IACHR Inter-American Commission on Human Rights

OEA/Ser.L/V/II.150
Doc. 17
2 April 2014
Original: English

REPORT No. 13/14
CASE 12.422

MERITS (PUBLICATION)

ABU-ALI ABDUR' RAHMAN
UNITED STATES*

Approved by the Commission at its session No. 1976 held on April 2, 2014
150 Regular Period of Sessions

Cite as: IACHR, Report No. 13/14, Case 12.422. Merits (Publication). Abu-Ali Abdur' Rahman. United States. April 2, 2014.

www.cidh.org

Organization of American States

Downloaded from worldcourts.com subject to terms and conditions

REPORT No. 13/14
CASE 12.422
MERITS (PUBLICATION)
ABU-ALI ABDUR' RAHMAN
UNITED STATES*
April 2, 2014

INDEX

I. SUMMARY 2
II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT 39/03 2
III. POSITIONS OF THE PARTIES 3
A. Position of the Petitioners 3
B. Position of the State 11
IV. ANALYSIS 11
A. Standard of Review 11
B. Right to Due Process and to a Fair Trial 12
V. PROCEEDINGS SUBSEQUENT TO REPORT 54/03 18
VI. FINAL CONCLUSIONS AND RECOMMENDATIONS 23
VII. PUBLICATION 24

* In keeping with Article 17.2.a of the Rules of Procedure of the IACHR, Commissioner James L. Cavallaro, a U.S. national, did not participate in the deliberations or in the voting on this report.

Downloaded from worldcourts.com subject to terms and conditions

REPORT No. 13/14
CASE 12.422
MERITS (PUBLICATION)
ABU-ALI ABDUR' RAHMAN
UNITED STATES*
April 2, 2014

I. SUMMARY

1. On February 28, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission") received a petition dated February 27, 2002 from the Office of the Post-Conviction Defender of the State of Tennessee (hereinafter the "Petitioners") against the Government of the United States of America (hereinafter the "State" or "United States"). The petition was presented on behalf of Mr. Abu-Ali Abdur' Rahman, formerly Mr. James Jones (hereinafter "Mr. Abdur' Rahman" or "Abdur' Rahman"), a citizen of the United States who is incarcerated on death row in the State of Tennessee. The petition indicates that Mr. Abdur' Rahman was convicted on July 13, 1987 of first-degree murder, assault with intent to commit first-degree murder with bodily injury, and armed robbery, that he was sentenced to death on July 15, 1987, and that his execution was scheduled to take place on April 10, 2002. Mr. Abdur' Rahman's execution was subsequently postponed on several occasions as a result of additional domestic proceedings pursued on his behalf.

2. The petition alleges that the State is responsible for violations of Mr. Abdur' Rahman's rights under Articles I, XVII, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration" or the "Declaration"), based upon deficiencies in the fairness of the criminal proceedings against him as well as his competence to be executed in light of his mental disability.

3. In Report 39/03 dated June 6, 2003, the Commission found the Petitioners' claims to be admissible in respect of Articles I, XVII, XVIII and XXVI of the American Declaration and decided to continue with the analysis of the merits of the case.

4. As of the date of this report, the Commission had not received observations from the State concerning the merits of the Petitioners' petition.

5. As set forth in the present report, having examined the merits of the case, the Commission concluded that the State is responsible for violations of Mr. Abdur' Rahman's right to a fair trial and to due process under Articles XVIII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration in respect of the criminal proceedings against him and recommended that the State provide Mr. Abdur' Rahman with an effective remedy, which includes a re-trial in accordance with fundamental principles of due process or, where this is not possible, his release. The Commission also considered that the United States would perpetrate a grave and irreparable violation of the right to life under Article I (right to life, liberty and personal security) of the American Declaration should it proceed with Mr. Abdur' Rahman's execution based upon the criminal proceedings under consideration in the Commission's report.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT 39/03

6. In Report 39/03 adopted on June 6, 2003, the Commission declared Mr. Abdur'Rahman's admissible in respect of Articles I, XVII, XVIII and XXVI of the Declaration, and indicated that it would continue with its analysis of the merits of the case. At that time, Mr. Abdur'Rahman's execution had been scheduled for June 18, 2003 in the State of Tennessee. Consequently, in its admissibility report, the Commission decided to reiterate its March 7, 2002 request under Article 25 of its Rules of Procedure for the United States to take all necessary measures to ensure that Mr. Abdur'Rahman's execution was stayed pending the Commission's determination of the matter. Report 39/03 was transmitted to the State and to the Petitioners by note dated June 6, 2003. In the same communication, the Commission requested that the Petitioners provide any

Downloaded from worldcourts.com subject to terms and conditions

additional observations on the merits of the case within a period of two months, in accordance with Article 38(1) of its Rules.

