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REPORT No. 230/22
PETITION 340-16
REPORT ON INADMISSIBILITY

JAMAR BLAINE PERRY
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 28, 2022.

Cite as: IACHR, Report No. 230/22, Petition 340-16. Inadmissibility.
Jamar Blaine Perry. United States of America. August 28, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jamar Blaine Perry
Alleged victim:	Jamar Blaine Perry
Respondent State:	United States of America ¹
Rights invoked:	No specific provisions invoked

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	March 2, 2016
Additional information received at the stage of initial review:	October 4, 2016, March 22, 2017, March 28, 2017, October 4, 2017, January 2, 3, 2018, March 9, 2018, May 14, 2018, January 16, 18, 2019, April 29, 2019, August 20, 2019, September 19, 2019, October 23, 2019
Notification of the petition to the State:	October 23, 2019
State's first response:	May 6, 2020
Additional observations from the petitioner:	January 26, 2021, March 15, and 2021, May 18, 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:	Partially (in terms of Section VI)
Timeliness of the petition:	No

V. ALLEGED FACTS

1. The petition deals primarily with claims of due process violations arising out of criminal proceedings against the petitioner and alleged victim, Jamar Blaine Perry ("the petitioner").

2. According to the record, on March 26, 1999, the petitioner was convicted in the Court of Common Pleas of Beaver County, Pennsylvania of first-degree murder, conspiracy to commit murder and robbery. The petitioner was subsequently sentenced to a term of life imprisonment (on April 7, 1999). The petitioner generally claims that he suffers from an unspecified mental/learning disability that inhibited his ability to defend himself during the trial. He also claims that he was deprived of adequate legal representation particularly during the initial judicial proceedings to challenge the conviction. In this regard, it appears that

¹ Hereinafter "USA", "US", or "United States".

² The observations submitted by each party were duly transmitted to the opposing party.

appears that on May 5, 1999, the petitioner's attorney (William A. Jones) challenged the petitioner's conviction by way of an "Omnibus Post Sentence Motion". This motion was subsequently denied on August 2, 1999, allegedly because of the attorney's failure to appear at the hearing or to file the appropriate documentation³. Generally, the petitioner alleges that the due process violations also gave rise to discrimination against him as a disabled person, having regard for his alleged mental/learning disability. The petitioner also alleges that he has been subjected to inhumane conditions of incarceration, but without providing supporting details or a chronology.

3. Based on the information available, the petitioner subsequently initiated multiple court actions between 2001 and 2014 aimed at impugning his conviction and sentence based mainly on the ground of lack of due process. All these court actions were dismissed. On September 1, 2001, the petitioner filed a petition for relief under the Pennsylvania Post Conviction Relief Act (PCRA). On December 2, 2004, the PCRA court conducted an evidentiary hearing, where the petitioner's trial attorney testified that after he had filed the post sentence motions but before a hearing was held on them, the petitioner had fired him. The trial attorney also testified that he acceded to the request of the petitioner to return the case file to the petitioner. The PCRA court accepted the testimony of the trial attorney, and ultimately dismissed the petitioner's application under the PCRA.

4. While the PCRA proceedings were pending, on October 23, 2003, the petitioner appears to have filed a petition for federal writ of habeas corpus, in which he raised due process complaints, including claims of ineffective assistance of counsel. The matter was ultimately dismissed by the United States District Court for the Western District of Pennsylvania on March 10, 2004, for primarily because the petitioner had a pending petition for relief under the PCRA, and therefore had not exhausted remedies at level of the State courts.

5. According to the record, the petitioner unsuccessfully appealed to the Superior Court of Pennsylvania and to the Pennsylvania Supreme Court. These appeals were dismissed on October 28, 2005, and May 17, 2006, respectively. The petitioner subsequently filed a second writ of habeas corpus in November 2006, which was ultimately dismissed on February 29, 2008. It appears on June 4, 2014, that the petitioner, again tried to challenge the dismissal of his second habeas corpus petition by way of an "Independent Action for Relief from Final Order or, in the Alternative, Motion for Relief from Final Order Pursuant to Rule 60 of the Federal Rules of Civil Procedure (F.R.Civ.P)". The petitioner's application was ultimately dismissed by the United States District Court for the Western District of Pennsylvania on December 5, 2014.

6. The State, in the other hand, contends that the petition is inadmissible on a number of grounds: (a) failure to pursue and exhaust domestic remedies; (b) untimeliness; (c) failure to state facts that tend to establish a violation of the American Declaration/claims of petition are manifestly groundless, (d) violation of the Commission's fourth instance doctrine.

