BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Ernest Hubbard

TIRC No. 2014.242-H
(Relates to DuPage County Circuit Court Case No. 99-CF-2142)

SUMMARY DISMISSAL

Pursuant to section 40(a) of the Illinois Torture Inquiry and Relief Act ("TIRC Act," 775 ILCS 40/40(a)), the Commission hereby summarily dismisses this Claim for the reasons that follow.

1. On approximately March 28, 2014, Mr. Ernest Hubbard, Jr. submitted a claim form to the Commission alleging that Glendale Heights police tortured him. He alleged that police, responding after he and his wife had been severely burned, "restrained me to a wall, touching my wounds and bombarded me with incessant and simultaneous questioning until [an] E.M.T. came and forced release."[1]

2. Hubbard also alleged that while he recovered in the hospital at the Rehabilitation Institute of Chicago, police questioned him knowing he was under the influence of Demerol and was "to[o] drugged up to understand Miranda Rights." [2]

3. At the time Hubbard submitted his claim, the Illinois Torture Inquiry and Relief Commission (TIRC) Act conferred jurisdiction upon the Commission to investigate Claims of torture. The statute defined a Claim of torture as "a claim on behalf of a person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture committed by [Chicago police] Commander Jon Burge or any officer under the supervision of Jon Burge." 775 ILCS 40/5(1) (2014).

4. On September 26, 2013, Hubbard wrote to the Commission confirming that "[m]y case isn't under Jon Burge or Cook County for that matter. It happened in DuPage County[,] in the area of Glendale Heights."[3]

[1] Ernest Hubbard Claim Form.

[2] *Id. See also Hubbard v. Rednour*, 2011 WL 1542137 (April 18, 2011) (detailing facts of the Hubbard's criminal conviction).

5. Under 2 Ill. Admin. 3500.340(e) (eff. Sept. 19, 2014), the Commission accepted Mr. Hubbard's claim but took no further action on it while the Illinois Appellate Court considered the issue of the Commission's jurisdiction over claims not related to Jon Burge.

6. On March 25, 2016, the Illinois Appellate Court confirmed that the Commission's jurisdiction was limited to "petitioners who were victims of Burge or officers under his supervision" and claims unrelated to Burge were outside the Commissioner's jurisdiction. *People v. Allen*, 2016 IL App (1st) 142125, ¶1.[4]

7. On July 29, 2016, Public Act 99-0688 amended the TIRC Act, expanding the Commission's jurisdiction to "allegations of torture occurring within a county of more than 3,000,000 inhabitants." Section 5(1).

8. Glendale Heights is located in DuPage County, a county of 916,924 people[5]. Cook County is the only county in Illinois with more than 3,000,000 inhabitants.[6]

9. The Rehabilitation Institute of Chicago has several locations and facilities, both within and outside of Cook County.[7]

ANALYSIS

For the purposes of this determination, the Commission assumes, without deciding, that the police conduct alleged by Mr. Hubbard to have taken place at the Rehabilitation Institute of Chicago constitutes "torture" as defined by the TIRC Act and its Rules, and that the conduct alleged occurred within the geographical boundaries of Cook County.

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[3] Letter from Ernest Hubbard, September 30, 2013.

[4] Mr. Allen has filed a petition for leave to appeal to the Illinois Supreme Court. The Commission is not aware that the PLA has been ruled on. However, even if the PLA is granted, "the precedential effect of an appellate court opinion is not weakened by the fact that a petition for leave to appeal has been granted and is pending, and trial courts are bound by that appellate court ruling until this court says otherwise." *People v. Harris*, 123 Ill. 2d 113, 129 (Ill., 1988).

[5] SOURCE: Census.gov, 2010 Demographic Profile.

[6] *Id.*

[7] *See* "RIC's Inpatient Locations," available at http://www.ric.org/about/locations/.

Mr. Hubbard concedes that Jon Burge or officers who at one time were under his supervision were not involved in his interrogation. Under the plain language of the TIRC Act as it existed prior to July 29, 2016, the Commission had no jurisdiction to investigate his claim.[8]

After July 29, 2016, the Commission was empowered to investigate any claim of torture "occurring within a county of more than 3,000,000 inhabitants." P.A. 99-688. The TIRC Act does not define "occurring within a county of more than 3,000,000 inhabitants."

To interpret the TIRC Act, the Commission looks to the rules of statutory construction articulated by the Illinois Supreme Court.