7. On June 10, 2003, the State transmitted to the Commission a copy of a letter dated June 9, 2003 from the Ambassador of the United States to the Organization of American States to the Governor of the State of Tennessee in which the Ambassador provided the Governor with a copy of the Commission's admissibility report and request for precautionary measures and asked that the Governor transmit the correspondence to the Tennessee Board of Probation and Parole. On the same date, the Commission received information that the United States Court of Appeals for the Sixth Circuit had agreed to hear an appeal from Mr. Abdur'Rahman *en banc* and had stayed his execution pending the appeal.

8. On July 8, 2003, the Petitioners provided the Commission with additional observations on the merits of Mr. Abdur'Rahman's case. By note of the same date, the Commission transmitted the pertinent parts of the Petitioners' additional information to the State with a request for any observations within two months, as provided for under Article 38(1) of the Commission's Rules of Procedure.

9. As of the date of the present report, the Commission had not received a response from the State to its request for observations concerning the merits of the Petitioners' petition.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

10. According to the petition, Abu-Ali Abdur' Rahman is a citizen of the United States who is incarcerated on death row in the State of Tennessee. The petition indicates that Mr. Abdur' Rahman was convicted on July 13, 1987 of first-degree murder, assault with intent to commit first-degree murder with bodily injury, and armed robbery, and that he was sentenced to death on July 15, 1987.

11. The information available indicates that Mr. Abdur' Rahman's crime relates to the assault and death on February 17, 1986 of Patrick Daniels. At that time, Mr. Abdur' Rahman was alleged to have been a member of a small paramilitary arm of the Southeastern Gospel Ministry (SGM), a Christian activist organization dedicated to improving conditions in the Nashville African-American community. On February 17, 1986, Mr. Abdur' Rahman and another member of SGM, Devalle Miller, visited Patrick Daniel's apartment with loaded guns furnished by SGM leaders Allen Boyd and William Beard. According to Mr. Miller's sworn testimony during his sentencing hearing in 1987 and subsequent additional testimony in 1993, he and Mr. Abdur' Rahman visited Mr. Daniels in order to carry out the mandate of the SGM, namely to help the community by eliminating drugs from drug dealers in the area.[1]

12. The petition also states that when Mr. Abdur' Rahman and Mr. Miller entered Mr. Daniel's apartment; they were met by Mr. Daniels, Norma Norman, and her two children. The children were put into a bedroom during the assault that ensued. According to the plan, Mr. Miller was to bind up Mr. Daniels with duct tape, but Mr. Miller froze. Mr. Abdur' Rahman took the duct tape and used it to bind and blindfold Mr. Daniels and Ms. Norman. Mr. Daniels and Ms. Norman were then stabbed several times with a knife from Daniels' kitchen. Ms. Norman survived but could not identify her assailant. Mr. Daniels died from six stab wounds to the heart and chest. According to Mr. Miller, he and Mr. Abdur' Rahman left the apartment and met immediately with Mr. Boyd.

13. According to the Petitioners, Ms. Norman described both Mr. Miller and Mr. Abdur' Rahman up to the point when she was blindfolded. She repeatedly said that Mr. Abdur' Rahman was wearing a long dark wool coat at the time and Mr. Miller also described Mr. Abdur' Rahman as wearing a long dark wool coat during the evening. The police reports indicated that the crime scene was bloody, with pools of blood on the

[1] Petitioners' petition dated February 27, 2002, p. 4.

Downloaded from worldcourts.com subject to terms and conditions

floor and blood spattered on the walls, and the crime scene photographs showed extensive blood spattering on the walls.

