

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Lazaro Gutierrez

TIRC No. 2013.130-G
(Relates to Cook County
Circuit Court No. 04-CR-29444)

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. Lazaro Gutierrez was arrested on November 6, 2004 and charged with the attempted murder of two police officers that same day. Exhibit A (Arrest Report). Mr. Gutierrez pled guilty to two counts of attempted murder on October 10, 2006. Exhibit B (Transcript of Pretrial Proceedings), at 126.
2. On approximately June 14, 2012, Lazaro Gutierrez submitted a claim form to the Commission alleging that police officers, including those who arrested him, beat him and pressed guns to his head while pulling the trigger. Mr. Gutierrez alleged that he confessed to the attempted murder charges in a statement to the police as a result of that torture. Exhibit C (Gutierrez Claim Form).
3. At Mr. Gutierrez's plea hearing, the State of Illinois recounted the evidence against him:
 - Mr. Gutierrez was observed fleeing the scene of the attempted murder in a car;
 - Police officers observed the car crash and arrested Mr. Gutierrez after he exited the car;
 - Officers recovered a gun from the car and matched it to shell casings at the scene of the shooting;
 - The gun had DNA and a palm print on it, both of which were matched to Mr. Gutierrez;
 - Mr. Gutierrez was brought back to the scene of the attempted murder and identified by the victims; and
 - after he was identified, Mr. Gutierrez gave a statement to police in which he confessed to the shooting and explained the circumstances of it. Exhibit B, at 99-102.

4. At the plea hearing, Mr. Gutierrez's attorney moved to suppress his statement to the police on the basis that it was obtained by mental and physical coercion, threats, and false promises. Exhibit B, at 138-139. The Judge explained to Mr. Gutierrez that by pleading guilty, he was giving up his right to pursue the motion. Exhibit B, at 140. The Judge went on to explain that Mr. Gutierrez could proceed on the suppression motion before pleading guilty, and that if he granted the motion, Mr. Gutierrez's statement would be thrown out. Exhibit B, at 140. The Judge warned Mr. Gutierrez that, "of course, there is a substantial body of evidence against you without the statement." Exhibit B, at 140. Mr. Gutierrez confirmed that he wanted to plead guilty without first pursuing his motion to suppress. Exhibit B, at 141.
5. Section 5(1) of the TIRC Act defines a "Claim of Torture" as a claim by a convicted person "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."

ANALYSIS

The Commission cannot provide relief under the TIRC Act unless Mr. Gutierrez's statement to the police was "used to obtain his conviction." We turn first to that issue.

In previous claims, the Commission has determined that a guilty plea prompted by a tortured confession can constitute a claim of torture under the TIRC Act. *See Tony Anderson*, TIRC No. 2011.014-A, decided May 20, 2015 (analyzing whether the allegedly tortured confession was used to obtain the conviction in each of the criminal cases in which Anderson was charged).

In this instance, the State began the plea colloquy by citing the aforementioned witness accounts and physical and ballistics evidence against Mr. Gutierrez, and also cited Mr. Gutierrez's confession. The Judge then specifically addressed the confession and Gutierrez' pending motion to suppress it. She offered to delay the plea in order to give Mr. Gutierrez the chance to pursue the motion to suppress, telling him that this could lead to his statement being thrown out. The Judge warned him that, even without the statement, the State would likely proceed on the basis of "a substantial body of evidence against [him]." Exhibit B, at 140. Mr. Gutierrez then, with the advice of counsel, in open court, waived the suppression challenge and proceeded to plead guilty.

Given that Mr. Gutierrez chose to proceed with his guilty plea with the understanding that he could delay it and first see if he could have the statement suppressed, it becomes apparent that the statement was not a significant element that led to his plea. *See Anderson*, TIRC No. 2011.014-A, decided May 20, 2015¹

This case presents unique circumstances. Because of the combination of the overwhelming evidence of guilt apart from the confession, the specific waiver of the as-yet-undecided suppression motion in open court at the time of the guilty plea, and the presence of advice of counsel, we conclude that this case is different from *Anderson* – where the allegedly tortured confession prompted the plea. Here, the on-the-record plea colloquy, combined with the rest of the evidence, compels the conclusion that the allegedly tortured confession did not prompt the plea, and was not ‘used to obtain the conviction,’ under the terms of the TIRC Act.

Mr. Gutierrez’ explicit acceptance of the plea, in spite of the possibility of suppressing the statement, leads the Commission to find that the statement was not a significant factor in the state’s securing of his conviction. This finding should not be read to be a repudiation of the Commission’s finding in *Anderson*, or a finding that a plea removes all taint of a tortured confession. Rather, it is a recognition of these unique, provable circumstances that Mr. Gutierrez’ plea did not stem from his allegedly tortured confession.

The Commission finds that Mr. Gutierrez’s claim does not meet the definition of “claim of torture” in Section 5(1) of the TIRC Act, in that the allegedly tortured confession was not used to obtain his conviction, and that the Commission is thus without jurisdiction to consider his claim.

¹ While *People v. Wrice*, held that the “use of a defendant’s physically coerced confession as substantive evidence of his guilt is never harmless error,” *Wrice*’s holding occurred in the context of a determination of whether the prejudice prong of a cause-and-prejudice test is satisfied such that a court should grant a defendant leave to file a successive post-conviction proceeding after being convicted at trial, rather than through a plea. *People v. Wrice*, 962 N.E.2d 934, 945 (Ill. 2012); see *People v. Anderson*, 375 Ill. App. 3d 121, 133 (Ill. App., 1st Dist. 2007). *Wrice* is not directly relevant to the question of the TIRC’s jurisdiction and whether the allegedly tortured confession was used to obtain Mr. Gutierrez’s guilty plea.

The Commission summarily dismisses Mr. Gutierrez's claim and instructs its Executive Director to notify Mr. Gutierrez 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).²

Dated: October 21, 2020


Alternate/Acting Chair Kathleen Pantle
Illinois Torture Inquiry and Relief Commission

² 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.