

REPORT No. 132/11¹
PETITION 194-04
ADMISSIBILITY
GREGORY THOMPSON
UNITED STATES
October 19, 2011

I. SUMMARY

1. On March 9, 2004, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a petition lodged by Michael J. Passino and Marjorie Bristol of the *Tennessee Justice Center* (hereinafter, “the petitioners”) against the United States of America (hereinafter, “the United States” or “the State”). The petition was submitted on behalf of Gregory Thompson (hereinafter, “the alleged victim” or “Mr. Thompson”) who, at the time of its submission, was deprived of his liberty on death row in the state of Tennessee.

2. The petitioners claim that Mr. Thompson suffers from a serious mental illness and therefore could not be executed. They also contend that the state of Tennessee violated Mr. Thompsons due process rights by withholding information from the courts and the defense about the existence and severity of his mental illness and that the alleged victim’s trial counsel did not provide effective representation. For its part, the State asserts that the petition is inadmissible due to the failure to exhaust domestic remedies. It also points out that Mr. Thompson’s competency to be executed has been reviewed and upheld in state and federal courts and that the extensive legal file shows that the alleged victim’s due process rights have been respected.

3. Without prejudging the merits of the complaint, after examining the position of the petitioners and the State, and pursuant to the requirements set out in Articles 31 to 34 of its Rules of Procedure, the Inter-American Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter, “the American Declaration”). The IACHR also decides to notify the parties of its decision and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESS BEFORE THE INTER-AMERICAN COMMISSION

4. The IACHR received the petition on March 9, 2004 and on the 31st of that month, forwarded the relevant parts to the State, granting it a two month period in which to submit its observations. On April 16, 2004 the State requested a sixty-day extension, which was denied by the Inter-American Commission, since the alleged victim’s execution was scheduled for August 19, 2004.

5. The Inter-American Commission received additional information from the petitioners on May 20, 2004, which was forwarded to the State. On June 30 of that year, the IACHR received the State’s response, which was forwarded to the petitioners with a 14 day period to submit their observations given that the victim’s execution date was imminent. On August 5, 2004, the State reported that Mr. Thompson had been granted a stay of execution on grounds that domestic remedies were still pending resolution.

6. The petitioners sent additional information on September 15, 2005 and January 23, 2006, and both communications were duly forwarded to the State. On March 1, 2006, the State requested a 30-day extension to respond to those observations, and this was granted by the Inter-American Commission.

¹ Commissioner Dinah Shelton, a citizen of the United States, did not participate in the deliberations or decision in the instant case as provided in Article 17(2)(a) of the Rules of Procedure of the Inter-American Commission.

On April 7, 2006, the IACHR received additional information from the petitioners and, on June 2, 2006, it received the State's response; each of these communications was duly forwarded to the other party.

7. On July 23, 2010, the Executive Secretariat requested updated information from the petitioners. The response was received on August 6, 2010, and forwarded to the State.

Precautionary Measures

8. On March 31, 2004, the IACHR notified the State that precautionary measures had been granted on behalf of the alleged victim, and requested a stay of execution until such time as it should pronounce on the merits of the petition.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. According to the original petition, in 1985, Mr. Thompson was convicted of first-degree murder and sentenced to death in Manchester, Coffee County, Tennessee. According to the available information, the Tennessee Supreme Court upheld the sentence on direct appeal and, in 1990, the United States Supreme Court denied the *certiorari* petition.² The petitioners assert that state post-conviction proceedings were rejected in 1997. They also point out that the United States Court of Appeals for the Sixth Circuit denied a federal habeas corpus petition, and that the Tennessee Supreme Court and the United States Supreme Court, respectively, refused to review the case, after which an initial execution date was set for August 19, 2004. They assert that each one of the claims submitted to the IACHR had been duly presented to the domestic courts on one or more occasions.

10. The petitioners' main claim is the alleged mental incapacity of Mr. Thompson, who they claim had been diagnosed with bipolar affective disorder, schizo-affective disorder, and schizophrenia. They point out that this severe mental illness has been documented by professionals of the state over a nearly twenty year period and that at the time the petition was submitted, the alleged victim was heavily medicated with anti-psychotics, and mood stabilizers. The petitioners claim that executing someone who is mentally incompetent is inconsistent with due process and with the prohibition against cruel, infamous, and unusual punishment recognized under international law and therefore a violation of Articles I, XVII, XVIII, and XXVI of the American Declaration.