> When construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *People v. Elliott*, 2014 IL 115308, ¶11, 378 Ill.Dec. 424, 4 N.E.3d 23. The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning. *Elliott*, 2014 IL 115308, ¶11, 378 Ill.Dec. 424, 4 N.E.3d 23. In determining the statute's plain meaning, we consider the subject it addresses and the legislature's purpose in enacting it. *Elliott*, 2014 IL 115308, ¶11, 378 Ill.Dec. 424, 4 N.E.3d 23.

BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶38 (Ill. 2014).

"The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. * * * Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Krohe v. City of Bloomington*, 2013 IL 94112, ¶3, 789 N.E.2d 1211 (2003). Only when a statute is ambiguous will the court "look to aids of statutory construction, including legislative history and established rules of construction." *BAC Home Loans*, 2014 IL 116311, ¶38.

Viewing the language of Section 5(1) of the TIRC Act as amended by P.A. 99-688 in a vacuum, the plain language of "torture occurring within a county of more than 3,000,000 inhabitants" would seem to place within the Commission's jurisdiction any torture that was inflicted upon a claimant while he was physically located within the boundaries of Cook County, a county of more than 3,000,000 inhabitants, regardless of whether the criminal case in which torture is alleged was tried to conviction in another county's court system.

This interpretation is arguably consistent with the limited legislative debate and commentary that took place when SB 392 was passed. Speaking at the third reading of the bill, the bill's sponsor, Senator Kwame Raoul, described the purpose of the bill as follows.

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[8] *See In re: Claim of Jaime Hauad,Before the Torture Inquiry and Relief Commission, Order Concerning Jurisdiction, June 18, 2014; See also*, *People v. Allen*, 2016 IL App (1st) 142125, ¶1 (finding "the explicit language of the Act limits its application only to petitioners who were victims of Burge or officers under his supervision, and we therefore affirm the trial court's dismissal of the Commission's referral of petitioner's case.")

> Senate Bill 392 expands the reach of the Torture Inquiry and Relief Commission beyond just claims under the Command of Jon Burge to claims throughout, claims of torture throughout Cook County and expands the time for an additional five years for such claims to be filed.[9]

Representative Turner described the bill as follows.

> Senate Bill 392 expands the scope of the Illinois Torture Inquiry and Relief Commission and extends the time period that claims may be filed by five years. Currently the Commission conducts inquiries into claims by living persons convicted of a felony in Illinois, asserting that he or she was tortured into confession to the crime, the tortured confession was used to obtain the conviction, there was credible evidence that related to allegations of torture committed by Commander Jon Burge or any officer under his supervision. Priority is given in these cases in which are, which a person is convicted or currently incarcerated solely for the crime for which he or she claims the torture was committed by Jon Burge or officers under his supervision. This bill removes all references to Jon Burge and instead provides that the Commission may review claims related to allegations of tortured confessions occurring within Cook County. Additionally, under this bill, priority will no longer be given to cases in which the convicted person is currently incarcerated for the crime involving the torture. And it extends the time for which claims may be filed from 2014 to 2019.[10]

However, "[b]ecause all provisions of a statutory enactment are viewed as a whole, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *In re Detention of Lieberman*, 201 Ill.2d 300, 307-308 (Ill. 2002)(internal citations omitted). The Illinois Supreme Court also presumes that "the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice." *Id.*

With that in mind, we note that Section 45(c) of the TIRC Act outlines the only remedy available to the Commission. In those instances where the Commission concludes there is credible evidence of torture meriting judicial review, "the case shall be referred to the Chief Judge of the Circuit Court of Cook County." Section 50(a) additionally commands that in such referrals, "the Chair of the Commission shall request the Chief Judge of the Circuit Court of Cook County for assignment to a trial judge for consideration," and that trial judge may order relief, including retrial or discharge.

In light of that language, continuing to interpret "occurring within a county of more than 3,000,000 inhabitants" to mean that the torture occurred within the physical boundaries of Cook

[9] Senate floor comments of Bill sponsor Sen. Kwame Raoul upon third reading on April 21, 2016. Audio recording on file with the Illinois Torture Inquiry and Relief Commission.

[10] Illinois House of Representatives floor comments of bill sponsor Rep. Art Turner, upon third reading on May 25, 2016. Audio recording on file with the Illinois Torture Inquiry and Relief Commission.

County, regardless of where the criminal case was tried, results in, if not absurdities, inconveniences on a grand scale involving multiple venue changes and possible conflict with other statutes.

