petitioner contends that he has been denied relief for alleged violation of his right to due process/fair trial together with other rights such as personal liberty, freedom of movement, family, and to equal protection of the law.

11. The State rejects the petition as inadmissible on several grounds. The State contends that: (a) the petitioner failed to exhaust domestic remedies; (b) the petition is untimely; (c) the petition’s claims either fail to state a prima facie violation of the American Declaration or are manifestly groundless; and (d) that the petition violates the “fourth instance” doctrine of the IACHR.

12. Regarding the issue of domestic remedies, the State notes that, the petitioner has raised claims relating to rights to personal liberty, to freedom of movement, to a fair trial, to family, and to equal protection of the law. The State contends that there is no evidence that the petitioner has raised a claim in U.S. courts alleging a violation of the right to life, liberty, or security of person; the right to freedom of movement; the right to a family; or the right to equality before the law. Accordingly, the State concluded that the petitioner has failed to pursue and exhaust domestic remedies with respect to most of his claims, and the petition should be found inadmissible as to these claims.

13. With respect to the petitioner’s claim of a violation of the right to a fair trial (relating to alleged discrepancies in transcripts of the testimony of a prosecution witness), the State asserts that Mr. Jerry Alfred has raised this claim repeatedly in the domestic courts. The State notes that this claim was raised on appeal of the petitioner’s conviction and dismissed by the District Court of Appeal of Florida for the Third District. The State further indicates that other attempts by the petitioner to bring this claim before other state and federal courts have also been dismissed, mainly due to the petitioner’s failure to comply with reasonable procedural rules. The State notes that the last attempt made by the petitioner to litigate his claim was an application in May 2021, for a petition for writ of habeas corpus, before the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The State indicates that this petition was denied (on July 15, 2021) as untimely, unauthorized, and successive. The State argues that the petitioner’s claim of violation of the right to fair trial is inadmissible for failure to exhaust domestic remedies, to the extent that the petitioner failed to comply with the aforementioned procedural rules.

14. The State submits that in the petition is untimely under Article 32 of the Commission’s Rules of Procedure. In this regard, the State notes that the petitioner was convicted on July 12, 2001; and sentenced

to life imprisonment on October 12, 2001. Subsequently the District Court of Appeal of Florida in the Third District affirmed the petitioner's conviction on July 17, 2002, and then further affirmed the conviction on August 2, 2006, after the petitioner filed a second appeal. According to the State the Commission appears to have received the petition nearly a decade and a half after the petitioner's conviction was affirmed on appeal, which is well beyond the six-month period prescribed by Article 32(1) of the Commission's Rules of Procedure. The State further notes that the prior to the submission of the petition, the United States Supreme Court dismissed an application for certiorari on January 10, 2018. The State submits that even if the denial of certiorari by the United States Supreme Court is considered the moment in which domestic remedies were exhausted, the petition is still not timely. In this respect, the State indicates that the IACHR did not receive the petition until November 15, 2018, which is beyond the six-month deadline prescribed by the IACHR's Rules of Procedure.

15. The State considers that the claims contained in the petition fail to establish *prima facie* violations of the American Declaration. Alternatively, the State argues that these claims are manifestly groundless. Regarding Mr. Jerry Alfred's principal claim (violation of right to fair trial/failure of due process), the State contends that this claim is unsubstantiated and fails to state facts that establish any violations of Article XVIII or Article XXVI of the American Declaration. The State submits that the petitioner has failed to establish that he was deprived of the due process protections contained in the American Declaration, or of the more stringent due process standards of United States state and federal law.

16. The State makes similar submissions regarding the allegations regarding: the right to life, liberty, and personal security; the right to residence and movement; the right to family; and the right to equality under the law. The State notes that the petitioner was lawfully imprisoned following his conviction, and that this cannot provide a valid basis for alleging violations of his right to personal liberty, right to family, and other associated rights.

17. Finally, the State contends that to the extent that the petitioner's claims have been examined by U.S. courts, any review of his petition is barred by the Commission's fourth instance doctrine. In this regard, the State asserts that the petition plainly constitutes an effort by petitioner to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

18. The Commission notes that the requirement of exhaustion of domestic remedies does not mean that the petitioner or alleged victim has the obligation to exhaust every possible remedy available to them. The IACHR has maintained that if the petitioner or alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled. Further, the Commission has established that the analysis of the requirements provided in Articles 31 and 32 of the Commission's Rules of Procedure is performed in the light of the situation in effect at the time a decision is issued regarding a petition's admissibility or inadmissibility. The Commission notes that the petition was submitted on November 15, 2018. However, it often happens that, while a petition is being processed, the situation as regards exhaustion of domestic remedies changes. Nevertheless, the petition and case system ensure that both the State and the petitioner have every opportunity to present information and arguments in this regard. The Commission therefore deems that the requirement established in Articles 31 (1) and 32 (1) of the Rules of Procedure have been met.

VII. ANALYSIS OF COLORABLE CLAIM

19. The Commission notes that this petition alleges due process violations during criminal proceedings against the petitioner. In particular, the petitioner alleges that the trial court wrongly admitted into evidence an inaccurate transcript of a previous statement made by a prosecution witness. The petitioner further alleges that the due process violations led to violations of other rights, including the right to personal liberty, freedom of movement, family, and equal protection before the law.

20. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as stipulated in Article 34 (a) of the Commission's Rules of Procedure, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 34 (b). The criterion for analyzing admissibility is different from that used for the analysis of the merits, given that the Commission only performs a *prima facie* analysis to determine whether the petitioner establishes an apparent or possible violation of a right guaranteed by the American Declaration. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

21. From the record, it appears that the Mr. Jerry Alfred's claims were fully ventilated before the domestic courts and rejected, based upon duly grounded decisions. The petitioner appears to be dissatisfied with the outcome of the domestic judicial proceedings and now seeks relief from the Commission. The Commission has observed that the interpretation of the law, the relevant proceeding, and the weighing of evidence, are, among others, functions to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.

22. Based on available information, the Commission considers that the petitioner was accorded all due judicial guarantees, and that he has not provided sufficient evidence to indicate, *prima facie*, any violations of his due process rights as guaranteed by the American Declaration. In this regard, it should be recalled that the Commission does not have authority to review judgments handed down by domestic courts acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Declaration has been committed.

23. In view of these considerations, the Commission considers that the claims of the petitioner are manifestly unfounded. Considering the foregoing, the IACHR concludes that the petition should be ruled inadmissible, in keeping with Article 34 (a) of the Commission's Rules of Procedure.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 8th day of the month of November, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.