11. The petitioners state that following the conviction, Mr. Thompson entered a request for an evidentiary hearing before the Circuit Court for Coffee County to determine his mental competency to be executed. They attached, as evidence, the reports written by two psychiatrists and a clinical psychologist who concluded after meeting with Mr. Thompson that he was incompetent to be executed. The alleged victim also allegedly submitted an extensive medical history created in large part by the state of Tennessee itself. The petitioners indicate that the Court, without offering any evidence whatsoever, denied the request for a hearing on grounds that the alleged victim did not demonstrate a *prima facie* lack of competency and also because Mr. Thompson understood that he was going to be executed.³ The motion presented before the Court of Appeals for the Sixth Circuit was denied on May 12, 2004.

12. After the petition was lodged, the Court of Appeals vacated its earlier opinion, stayed the execution of the alleged victim, and remanded the case to the United States District Court for the Eastern District of Tennessee. The petitioner explains that the Court of Appeals found that there was substantial evidence that showed that Mr. Thompson was suffering from severe mental illness at the time the crime was committed and decided that this, and other evidence concerning the mental health of the alleged victim, was not made known to the jury during the trial. The Court took the view that had the jury been

² Information obtained from the ruling *Thompson v. State*, M1987-00067-SC-DPE-DD (Tenn.2004).

³ The petitioners indicate that according to the jurisprudence established in *Van Tran v. State*, 6 S.W.3d 257, 266 (Tenn. 1999), anyone who lacks the mental capacity to understand the fact of his imminent execution and the reasons for it is not competent to be executed.

aware of Mr. Thompson's personal history, there was a reasonable probability that at least one juror would have struck a different balance and for this reason, trial counsel had not been effective.

13. The state of Tennessee appealed the decision to the United States Supreme Court which, on August 29, 2005, reversed the Court of Appeals ruling in a 4-5 vote, on grounds that the latter had abused its discretionary powers by failing to notify the parties that it was reconsidering its earlier opinion. The petitioners argue that four of the judges agreed with the Court of Appeals' reasoning and that the other five elevated procedural rules above constitutional rights. The Tennessee Supreme Court scheduled the execution for February 7, 2006. On January 5, 2006, however, the District Court stayed the execution in order to assess the mental state of the alleged victim.

14. In the last communication received, the petitioners report that on September 11, 2009, the Court of Appeals remanded the case to the District Court in order for the latter to rule first with respect to the alleged ineffective assistance of counsel and, should that claim be denied, to hold an evidentiary hearing to determine Mr. Thompson's competency to be executed. The petitioners note that the state of Tennessee appealed that decision to the United States Supreme Court. The appeal was still pending on August 6, 2010, the date on which the petitioners' final communication was received. According to publicly available information, on October 4, 2010, the Supreme Court rejected the appeal, and the case therefore would still be pending in the federal courts.⁴

15. The petitioners also contend that the state of Tennessee violated due process by withholding information from the courts and the defense on the existence and severity of Mr. Thompson's mental illness, and that the trial counsel for the alleged victim did not provide effective representation.

16. With respect to the first point, they argue that the prosecutor misled the jury during the court proceeding by failing to disclose available evidence concerning Mr. Thompson's incapacity. They maintain that the records at the State's disposal would have described a significant history of psychosis and the need for multiple medications. Moreover, the alleged victim apparently had a well-documented history of hallucinations and delirious thinking, including the delusion of seeing and hearing devils, gods, and women in his cell; of believing that he wrote songs for Elvis Presley and Michael Jackson; of attempted self-mutilation; and of splattering feces and urine over his cell and eating feces.

17. They also point out that according to the available records, Mr. Thompson has almost always been on medication since his incarceration. Despite this, he allegedly had not been prescribed any medication whatsoever during the two months preceding the hearing held as part of the proceedings following the March 1995 conviction. During that hearing, the prosecutor apparently had argued that the fact that the alleged victim was off his medication showed that he was not mentally ill. According to the petitioners, following the hearing, Mr. Thompson once again began to experience psychotic symptoms. Upon being taken to the prison infirmary, he was diagnosed with mania, delirium and paranoia and was once again prescribed medications.

18. The petitioners assert that the state of Tennessee's position regarding the mental health of the alleged victim has been inconsistent since, in 2001, the state requested a court appointed guardian for Mr. Thompson due, according to the state, to the latter's incapacity to make decisions. The state would have based such a request on the report of a mental health professional who had examined the alleged victim. In this regard, the petitioners underscore that several years before, and based on the same evidence, the State had taken the view that Mr. Thompson was faking his incapacity.

