

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Raul Fernandez

TIRC No. 2019.618-F
(Relates to Cook County
Circuit No. 05-CR-27148)

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. Claimant, Raul Fernandez, was convicted of the 2005 murder of Jose Santos.
2. On or about January 31, 2019, Mr. Fernandez sent a letter to Commission staff alleging that he was questioned and tortured in and around September and October 2005 by four detectives of the Chicago Police Department. Mr. Fernandez asserted that he did not cooperate in the investigation. He further stated that he “never gave them a statement nor alibi.”²
3. On or about April 23, 2019, Mr. Fernandez filed a claim form with the Commission alleging that he was tortured by four CPD detectives between October 23-26, 2005. However, Mr. Fernandez stated that the prosecution did not claim that he made statements to the police obtained as a result of torture. He also stated that the prosecution did not introduce any statements by him at trial that were obtained through torture.³
4. On his claim form, Mr. Fernandez alleged that a “State’s witness” named Curtis Collins was also tortured by one of the same detectives.⁴ However, Mr. Collins testified at trial that he did not see Mr. Fernandez at the scene of the crime for which Mr. Fernandez then was convicted.⁵
5. On June 6, 2019, Commission staff wrote to Mr. Fernandez to inform him that the circumstances of his claim likely fell outside the Commission’s jurisdiction because although he alleged that he was tortured, he declared that he “never gave them a statement or alibi” and he indicated he never made a statement to the police period, let alone as the result of torture, nor was any statement introduced against him at trial. Commission staff

¹ See, *People v. Fernandez*, 2016 IL App (1st) 133644-U (2016).

² See January 31, 2019, Letter from Raul Fernandez to Rob Olmstead.

³ See TIRC Claim Form of Raul Fernandez.

⁴ Mr. Fernandez only states that Mr. Collins was tortured. He does not claim that Mr. Collins provided any testimony period at Mr. Fernandez’s trial, let alone any testimony obtained through torture. See January 31, 2019, Letter from Raul Fernandez to Rob Olmstead; see also TIRC Claim Form of Raul Fernandez.

⁵ *Fernandez*, 2016 IL App (1s) 133644-U, ¶ 5.

informed Mr. Fernandez they intended to recommend to the Commission that his claim be dismissed, and encouraged Mr. Fernandez to provide further details if his claim had been misunderstood.⁶

6. On or about June 27, 2019, Mr. Fernandez responded to Commission staff's June 6 letter. Mr. Fernandez reiterated that he was tortured, but again did not provide any allegation or evidence that he made any statement as a result of the torture. In fact, Mr. Fernandez specifically stated that "they wasn't successful in getting a false confession from me..."⁷

ANALYSIS

The Illinois Torture Inquiry and Relief Act empowers the Commission to investigate Claims of Torture, which the Act defines as:

* * * a claim on behalf of a living 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 occurring within a county of more than 3,000,000 inhabitants. 775 ILCS 40/5(1) (Emphasis added).

While coercion of witnesses other than the defendant is often a basis for postconviction review,⁸ it is not a basis for jurisdiction that was given to this commission.⁹

Section 40(a) of the TIRC Act provides that the "Commission may informally screen and dismiss a case summarily at its discretion."

Mr. Fernandez's own claim form and his statements in both his January 31 and June 27 letters indicate that he was not tortured into giving any statement that was used to convict him. Rather, he claims that he was tortured but emphatically asserts that he did not make any statement in response to that torture. Mr. Fernandez further claimed that another witness was tortured, but this Commission has not been given authority to investigate such claims.

While the Commission does not condone police misconduct of any kind, the plain language of the TIRC Act limits this Commission's jurisdiction to those instances in which a defendant

⁶ See June 6, 2019, Letter from Rob Olmstead to Raul Fernandez.

⁷ See June 27, 2019, Letter from Raul Fernandez to Rob Olmstead.

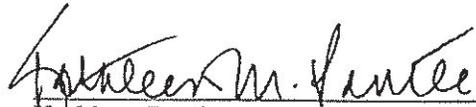
⁸ See, generally, *People v. Montanez*, 2016 IL App (1st) 133726; see also, generally, *People v. Serrano*, 2016 IL App (1st) 133493.

⁹ See *In re: Claim of Cedryck Davis*, TIRC No. 2018.568-D, dismissed by the Commission on July 18, 2018 because "tortured statements of witnesses are not within the reach of the Commission." Available at <https://www2.illinois.gov/sites/tirc/Documents/2018.7.19%20Davis%20Determination-STAMPED.pdf>.

claims that he was tortured into giving a statement against himself, and that that statement was used to obtain his conviction.¹⁰

The Commission summarily dismisses Mr. Fernandez's claim and instructs the Executive Director to notify Mr. Fernandez of the dismissal and his right to judicial review under the Illinois Administrative Review Law. This determination shall be considered the final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 4/3-101).¹¹

Dated: August 21, 2019



Kathleen Pantle
Acting Chair
Illinois Torture Inquiry and Relief Commission

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¹⁰ See *In re: Claim of DeShawn Gardner*, TIRC No. 2018.580-G, dismissed by the Commission on December 18, 2018, because Mr. Gardner unequivocally stated that he was not coerced through torture to provide a statement that was used to convict him. Available at: <https://www2.illinois.gov/sites/tirc/Documents/2018.12.18.GARDNER.dismissal.FILED.pdf>.

¹¹ Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required under the TIRC Act (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.