Such an interpretation arguably creates a conflict with the Post-Conviction Hearing Act and the Code of Civil Procedure, the two most common vehicles for post-conviction relief. The former requires that a post-conviction hearing "be commenced by filing with the clerk of the court in which the conviction took place," (725 ILCS 5/Art. 122-1(b)), while the latter states that a petition for relief "must be filed in the same proceeding in which the order or judgment was entered." 735 ILCS 5/2-1401(b). Similarly, the Criminal Code of 2012 provides that "[c]riminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law."

The Illinois Supreme Court instructs that, "[w]here there is an alleged conflict between two statutes, a court has a duty to interpret those statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible." *Ferguson v. McKenzie*, 202 Ill.2d 304, 311-312 (2001).

It could be argued that the legislature intended such a venue change to be a possible outcome of the TIRC Act as an entirely separate post-conviction remedy "provided by law." Indeed, the Act views itself as establishing "an extraordinary procedure to investigate and determine factual claims of torture" (Sec. 10) and allows for relief "notwithstanding the status of any other postconviction proceedings relating to the petitioner." (Sec. 50). There is also no jurisdictional problem with this view, as the Illinois Constitution invests original jurisdiction in almost all crimes with the Circuit Court of any county.[11]

This transfer of the criminal matter from another county's courts to Cook County courts would, however, necessarily involve a statutorily ordered change in venue. This statutorily mandated venue change is one the claimant would then have a Constitutional right to veto if a retrial were ordered, because the right to be tried in the county where the crime is alleged to have taken place is guaranteed by Article I, § 8 of the Illinois Constitution.[12]

In this interpretation of the statute, then, the legislature would have envisioned a criminal defendant of another county changing venue to Cook County for post-TIRC proceedings, but having the ability to then re-remove himself or herself to the court of original jurisdiction in another county.

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[11] *See People v. Goins*, 119 Ill.2d 259, 264-265 (1988) (noting that "Jurisdiction, the authority or power of a court to take congnizance of and adjudicate cases, is conferred by section 9 of article VI of the Constitution of Illinois, which provides that circuit courts have 'original jurisdiction of all justiciable matters.' (Ill. Const. 1970, art. VI, § 9,)")

[12] *See People v. Adams*, 161 Ill.2d 333, 341 (Ill. 1994) (superseded legislatively on other grounds, as stated in *People v. Steading*, 308 Ill.App.3d 934, 942 (1999).

This procedure, if not absurd, certainly demands a extraordinarily high level of inconvenience, which *Lieberman* instructs cannot be assumed as intentional. 201 Ill.2d 300, 307-308 (Ill. 2002).

Interpreting the statute to allow review of convictions originating in another county's courts would also conflict with previous appellate court interpretations of the statute.

> Equally important is the Act's direction that Commission recommendations are filed with the chief judge of the circuit court of Cook County, *which perforce eliminates claims from petitioners convicted in counties other than Cook from the Commission's purview*, and further supports the conclusion that the Act should be narrowly construed to apply only to a specific set of cases, and not to allegations of police misconduct in general. 775 ILCS 40/45(c) (West 2012).

People v. Allen, 2016 IL App (1st) 142125, ¶15 (March 25, 2016) (Emphasis added).

Although the *Allen* court's interpretation of the TIRC Act predates the July, 2016, amendments of P.A. 99-688, there is nothing to suggest that the legislature intended to override this aspect of the *Allen* decision. The legislature left untouched the provision of the statute the above *Allen* passage cited that notes the Commission's recommendations for judicial review are to be filed only with the chief judge of the circuit court of Cook County. The amendment the legislature did make in P.A. 99-688, expanding jurisdiction beyond Burge to all of Cook County, still harmonizes with this aspect of the *Allen* court's opinion. While there is no mention of the *Allen* decision in the legislative history of P.A. 99-688, there is some evidence that at least its Senate sponsor was acutely aware of the *Allen* decision in his efforts to broaden the TIRC Act's scope.

> Raoul, the architect of the 2009 TIRC Act, said the 1st District accurately followed the language of the statute as it's currently written in *People v. Allen*, 2016 IL App (1st) 142125. But he believes the law should be expanded.
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> Raoul's proposal, which he said he plans to submit as an amendment to Senate Bill 3293, would change the definition of "claim of torture" in the TIRC Act. Currently, claims of torture under the act are defined as being "committed by Commander Jon Burge or any office under the supervision of Jon Burge."
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> This was the crux of the 1st District's ruling in the Allen case. Raoul's bill would effectively expand the definition to include all torture claims occurring in Cook County.