14. Two days later, the police arrested Mr. Abdur' Rahman at work at the Nashville Baptist Publishing Board. According to Mr. Abdur' Rahman's wife and the police report, at the time of his arrest Mr. Abdur' Rahman was unable to recall the actual assaults on Mr. Daniels and Ms. Norman. On the day of Mr. Abdur' Rahman's arrest, police searched his apartment and seized the gun that he carried with him to Mr. Daniels' apartment as well as his clothing and the long dark wool coat that he was said to have been wearing at the time of the offense. The coat was then sent to the Tennessee Bureau of Investigation (TBI) crime lab where it was tested chemically for blood stains, and the crime lab issued a report stating that no blood stains were found on any of Mr. Abdur' Rahman's clothing.[2] Internal prosecution documents provided by the Petitioners indicated that prosecutors contemplated the test results as a possible weaknesses in the case against Mr. Abdur' Rahman.[3] Also in this respect, the Petitioners provided the Commission with a transcript of the testimony of Dr. Kris Sperry, Chief Medical Examiner for the State of Georgia, before the U.S. District Court in February 1998 in which Dr. Sperry claimed that Mr. Daniel's wounds would undoubtedly have spattered blood on the assailant's clothes, that those stains could not have been removed from the coat even if the coat had been cleaned, and that the test administered by the TBI lab would have detected blood stains despite any possible cleaning.[4]

15. According to the petition, Mr. Abdur' Rahman's trial lawyer was unaware of the existence of this lab report and the prosecution never disclosed this blood evidence to the defense or the jury. The Petitioners state that the prosecution has never offered an explanation for the apparent inconsistency between the condition of the crime scene and the absence of blood on Mr. Abdur' Rahman's coat.

16. The Petitioners also indicate that Mr. Abdur' Rahman was identified as the assailant in this case based solely on the uncorroborated testimony of Devalle Miller, Mr. Abdur' Rahman's co-defendant, who was offered a plea bargain from the prosecution under which he would plead guilty to second degree murder in exchange for his testimony against Mr. Abdur' Rahman. Mr. Miller ultimately received a term sentence and was released from parole approximately 10 years later. According to the petition, several facts point to Mr. Miller's potential responsibility for the assaults and murder. These include the fact that, on the day of Mr. Abdur' Rahman's arrest, Mr. Miller was fleeing the state with money that had been provided by Mr. Beard and SGM, who also supplied money to Mr. Miller's wife and family until they eventually joined him in his hometown in Pennsylvania.[5] After authorities in Tennessee made arrangements for the capture and arrest of Mr. Miller in Pennsylvania and before he was appointed counsel, the prosecution interviewed him about the offense. The Petitioners contend that Mr. Miller's story changed considerably after his first interview. They also claim that during the week before Mr. Abdur' Rahman's trial the prosecution conducted 5 interviews with Mr. Miller on 5 consecutive days averaging 3 hours per interview, and that despite this preparation, Mr. Miller never said that Mr. Adbur' Rahman removed his long dark wool coat before Mr. Daniels was stabbed. The Petitioners also point out that Mr. Miller's clothes were never tested for blood stains.[6]

17. In light of this factual background, the Petitioners argue that Mr. Abdur' Rahman was denied a fair trial, based upon prosecutorial misconduct and ineffective assistance of counsel.

---

[2] Petitioners' petition dated February 27, 2002, Appendix G (TBI lab report dated May 22, 1986).

[3] Petitioners' petition dated February 27, 2002, Appendix I (Memorandum from John Zimmerman to Eddie Barnard dated March 24, 1987, p. 3).

[4] Petitioners' petition dated February 27, 2002, Appendix J (Testimony of Dr. Kris Sperry, pp. 37-63).

[5] Petitioners' petition dated February 27, 2002, p. 6.

[6] Petitioners' petition dated February 27, 2002, Appendix G (TBI lab report dated May 22, 1986).