19. The petitioners conclude with respect to this point that during the state post-conviction proceedings, the prosecutors repeatedly claimed that the alleged victim was not suffering from any mental illness whatsoever and that he was competent to be executed. This, notwithstanding prison records showing that state-employed professionals had diagnosed Mr. Thompson with schizophrenia,

⁴ *Crime and Capital Punishment Forum*, available at <http://www.cncpunishment.com/forums/showthread.php?2461-Gregory-Thompson-Tennessee-Death-Row&s=c76f148ba695ead1c3caa06a548d9841>

visual and auditory hallucinations, and paranoia and that he had been treated with psychotropic medications and psychotherapy. They point out that not only did the prosecutors fail to provide this information to the defense as required by law, they also presented false or misleading information to the court regarding the alleged victim's mental health. Finally, they claim that this conduct violated Mr. Thompson's right to a fair and comprehensive review of his conviction, for which the State violated the rights envisaged in Articles I, XVII, and XXVI of the American Declaration.

20. In relation to the alleged inefficacy of trial counsel, the petitioners assert that the attorneys that represented the alleged victim during the trial had never litigated a death penalty case before. They add that the attorneys lacked the necessary expertise to identify an appropriate mental health professional to evaluate Mr. Thompson. Instead of a psychiatrist, they chose an industrial psychologist who performed vocational evaluations and testified at the trial that the alleged victim could perform a job in prison. The petitioners point out that industrial psychologists are not trained to determine whether a person's mental illness affects his or her ability to understand legal proceedings or the impact of that illness on the commission of the crime.

21. The petitioners conclude with respect to the latter point that because the attorneys did not know how to identify an appropriate expert in the case, the jury was denied the opportunity to hear convincing evidence about the severity of the alleged victim's mental illness. For this reason, they argue that the ineffective assistance of counsel constitutes a violation of Articles I, XVI, XVII, and XXVI of the American Declaration.

22. Based on the foregoing, the petitioners claim that the state of Tennessee and the United States violated the rights enshrined in Articles I, II, XVI, XVII, XVIII, and XXVI of the American Declaration to the detriment of Mr. Thompson.

B. Position of the State

23. The State, in its response, summarizes the remedies that Mr. Thompson pursued prior to lodging the petition, many of which already were described in the section on the position of the petitioners. The State points out that Mr. Thompson's claim concerning his alleged lack of competency to be executed was reviewed by the United States courts, which found that the alleged victim is competent.

24. The State went on to describe the remedies that were still pending in the domestic venue. It noted that in June 2004, the Court of Appeals reversed its previous ruling, which had upheld the District Court's rejection of a habeas corpus petition, and returned the case to that court for an evidentiary hearing on Mr. Thompson's mental state at the time the crime was committed.

25. The State points out that the United States Supreme Court reversed the Court of Appeals' judgment, holding that the latter had abused its discretion for three main reasons: it failed to make known its intention to reconsider its opinion, which led the state of Tennessee to believe that the ruling was final and to set the execution date; the evidence which the Court of Appeals used as grounds to reverse its previous ruling (the report by Dr. Faye Sultan) had already been introduced to the Court in a remedy presented by the victim in 2003; and Dr. Sultan's report was not of such a character as to warrant the Court extraordinary departure from standard appellate procedures. With respect to the latter point, the Supreme Court found sufficient grounds to conclude that that evidence was unlikely to have altered the District Court ruling on the alleged ineffective assistance of counsel. The Supreme Court added that Dr. Sultan's findings were contradicted by Dr. Watson who, after reviewing Mr. Thompson's military records and social history, concluded that he was faking his mental incapacity.

26. The State points out that on September 22, 2005, the Tennessee Supreme Court scheduled the execution for February 7, 2006. On September 29, 2005, Mr. Thompson requested the Tennessee Supreme Court to stay the execution arguing a substantial change in his mental health since the last time his competency had been legally established. The State notes that after receiving the pleadings from both parties, the Court denied the request on December 13, 2005, finding that Mr. Thompson had failed to demonstrate that there had been a substantial change in his mental health. This decision was upheld by the Court of Appeals on December 1, 2005.

27. The State asserts that on December 21, 2005, Mr. Thompson moved the District Court to reinstate a stay of execution to permit consideration of the merits of his petition for writ of habeas corpus, in which he claimed that he was incompetent to be executed under Ford.⁵ It notes that the District Court granted a stay of execution on January 5, 2006, and on March 9, 2006, granted Mr. Thompson leave to file an amended habeas corpus petition previously raised and exhausted in state proceedings. On May 4, 2006, the District Court dismissed the habeas corpus petition. At the time of the State's final communication, which was received on June 2, 2006, the time period in which the victim could appeal that ruling had not expired.

