

REPORT No. 90/11¹
PETITION 12.381
DECISION TO ARCHIVE
UNITED STATES
July 21, 2011

Alleged victims: Robert Bacon Jr.

Petitioner: Gretchen M. Engel (Center for Death Penalty Litigation)

Initiation of processing: April 25, 2001

Alleged violations: Articles I, II and XXVI of the American Declaration of the Rights and Duties of Man (the "American Declaration")²

I. POSITION OF THE PETITIONER

1. On April 16, 2001, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Ms. Gretchen M. Engel (the "petitioner") on behalf of Robert Bacon Jr. (the "alleged victim") against the United States of America (the "State" or the "United States"). The petitioner argues that the alleged victim, an African-American man, was sentenced to death by an all-white jury in 1987 and subsequently re-sentenced to death by another all-white jury in 1991 after a new sentencing hearing, and that racial bias infected jury deliberations in both instances; all of which supposedly indicates that the death penalty was inflicted upon the alleged victim in a racially discriminatory manner.

2. According to the petition, the alleged victim was tried with a co-defendant, a white woman named Bonnie Clark, for the murder of a white man named Glennie Clark, in the state of North Carolina. The petitioner states that Mr. Clark was the estranged husband of Ms. Clark, who was the alleged victim's girlfriend at the time of the crime. The petitioner further alleges that due to Mr. Clark's abusive and violent behavior towards his wife and children, Ms. Clark asked the alleged victim to help her kill her husband. Mr. Bacon acquiesced and on February 1, 1987 he and Ms. Clark killed Mr. Clark.

3. The petitioner submits that the alleged victim was convicted of first degree murder and sentenced to death in 1987; Ms. Clark was also convicted of first degree murder but only received a life sentence. According to the petition, the Supreme Court of North Carolina vacated the alleged victim's death sentence in 1990, but on re-sentencing in 1991, the alleged victim was again sentenced to death. The petitioner indicates that the alleged victim has been the victim of racial discrimination in the jury selections and jury deliberations that led to his death sentence. Indeed, in the petition it is claimed that both juries that convicted and sentenced the alleged victim were all-white; that the African-American candidates for jury duty were dismissed by the courts or by the prosecution; and that jurors, upon sentencing him to death, considered the alleged victim's race and the fact that he was romantically involved in an inter-racial relationship with his co-defendant.

4. On October 22, 2001, the petitioner confirmed that the alleged victim's death sentence was commuted to life imprisonment on October 2, 2001.

II. POSITION OF THE STATE

5. In a letter dated October 4, 2001, the State informed the IACHR that the Governor of North Carolina had commuted the alleged victim's death sentence to life in prison without parole.

¹ In keeping with Article 17.2.a of the Rules of Procedure of the IACHR, Commissioner Dinah Shelton, a U.S. national, did not participate in the deliberations or in the voting on this report.

² The petitioner also alleged that the facts establish a violation of Article 5.a of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD").

6. The United States further argues that the foregoing indicated that domestic remedies had not been exhausted prior to the submission of the petition to the Inter-American Commission. The State also submits that there is no violation of international law in the case. Therefore, the United States requested that the petition be declared inadmissible because it considers that it is moot and that the petitioner failed to exhaust domestic remedies.

III. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

7. On April 16, 2001, the Inter-American Commission received the petition. On April 25, 2001, the IACHR transmitted the petition to the State, and simultaneously requested that the United States take precautionary measures to stay the alleged victim's execution pending the IACHR's examination of this petition. The State replied to the petition on April 27, 2001³.

8. The petitioner presented additional information on May 23, 2001; August 2, 2001; September 20, 2001 and October 22, 2001. These communications were duly transmitted to the State. Additional information was presented by the State on September 6, 2001 and October 4, 2001. These were likewise duly transmitted to the petitioner.

9. Since the commutation of the alleged victim's death sentence in October 2001, the IACHR has not received any communications from either party. On January 13, 2010, the Inter-American Commission requested information from the petitioner as to whether the grounds for her petition still existed, and informed her that it might order the record to be closed, in accordance with Article 42 of its Rules of Procedure. No response has been received.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

10. Articles 48.1.b of the American Convention and 42 of the Rules of Procedure of the IACHR establish that, at any time during the proceedings, the Inter-American Commission shall ascertain whether the grounds for the petition still exist; and that if it considers that they do not exist or subsist, it may decide to archive the file. In addition, Article 42.1.b of the Rules of Procedure establishes that the IACHR may also decide to archive a case when the information necessary for the adoption of a decision is unavailable.

11. In the present case, it has been over nine years since the last communication from either party was received. Moreover, the IACHR notes that, since the commutations of the alleged victim's sentence, there has been no response from the petitioner as to whether the grounds for the petition still exist.

12. Under these circumstances, the IACHR considers that it lacks the necessary elements to make a determination as to whether the grounds underlying the initial petition subsist; to pronounce on admissibility; or to reach a decision on the alleged human rights violations. Therefore, in accordance with Article 48.1.b of the American Convention and Article 42 of its Rules of Procedure, the Inter-American Commission decides to archive this petition.

³ With regard to the precautionary measures, the United States indicated that the IACHR's "authority to issue such measures does not exist in the American Convention on Human Rights or in the IACHR Statute", thus the State considered that request "a non-binding recommendation." The Inter-American Commission reiterated its precautionary measures on August 6, 2001 and October 2, 2001.

Done and signed in the city of Washington, D.C., on the 21st day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice President; Rodrigo Escobar Gil, Second Vice President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.