Thomas, David, *Torture board waiting for cue on non-Burge claims*, Chicago Daily Law Bulletin, March 31, 2016[13]

Given the *Allen* decision's clear and unambiguous language regarding a lack of jurisdiction over convictions originating outside of the Cook County Court system, and the fact that the *Allen* decision preceded P.A. 99-688 by several months, it would seem that if the legislature intended P.A. 99-688 to draw in cases originating in court systems outside of Cook County, it would have used much more specific and pointed language to do so. That it did not do so suggests it did not intend to change that aspect of the law.

The Commission therefore concludes that the phrase "occurring within a county of more than 3,000,000 inhabitants." is ambiguous. The Commission reaches this conclusion because reading it to encompass any act of torture occurring within Cook County geographical boundaries (as the plain language might imply) would result in extreme inconvenience, if not absurdities, for both the courts and claimants whose criminal convictions originated outside of the Cook County courts. Additionally, it would be in conflict with established appellate court case law limiting the Commission's jurisdiction to convictions originating in Cook County courts.

Additionally, a literal interpretation of the phrase "occurring within a county of more than 3,000,000 inhabitants" would have the effect, in some cases, of *reducing* the scope of the Commission's jurisdiction where the torture occurred in another county or state, but at the hands of Cook County authorities.[14] This runs counter to Sen. Raoul's and Rep. Turner's stated intent of expanding the Commission's jurisdiction.

The Commission concludes that a much more reasonable interpretation of the phrase "occurring within a county of more than 3,000,000 inhabitants" means that the *felony conviction* at issue in the Claim of torture occurred in the courts of a county of more than 3,000,000 inhabitants.[15]

[13] It is not clear if the Senate Bill 3292 cited in the story is a typographical error for SB 392, which became P.A. 99-688, or whether initial plans to advance the legislation under SB 3292 fell through. SB 3292 was also a criminal justice bill by Sen. Raoul.

[14] The Commission has already encountered and decided such a claim, *In re: Claim of Ivan Smith*, decided January 20, 2016. The claim involved an allegation that Chicago detectives tortured a defendant in a Tennessee jail when they interrogated him before extraditing him to Chicago.

[15] On August 24, 2016, the Commission approved language that would amend its Rules to both conform to the new legislation of P.A. 99-688 and codify this interpretation of the phrase "occurring within a county of more than 3,000,000 inhabitants." The language is the process of being submitted to the Illinois Secretary of State for First Notice publication in the Illinois Register as part of the Rules amendment process.

This is not only a reasonable construction, as *Ferguson* requires, but a necessary one to avoid the inconvenience or absurdity of multiple forum changes for claimants originally convicted outside of Cook County. It is also needed to remain in compliance with the interpretation of the TIRC Act as stated by the *Allen* decision, as being limited to convictions originating in Cook County. Lastly, it also conforms to Senator Raoul's stated intent to expand, rather than reduce, the Commission's jurisdiction by keeping within the Commission's purview those cases where the torture occurred outside the geographical boundaries of Cook County, but where the underlying criminal case was originally tried in Cook County.

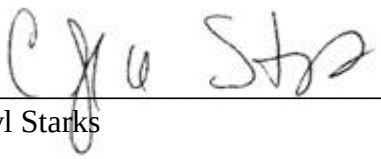
Given that interpretation, the Commission concludes that Mr. Hubbard's claim does not meet the definition of "Claim of torture" in Section 5(1) of the TIRC Act, as amended July 29, 2016 by P.A. 99-688, in that Mr. Hubbard's criminal conviction occurred in DuPage County, a county of fewer than 3,000,000 inhabitants.[16]

CONCLUSION

The Commission finds that Mr. Hubbard's claim does not meet the definition of "claim of torture" in Section 5(1) of the TIRC Act, and that the Commission is without jurisdiction to consider his claim.

The Commission summarily dismisses Mr. Hubbard's claim and instructs its Executive Director to notify Mr. Hubbard of the dismissal and of his right to judicial review under the Illinois Administrative Review Law.

Dated: September 21, 2016



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Chair
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[16] The claim also does not fall within the Commission's pre-P.A. 99-688 jurisdiction, as evidenced by Mr. Hubbard's concession that Jon Burge and his officers were not involved in his case.