28. The State argues, in conclusion, that Mr. Thompson's competency to be executed has been reviewed and upheld by state and federal courts and most importantly, remains under review. It also asserts that the extensive legal file at the state and federal levels shows that Mr. Thompson's right to due process has been respected. Lastly, it points out that it is premature for the Inter-American Commission to decide on the merits of the matter, since remedies at the federal level are still pending resolution.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

⁵ In *Ford v. Wainwright*, 477 U.S. 399 (1986), the United States Supreme Court found that people with mental disabilities could not be executed.

29. In principle, the petitioner is entitled under Article 23 of the Rules of Procedure of the Inter-American Commission to lodge petitions before the IACHR. The petition names, as the alleged victim, an individual person with respect to whom the United States has undertaken to respect and ensure the rights enshrined in the American Declaration. As far as the State is concerned, the Inter-American Commission notes that the United States is subject to the obligations imposed by the American Declaration pursuant to the OAS Charter, Article 20 of the IACHR Statute, and Article 51 of the Rules of Procedure of the Inter-American Commission. The United States has been part of the Organization of American States since June 19, 1951, the date on which it deposited its ratification instrument of the OAS Charter.⁶ Therefore, the Inter-American Commission has competence *ratione personae* to examine this petition.

30. The IACHR also has competence *ratione loci* to take up the petition insofar as it claims violations of rights protected in the American Declaration that allegedly occurred within the territory of the United States, a State Party to the Declaration. The Inter-American Commission has competence *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Declaration was already in effect for the State on the date on which the events described in the petition allegedly occurred. Finally, the Inter-American Commission has competence *ratione materiae*, because the petition claims possible violations of human rights protected by the American Declaration.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

31. According to Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition to be admissible, the remedies of the domestic legal system must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to take up the alleged violation of a protected right and, where warranted, to resolve it before it is taken up by an international body.

32. Under Article 31(2) of the IACHR's Rules of Procedure, the requirement of prior exhaustion of domestic remedies is not applicable when: a) the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated; b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. In the original petition, the petitioners asserted that all existing resources at the state and federal level had been exhausted. They subsequently reported that new remedies had been presented. The State, for its part, claims that federal remedies are still pending, for which the instant petition is not admissible.

34. At the time the petition was lodged, the post-conviction procedures had been rejected and the date of Mr. Thompson's execution had already been set. In June 2004, in other words, after the petition was lodged, the Court of Appeals for the Sixth Circuit reversed its ruling, thereby reopening review of the alleged victim's alleged lack of competency to be executed. While that ruling was later overturned by the United States Supreme Court, the case was subsequently remanded to the District Court for it to rule on the alleged ineffective assistance of counsel and, should that pleading be rejected, to hold an evidentiary hearing to determine Mr. Thompson's competency to be executed. At the time of the adoption of the instant report, the case appears to be still pending resolution in the federal courts.

35. According to the available information, the ordinary remedies envisaged under United States law were pursued and exhausted in respect of the three claims submitted to the IACHR. The

⁶ See also, Inter-Am. Ct. H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, OC-10/89, para. 45 (July 14, 1989).

State, therefore, is fully cognizant of the claims that gave rise to the instant petition. Federal remedies are still pending with respect to two of the pleadings, namely Mr. Thompson's alleged incompetency to be executed for reasons of his mental illness and the alleged ineffective assistance of counsel.

36. The Inter-American Commission notes that 26 years have transpired since the death penalty sentence was handed down against Mr. Thompson, and 14 years since the first extraordinary remedies were rejected. Bearing in mind that after all these years, the United States courts are still reviewing those claims, it would not be reasonable to require the petitioners to exhaust an extraordinary remedy as a condition for admissibility. It is also worth mentioning that the alleged victim has been deprived of his liberty on death row during all of this time. As the IACHR has pointed out, the rule of prior exhaustion of domestic remedies must never lead to a halt or delay that would render international action in support of the victim ineffective.⁷

37. Without prejudice to the decision on the merits of this case in the aforementioned procedural stage, the Inter-American Commission finds that an unwarranted delay has occurred in the legal proceedings, which triggers an exemption from the obligation to pursue additional extraordinary remedies. It should be noted that the decision adopted at this stage is based on admissibility criteria, which are different than those applied during the merits stage. The Inter-American Commission therefore concludes that domestic remedies were exhausted with respect to the alleged due process violation and in relation to Mr. Thompson's alleged incompetency to be executed and the alleged ineffective assistance of counsel and that the exception envisaged in Article 31(2)(c) of its Rules of Procedure is applicable.