Downloaded from worldcourts.com subject to terms and conditions

18. Concerning prosecutorial misconduct, the Petitioners claim that during the course of his trial, Mr. Abdur' Rahman's ability to enjoy a fair and just determination of his guilt was denied when the prosecutor made false representations and withheld exculpatory evidence, including the results of lab tests indicating that the coat worn by Mr. Abdur' Rahman did not contain any blood despite the fact that the crime scene was spattered with blood. In particular, the Petitioners allege that the prosecutor for Mr. Abdur' Rahman's case, Mr. John Zimmermann, had a well-documented history of misconduct and engaged in a fraudulent and deceptive scheme of withholding evidence and of making misrepresentations. In this connection, the Petitioners provided the Commission with accountings of instances of court reprimands of Mr. Zimmermann as a prosecutor as well as details of the pattern of alleged prosecutorial misconduct in Mr. Abdur' Rahman's case.[7] The latter are said to have included withholding exculpatory material and information; misleading statements to defense counsel concerning the blood evidence; misrepresentations to the Middle Tennessee Mental Health Institution (MTMHI") regarding the circumstances of the offense and Mr. Abdur' Rahman's mental state and background; misrepresentations to defense counsel concerning the nature of Mr. Abdur' Rahman's prior murder conviction; improper presentation of inadmissible and prejudicial evidence to the jury at trial; improper coaching and manipulation of witnesses; and improper jury argument that Mr. Zimmermann must have known was false based on information contained in his own files.

19. The Petitioners state that the factual basis of these instances of misconduct is a matter of court record, as Mr. Abdur' Rahman introduced the evidence regarding these claims in his federal habeas corpus evidentiary hearing and the evidence was not rebutted. The Petitioners also claim that no domestic court has ruled upon the claims because the federal courts dismissed the claims on procedural grounds, namely the fact that Mr. Abdur' Rahman's state-appointed counsel failed to include these claims in their state post-conviction appeal. Based on these factual circumstances, the Petitioners claim that Mr. Abdur' Rahman's conviction and sentence was based on a false picture of every aspect of the case, including the circumstances surrounding the offense and Mr. Abdur' Rahman's mental disability, background and personal character.

20. Concerning the allegations of ineffective assistance of counsel, the Petitioners argue that Mr. Abdur' Raman was not adequately represented by counsel throughout his trial and that every court that has collaterally reviewed his case has reached this conclusion.[8] In support of their contention, the Petitioners provided detailed allegations concerning alleged conflicts of interest and failures on the part of his trial counsel. Concerning the alleged conflicts of interest, the Petitioners claim that Mr. Abdur' Rahman's trial counsel was paid a $5,000 retainer along with a promise to pay an additional $10,000 by SGM, despite the fact that they were accessories to the crime. Mr. Abdur' Rahman's trial counsel also admitted during the federal habeas corpus hearing that he did not begin to work on the case because he did not receive the promised $10,000.00 retainer.[9]

21. Concerning the alleged incompetence on the part of Mr. Abdur' Rahman's legal representatives, the Petitioners claim that his trial counsel performed absolutely no investigation into the circumstances surrounding the offense or Mr. Abdur' Rahman's background.[10] These omissions are alleged to have included trial counsels' lack of awareness of the fact that Mr. Abdur' Rahman's clothes contained no blood stains, the fact that trial counsel failed to furnish MTMHI with any background information relevant to their evaluation of Mr. Abdur' Rahman, and the failure to request Mr. Abdur' Rahman's mental health,

[7] Petitioners' petition dated February 27, 2002, Appendices C and D.

[8] Petitioners' petition, p. 11. *See also* Abdur' Rahman v. Bell, 999 F.Supp. The Commission notes in this regard that the alleged incompetence on the part of Mr. Abdur' Rahman's trial counsel was the subject of habeas corpus proceedings before the U.S. federal courts. While the U.S. District Court for the Middle District of Tennessee concluded that Mr. Abdur' Rahman's representation during the sentencing phase had been deficient and vacated his sentence of death, the US Court of Appeals for the Sixth Circuit reversed the District Court's decision in this regard on the basis that, although Mr. Abdur' Rahman's representation was deficient, he had not been prejudiced as a result. Abu-Ali Abdur'Rahman v. Bell, Nos. 98-6568/6569, US Court of Appeals for the Sixth Circuit (13 September 2000).

[9] Petitioners' petition dated February 27, 2002, p. 11 and Appendix E.

[10] Petitioners' petition dated February 27, 2002, p. 6.