Exhaustion of domestic remedies

7. Generally, the State contends that the petitioner failed to pursue and exhaust domestic remedies regarding his claims. Regarding the petitioner's alleged violations of his right to due process/fair trial, the State contends that the petitioner did not file a direct appeal of his conviction. Secondly, the State contends that the petitioner did not file his applications under the PCRA or for federal habeas corpus petition in a timely manner. The State notes that the trial court entered its final order in the petitioner's case on August 2, 1999, denying the petitioner's post sentence motion, and that he had until September 2, 1999, to file a direct appeal. The State indicates that the petitioner did not file any such direct appeal. Further the State indicates that the petitioner thereafter had one year, until September 2, 2000, to file his application under the PCRA, but that he did not do so until September 10, 2001. Regarding the federal habeas petition, the State

³ However, the record shows that in subsequent proceedings under Pennsylvania's Post Conviction Relief Act (PCRA), a court found that the petitioner had discharged his attorney before the Omnibus Post Sentence Motion could be heard.

indicates that the petitioner had one year from September 2, 1999, to file his federal habeas petition, but that his federal habeas petition was ultimately, having been filed on October 23, 2003, (more than three years after the limitations period had passed). The State also notes that the petitioner filed a second application for federal habeas corpus on October 26, 2006, but that this application was ultimately denied by the Federal District Court on February 29, 2008, as untimely, under the relevant federal statute of limitations. Ultimately, having regard for the foregoing, the State contends that the petitioner failed to pursue and exhaust domestic remedies regarding his claims relating to due process/fair trial.

8. Regarding the petitioner's claim of discrimination based on his alleged mental disability, the State contends that the petitioner has never raised such a claim before the U.S. Courts. The State concludes that the petitioner's failure to pursue and exhaust domestic remedies renders this claim inadmissible.

9. Regarding the petitioner's claims relating to conditions of his confinement, the State indicates that the petitioner filed a civil claim in January 2015, but that the action has not appear to have been pursued and has been marked as closed as of November 18, 2019. Accordingly, the State rejects the claim as inadmissible for failure to exhaust domestic remedies.

Timeliness

10. The State argues that even if the Commission were to determine that the petitioner had exhausted his domestic remedies, the petition should be dismissed as untimely. In this regard, the State submits that the Commission appears to have received the petition on March 2, 2016, nearly seventeen years after the trial court entered its final order in the petitioner's case on August 2, 1999 and more than eight years after Petitioner's untimely federal habeas petition was denied in 2008; Secondly, the State submits that even if the Commission were to construe the 2008 denial of Petitioner's habeas petition as notification of exhaustion of domestic remedies, the petitioner's subsequent filing of the petition in 2016 cannot be considered timely within the meaning of Article 32 of the Commission's Rules of Procedure because the petition was not lodged within a period of six-months following the date on which the petitioner was notified of the decision that exhausted the domestic remedies.

11. The State further submits that the petitioner's attempt in 2014, more than six years later, to revive his post-conviction litigation through an "Independent Action for Relief from Final Order or, in the Alternative, Motion for Relief from Final Order Pursuant to Rule 60 F.R. Civ. P" ("Rule 60 Motion") cannot transform his petition into a timely one. The State contends that the denial of the petitioner's Rule 60 Motion was plainly not notification that the petitioner had exhausted domestic remedies within the meaning of Article 31. The State asserts that belatedly seeking extraordinary relief to which the petitioner was not entitled cannot be used to satisfy the requirement under Article 32(1) of the Commission's Rules of Procedure that a petitioner file his petition within a period of six-months following the date on which the petitioner was notified of the decision that exhausted the domestic remedies.

12. The State further contends that the petitioner has, in any event, (a) failed to establish that he is exempt from the exhaustion requirement; and (b) that even if the petitioner could establish such an exemption that he has failed to establish that the petition was filed "within a reasonable period of time," as required by Article 32(2) of the Commission's Rules of Procedure.

Failure to state facts that establish a violation of American Declaration/claims manifestly groundless

13. The State submits that the petition fails to state facts that establish a violation, pursuant to Article 34 (a) of the Commission's Rules of Procedure; and those the petition's claims are also manifestly groundless under Article 34 (b) of the commission's Rules of Procedure.

14. The State submits that the petitioner has failed to state facts that tend to establish that his right to a fair trial/due process was violated. The State rejects his claims in this regard based on alleged

abandonment by trial counsel as well his alleged mental disability. Regarding the petitioner's claim of abandonment by trial counsel, the State notes that this claim is refuted by the domestic courts⁴. The State submits that domestic courts similarly rejected the petitioner's claim regarding his claims based on his alleged mental disability⁵.

15. Accordingly, the State concludes that the petitioner's claims regarding his right to fair trial/due process fail to establish any violations and are otherwise manifestly groundless.

16. Regarding the petitioner's claims of inhuman treatment/inhuman conditions of confinement, the State contends that the petitioner has failed to state facts to support these claims. Accordingly, the State concludes that this claim must also be rejected as baseless.