2. Time frame for lodging the petition

38. According to Article 32(1) of the Rules of Procedure of the Inter-American Commission, petitions must be lodged within a period of six months following the date on which the alleged victim has been notified of the final, unappealable decision. Pursuant to Article 32(2) of the Rules of Procedure, however, in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time as determined by the Inter-American Commission. For this purpose, the IACHR shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.⁸

39. According to the available information, the conviction and death sentence were upheld by the Tennessee Supreme Court on direct appeal. Post-conviction state and federal remedies were also rejected. Finally, on January 20, 2004, the United States Supreme Court refused to hear the case.⁹ The petition was lodged before the IACHR on March 9 of that same year. Therefore, this petition also complies with the time frame established in Article 32(1) of the Rules of Procedures with respect to the alleged due process violation.

40. Several remedies relating to the victim's alleged incompetency to be executed and the alleged ineffective assistance of counsel were presented after the petition was lodged. Therefore, those claims fulfill the requirement of a reasonable time frame set out in Article 32(2) of the Rules of Procedure.

3. Duplication of proceedings and international res judicata

41. There is nothing in the file to indicate that the subject of the petition is pending in any other proceeding for international settlement, or that it is the same as any petition that has already been

⁷ IACHR, Report No. 17/06, Petition 531/01, Admissibility, Sebastián Claus Furlan and family, Argentina, March 2, 2006, para. 40.

⁸ IACHR, Report No. 63/10, Petition 1119-03, Admissibility, Garifuna Community of Punta Piedra and its members, Honduras, March 24, 2010, para. 49.

⁹ While the petitioners do not give the date on which this ruling was handed down, the information is available on the website of the United States Supreme Court: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/03-5759.htm>.

examined by this or any other international organ. Therefore, the requirements set out in Article 33(1) of the Rules of Procedure of the Inter-American Commission have been met.

4. Colorable claim

42. Under Article 34(a) of the Rules of Procedure, petitions lodged before the IACHR must state facts that tend to establish a violation of the rights referred to Article 27 therein, and a petition that fails to do so must be found to be “manifestly groundless” or “out of order,” pursuant to Article 34(b). The criterion for examining admissibility differs from that used to examine the merits of the petition, since the Inter-American Commission only conducts a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Declaration. This is a cursory analysis that in no way implies a prejudgment or a preliminary opinion on the merits of the matter.

43. Neither the American Declaration nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

44. The petitioners assert that Mr. Thompson suffers from a serious mental illness and is therefore not competent to be executed. Among other things, they point out that the alleged victim suffers from schizophrenia and hallucinations, that he is heavily medicated with anti-psychotics, and that this is very well documented in his medical history, which has been created mainly by State-employed physicians. They further claim that the state of Tennessee withheld information from the courts and the defense on the existence and severity of Mr. Thompson's mental illness and that the alleged victim's trial counsel did not provide effective representation. For its part, the State asserts that Mr. Thompson's competency to be executed has been reviewed and upheld by state and federal courts. The State also points out that the extensive legal file at the state and federal levels shows that the alleged victim's due process rights have been respected.

45. Given the heightened scrutiny test that it has applied in death penalty cases,¹⁰ the Inter-American Commission observes that if proven, the petitioners' claims could characterize violations of Articles I, XVIII, and XXVI of the American Declaration. The IACHR reiterates its enhanced obligation to verify that any deprivation of life which may occur through the application of capital punishment complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.¹¹

46. The Inter-American Commission observes that the petitioners offer no arguments for the alleged violation of Articles II, XVI, and XVII of the American Declaration and therefore, it is not appropriate to declare those claims admissible.

47. In conclusion, the IACHR decides that the petition is not manifestly groundless or out of order and declares that the petitioner has fulfilled, *prima facie*, the requirements set out in Article 34 of the Rules of Procedure of the Inter-American Commission.

V. CONCLUSIONS

¹⁰ See IACHR, Report No. 60/11, Petitions P-11.575 et al, Admissibility, Clarence Allen Lackey, March 24, 2011, para. 158; Report No. 77/09, Petition 1349-07, Admissibility, Orlando Cordia Hall, United States, August 5, 2009, para. 47; and Report No.61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, para. 66.

¹¹ IACHR, Report No. 1/05, Case 12.430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, para. 43.

48. The Inter-American Commission concludes that it is competent to take up the matter before it and that the petition is admissible under Articles 31 to 34 of its Rules of Procedure. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles I, XVIII, and XXVI of the American Declaration;
2. To declare the instant petition inadmissible in relation to Articles II, XVI, and XVII of the American Declaration;
3. To notify the parties of its decision;
4. To continue with its examination of the merits of the matter;
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington D.C. on the 19th day of the month of October, 2011.
(Signed): José de Jesús Orozco Henríquez, First Vice President; Rodrigo Escobar Gil, Second Vice President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commissioners.