Downloaded from worldcourts.com subject to terms and conditions

educational, prison or military records. The Petitioners similarly claim that Mr. Abdur' Rahman's representatives did not file a motion requesting the trial court to declare Mr. Abdur' Rahman indigent and requesting investigative and expert services, never introduced any information from the MTMHI records relating to Mr. Abdur' Rahman's background or mental history, did not contact any members of Mr. Abdur' Rahman's family or call any of them to testify during the sentencing hearing, and failed to investigate the nature of Mr. Abdur' Rahman's prior convictions. The Petitioners point out that the judge presiding over Mr. Abdur' Rahman's habeas corpus petition before the U.S. District Court found these omissions to constitute "serious failures," "grave omissions," "substantial errors," or "significant mistakes," and went on to conclude:

> Thus, this Court, like the state post-conviction trial court and appeals court, finds that trial counsel's performance during the guilt phase and during sentencing was deficient.
>
> [. . .]
>
> The Court acknowledge[s] that Lionel Barrett and Sumter Camp have good reputations in the Nashville bar of being fine criminal defense lawyers. This case illustrates that lawyers do not make cases based on their reputations. A lawyer must actually work on each case. Cases are made through factual investigation, research, writing, witness preparation, trial strategy, and a bit of good fortune. In this case, the hard work was simply not done. This Court agrees with the state post-conviction trial and appellate courts that Mr. Barrett and Mr. Camp provided inadequate representation. Good lawyers can and do fail. Here Mr. Barrett and Mr. Camp utterly failed in their duty to adequately represent their client who, as a result of this miscarriage of justice, was unconstitutionally sentenced to death. This is not a case of harmless error.[11]

22. According to the Petitioners, however, the inadequate performance of Mr. Abdur' Rahman's trial counsel had two significant effects on the guilt/innocence and sentencing stages of his trial. His trial counsel failed to present any witnesses or any evidence during the guilt stage of the trial, even though Mr. Abdur' Rahman had strong guilt stage defenses, including the possibility that he was not the assailant, and "insanity and diminished capacity" defenses based upon Mr. Abdur' Rahman's well-documented history of "mental illness." In addition, trial counsel never presented any meaningful mitigation evidence in the sentencing stage of the trial, and therefore the jury was never offered a reason to impose a life rather than a death sentence. The Petitioners claim that extensive evidence could and should have been provided in this regard, including evidence concerning Mr. Abdur' Rahman's good character, his good behavior and work history, his extensively documented history of extreme physical, sexual and emotional abuse he suffered during most of his life, and his well-documented history of "mental illness."

23. In their petition, the Petitioners provide extensive submissions concerning Mr. Abdur' Rahman's background of abuse and mental illness. In this connection, they contend not only that the absence of this information during his trial deprived him of due process, but that to execute him in light of his "mental

[11] Abdur' Rahman v. Bell, 999 F. Supp. at 1095, 1101. This finding was overturned on appeal by the U.S. Court of Appeals for the Sixth Circuit, which considered that Mr. Abdur' Rahman ultimately was not prejudiced by the deficient performance of his counsel and therefore that there were no grounds to interfere with his conviction or sentence. According to the Sixth Circuit:

> Even considering the supplemental evidence heard by the district court and outlined in its opinion, Petitioner did not suffer prejudice at the sentencing phase due to his trial counsel's deficient performance. While it is true that much of the supplemental evidence contains mitigating evidence that a sentencer might find to be compelling, the same evidence likewise has aspects that would be compelling evidence of aggravating circumstances. In particular, the supplemental evidence contained a description of Petitioner's motive for killing a fellow prison inmate and a history of violent character traits. Therefore, we agree with the post-conviction trial court and the Tennessee Court of Criminal Appeals that because the mitigating evidence that could have been introduced also contained harmful information, Petitioner did not suffer prejudice sufficient to create a reasonable probability that the sentencing jury would have concluded that the balance of aggravating and mitigating factors did not warrant death. Thus, the decision of the district court that the Petitioner was prejudiced at the sentencing stage due to his counsel's deficient performance is reversed.
>
> Abdur-Ali Abdur' Rahman v. Bell, 2000 FED App. 0319P (6th Cir.)(13 September 2000) at 9-10.

