

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Fernandez Ursery

TIRC No. 2014.236-F
(Relates to St. Clair County Circuit
Court Case No. 02-CF-513)

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 February 24, 2014, Mr. Fernandez Ursery submitted a claim form to the Commission alleging that members of the Centreville police department deprived him of water for 24 hours, pointed guns at him, hit him with a nightstick through a phone book, and failed to provide him with medical treatment in a successful effort to obtain a confession to a 2002 murder.¹ The claim form also indicates that he was convicted in the Circuit Court of St. Clair County of the murder.
2. The Illinois Torture Inquiry and Relief Commission Act (775 ILCS 40/1 *et seq.*, TIRC Act) confers jurisdiction upon the Commission to investigate Claims of torture. At the time Mr. Ursery submitted his claim, 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) (hereinafter “Old Act”).
3. Although the Commission accepted Mr. Ursery’s claim when it was submitted in 2013, under 2 Ill. Admin. 3500.340(e) (eff. Sept. 19, 2014), it informed him in 2014 that it would take 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.
4. On March 25, 2016, the Illinois Appellate Court confirmed that the Commission’s jurisdiction under the Old Act was limited to “petitioners who were victims of Burge or officers under his supervision” and claims unrelated to Burge were outside the Commission’s

¹ See Fernandez Ursery Claim Form.

jurisdiction. *People v. Allen*, 2016 IL App (1st) 142125, ¶1.² Additionally, the *Allen* court determined that the Act’s wording “perforce eliminates claims from petitioners convicted in counties other than Cook from the Commission’s purview.” *Id.* at ¶15.

5. On July 29, 2016, Public Act 99-0688 amended the TIRC Act, eliminating the requirement of Burge’s involvement and expanding the Commission’s jurisdiction to “allegations of torture occurring within a county of more than 3,000,000 inhabitants.” Section 5(1) (hereinafter “New Act”). Cook County is the only county in Illinois with more than 3,000,000 inhabitants.³
6. In no correspondence with the Commission has Mr. Ursery claimed involvement in his case by Jon Burge or any officers under his supervision or that he was convicted in Cook County.

ANALYSIS

The TIRC Act, as it existed prior to July 29, 2016 (Old Act), conferred jurisdiction on the Commission to investigate claims of torture only when it was alleged to have been inflicted by Jon Burge or officers formerly under his command. *See People v. Allen*, 2016 IL App (1st) 142125, ¶1. Additionally, the Illinois Appellate Court in *People v. Allen* determined that the Old Act excluded claims whose convictions occurred in courts outside of Cook County. *Id.* at ¶15

Because Mr. Ursery has never claimed that Jon Burge or officers under his command were involved in his torture, and he acknowledges that he was convicted in St. Clair County Circuit Court, the Commission has no jurisdiction to investigate his claim under the Old Act.

After July 29, 2016 (New Act), the Commission was empowered to investigate claims of torture “occurring within a county of more than 3,000,000 inhabitants.” The Commission has interpreted this phrase to mean that *the conviction* at issue occurred within a county of more than 3,000,000 inhabitants. *See extensive statutory analysis in In re Claim of Ernest Hubbard*, 2014-242-H, decided by TIRC on September 21, 2016. The Commission concluded in that determination that the *Allen* court’s ruling that TIRC has no jurisdiction over convictions of courts outside Cook County was unaffected by the July 29, 2016, amendments.

² 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).

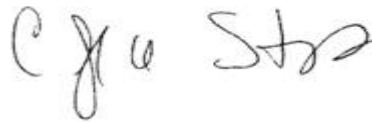
³ SOURCE: Census.gov, 2010 Demographic Profile.

Because Mr. Ursery acknowledges that he was convicted in the Circuit Court of St. Clair County, a county of fewer than 3,000,000 inhabitants, the Commission has no jurisdiction to consider his claim under the New Act, either.

CONCLUSION

The Commission finds that Mr. Ursery'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. Ursery's claim and instructs its Executive Director to notify him of the dismissal and of his right to judicial review under the Illinois Administrative Review Law.



Dated: September 21, 2016

Cheryl Starks
Chair
Illinois Torture Inquiry and Relief Commission