17. Regarding the petitioner's claim about discrimination based on his alleged mental disability, the State contends that the petitioner has failed to state facts that tend to establish that his right to equality before the law was violated. Accordingly, the State concludes that the petitioner has not shown that he has been discriminated against based on disability, or any other protected class and, as such, his claim in this regard must also be rejected as baseless.

Fourth instance

18. The State argues that the petition constitutes an attempt by the petitioner to use the Commission as a "fourth instance" body to review claims already heard and rejected by the courts. The State submits that it is not the Commission's place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a State's domestic courts in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task. Accordingly, under the fourth instance doctrine, the State concludes that the Commission is precluded from reviewing the claims of the petitioner.

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

19. The petitioner was convicted of various offences including murder. His principal complaint relates to allegations of due process violations that occurred during his criminal trial. These allegations included claims of inadequate legal representation, and the failure of the courts to take into account an unspecified mental/learning disability, that allegedly inhibited his ability to defend himself during the trial. Ultimately, the petitioner alleges that these violations resulted in a conviction that was not grounded in due process safeguards. According to the record, the petitioner challenged his conviction by means of various domestic proceedings culminating in a ruling in on December 5, 2014, by a federal court in Pennsylvania that dismissed an Independent Action for Relief from Final Order or, in the Alternative, Motion for Relief from Final Order Pursuant to Rule 60 of the Federal Rules of Civil Procedure.

⁴ The State cites the ruling of the District Court for the Western District of Pennsylvania in 2008 (federal habeas corpus proceedings), which held that "[t]his factual assertion is directly contradicted by the credibility determination and finding of fact made by the PCRA Court after it conducted an evidentiary hearing on the claim that Attorney Jones was ineffective for abandoning Petitioner. . . . [T]he PCRA court found as a fact that Petitioner terminated Attorney Jones from representing Petitioner and that Attorney Jones returned the case file to Petitioner as instructed. Petitioner's argument . . . requires this Court to accept as a fact that Petitioner did not fire Attorney Jones and to accept as a fact that Petitioner had no knowledge that Attorney Jones would not act on Petitioner's case to further it. This is directly contrary to the findings of fact and credibility determinations made by the PCRA court. . . . Hence, this Court is justified in finding that Petitioner did know in August-September 1999 that Attorney Jones would not be doing anything to move Petitioner's case forward because Petitioner had fired Attorney Jones."

⁵ According to the State the Report and Recommendation adopted by the Western District of Pennsylvania in 2014 found that— the public record affirmatively contradicts Petitioner's assertion that "[h]is documented mental illness combined with the extraordinary denial of access to any means to prepare a legal document and or to confer with another person who might assist him must be regarded as an extraordinary circumstance that stood in his way of complying with the statute of limitations.

20. Generally, the State contends that the petitioner failed to exhaust domestic remedies with respect to these allegations. The IACHR has established that the exhaustion requirement does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal; and that if one of the valid and appropriate options in accordance with the domestic legal system is pursued and the State had the opportunity to solve the matter in its jurisdiction, the objective of international law has been achieved. Based on the available information, the Inter-American Commission considers that domestic remedies concerning the allegations of due process violations were exhausted by the ruling of the federal court on December 5, 2014.

21. However, the Commission notes that the petition was not filed until March 2, 2016, which is more than year after the ruling of December 5, 2014. The petitioner has not offered any information to explain this delay and/or to justify any exception to the six-month deadline prescribed by Article 31 (1) of the Commission's Rules of Procedure. Consequently, in relation to the petitioner's due process claims, the IACHR considers the petition is inadmissible for failure to comply with the prescribed six-month deadline for filing.

22. The Commission notes that petitioner also complains about to inhumane conditions of detention. The petitioner does not provide any specific details about these conditions. According to the State, the petitioner filed a civil suit on 2015 about these conditions of detention, but there is no information from the petitioner as to the outcome, if any of this civil suit. According to the State, the civil suit has been marked as "closed" since November 2019. Having regard for the foregoing, the Commission is unable to verify whether the petitioner pursued and exhausted domestic remedies; or whether there are any circumstances that warrant an exemption from the requirement to exhaust domestic remedies. Accordingly, the Commission considers this complaint to be inadmissible. In any event, the Commission considers this complaint to be inadmissible for failure to state any facts that tend to establish a violation of the American Declaration.

VII. ANALYSIS OF COLORABLE CLAIM

23. Whereas the foregoing conclusion on the issue of domestic remedies is sufficient to dismiss this petition, the Commission nevertheless wishes to make some observations regarding the applicability of the fourth instance doctrine to this matter. In this respect, the IACHR notes that the interpretation of the law, the relevant proceeding, and the weighing of evidence, is among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR. 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. 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 rights as guaranteed by the American Declaration.

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 28th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.