Downloaded from worldcourts.com subject to terms and conditions

illness" would, in and of itself, constitute cruel, infamous or unusual punishment contrary to the American Declaration.

24. More particularly, the Petitioners indicate that throughout his life, Mr. Abdur' Rahman was the victim of abuse, as a result of which he suffers from Borderline Personality Disorder and Post-Traumatic Stress disorder. This abuse occurred during his childhood at the hands of his parents, and in his late teens when he was sent to prison for a minor offense and was subjected to abuses at the hands of other prisoners.

25. Concerning Mr. Abdur' Rahman's treatment during his childhood, the Petitioners indicate that he was subjected to inhumane and shocking treatment mostly at the hands of his father, who was a military policeman. The Petitioners point to the statements of a judge of the Middle District of Tennessee, the only judge to hear evidence about Mr. Abdur' Rahman's background. This evidence included descriptions in Mr. Abdur' Rahman's mental health records and the testimony of his step-sister, wife, brother, who committed suicide during the proceedings, and former fiancé. Among the judge's findings were the following:

> Ms. Lancaster [Mr. Adbur' Rahman's step-sister] testified that she and the Petitioner share a common mother, who abandoned Ms. Lancaster and her two brothers when she was an infant. Petitioner's mother put her three children in a taxi, drove them to the woods, and left them. Petitioner's mother later married Petitioner's father, James Jones, Sr. Three more children were born of that marriage – James (Petitioner), Mark and Sylvia.
>
> Petitioner's statements to mental health providers provide a vivid description of the abuse suffered at the hands of his father. Petitioner received regular beatings with a leather strap from his father. Petitioner's father made him take off his clothes, place him hog-tied in a locked closest, and tethered him to a hook with a piece of leather tied around the head of his penis. Petitioner's father struck Petitioner's penis with a baseball bat. To punish him for smoking, Petitioner's father required him to eat a pack of cigarettes, and when he vomited, he was made to eat the vomit. None of this extraordinary abuse, which constitutes relevant mitigating evidence, was heard by the jury. This was a grave omission by defense counsel.
>
> This, of course, is not to suggest that people who are abused as children should get away with murder. People with bad childhoods can be sentenced to death. But the Constitution requires that these significant facts should have been presented to the jury at sentencing by counsel.
>
> Petitioner's school and mental health records indicate that Petitioner's family lived in several different locations, and that Petitioner had undergone mental evaluations several times during is childhood. Petitioner ran away from home several times, and eventually, at 15, left home for good.
>
> A reasonable investigation would have produced information about Petitioner's mental history. A review of the MTMHI records, which trial counsel had in their possession before trial would have indicated that Petitioner had had prior mental evaluations, that he had served in the army, and had spent several years in prison. Petitioner's school, military and prison records reveal that Petitioner had been diagnosed in 1964 as having "paranoid personality" and, in 1971, as having a "passive aggressive personality, aggressive type." These records also describe the Petitioner as ""very sick" and in need of immediate commitment; "in serious need of therapy;" and "highly disturbed." The records also reflect numerous suicide attempts. None of this evidence was offered to the jury. This was significant error by counsel.
>
> Petitioner also had a family history of serious mental conditions. Petitioner's sister, Sylvia, attempted suicide on multiple occasions and was institutionalized several times for mental health problems. Petitioner's brother, Mark, committed suicide while this case was pending in this Court.
>
> Had counsel conducted an in-depth interview before calling Susi Mynum to testify at sentencing they would have gathered more evidence regarding Petitioner's mental health. They would have learned about Petitioner's belief that his wife would have the next Messiah; Petitioner's having carried on conversations with nonexistent people and animals; and his having banged his head against the wall on various occasions. Again, none of this evidence was made known to the jury. Ms. Bynum testified that she even told Mr. Barnett that he should have a psychiatrist examine the Petitioner before the trial. These were serious deficiencies by defense counsel.

Downloaded from worldcourts.com subject to terms and conditions

> Had trial counsel heeded Ms. Bynum's suggestion and hired a mental health professional to evaluate the Petitioner, or had they interviewed MTMHI's D. Craddock, they could have presented evidence that Petitioner had, at the very least, exhibited symptoms of a Borderline Personality Disorder, including extreme emotional swings, identity disturbance, and self-mutilating behavior. A mental health professional, like Dr. McCoy, could have offered an explanation placing in context the negative aspects of Petitioner's past. By describing Petitioner's history of earnestly seeking a religious faith with which to align himself, Dr. McCoy's testimony would have supported the notion that Petitioner had been strongly influenced by the SEGM. None of this was put into evidence before the jury. The failure of counsel to do so was a serious error.[12]

26. The Petitioners also contend that the documented history of Mr. Abdur' Rahman's subsequent adolescent years reveals evidence of violent and deviant behavior as well as possible mental illness. This includes, for example, fights and arguments involving Mr. Abdur' Rahman both in and out of school at ages 14, 15 and 17, criminal charges of assault and battery when he was 15, and a conviction under the Federal Youth Corrections Act for assault with a dangerous weapon while on a military base in 1969 when he was 18. Evidence of emotional and mental problems also developed during this period, including statements by school and hospital psychologists that Mr. Abdur' Rahman was sick and required treatment. In addition, on at least two separate occasions, at the ages of 15 and 16, Mr. Abdur' Rahman was placed in mental hospitals for his own protection because of suicide attempts, and it was reported that he suffered from auditory hallucination and nightmares.[13] Also according to reports from these institutions, Mr. Abdur' Rahman's father disregarded these warnings and recommendations and refused to allow treatment for Mr. Abdur' Rahman or his family.[14]

27. Further, the Petitioners' information indicates that Mr. Adbur' Rahman continued to suffer abuse while in prison. As a result of his 1969 conviction under the Federal Youth Corrections Act, Mr. Abdur' Rahman was imprisoned at the Federal Reformatory in Petersburg, Virginia, a youth facility. At this institution, Mr. Abdur' Rahman was not provided with any treatment and supervision as required under the Federal Youth Corrections Act and records indicate that as early as January 1971 when he was 20 years old, he suffered from episodes of "hysterical blindness" and made a number of suicide attempts.[15] Also during this time, Mr. Abdur Rahman became the victim of repeated homosexual rape. Despite requests to be placed in segregation, authorities failed to provide Mr. Abdur' Rahman with protection, and the instances worsened until Mr. Abdur' Rahman eventually killed an inmate named Michael Stein on April 1, 1972. Citing the results of an F.B.I. investigation into the incident, the Petitioners assert that the murder occurred as a consequence of rumors spread by Mr. Stein that the Petitioner had engaged in homosexual conduct. Psychiatric evidence arising out of Mr. Adbur' Rahman's prosecution for this event indicated that he suffered from a "schizoid personality" and "borderline personality with periodic decompensation with loss of control." While Mr. Abdur' Rahman was ultimately convicted of second degree murder, the trial court entered a final judgment recommending "commitment to institution where defendant may receive psychiatric treatment."[16]

28. Instead of receiving psychiatric treatment, however, Mr. Abdur' Rahman was placed in the federal penitentiary system where the Petitioners allege he continued to be the victim of homosexual rape at various placements throughout the federal prison system. The Petitioners also claim that he suffered an additional instance of hysterical blindness in February 1973, attempted suicide and other acts of self-

[12] Adbur' Rahman v. Bell, 999 F.Supp at 1073-1101. *See similarly* Abdur' Rahman v. Bell, 226 F.3d at 721-2. *See also* Petitioners' petition dated February 27, 2002, Appendix B (social history of Abu Ali Abdur' Rahman, prepared by forensic psychologist Diane McCoy, Ph.D.).

[13] Petitioners' petition dated February 27, 2002, Appendix B, pp. 14-15.

[14] Petitioners' petition dated February 27, 2002, Appendix B, p. 15.

[15] Petitioners' petition dated February 27, 2002, Appendix B, p. 20.

[16] Petitioners' petition dated February 27, 2002, Appendix B, pp. 21-22.

Downloaded from worldcourts.com subject to terms and conditions

mutilation, and was placed on suicide watch intermittently over the next 10 years. According to the Petitioners, while Mr. Abdur' Rahman was moved from one penitentiary to another because of his repeated sexual victimization, he committed no further violent acts in prison.

29. The Petitioners also contend that during the course of Mr. Abdur' Rahman's childhood, adolescence, and incarceration in the federal prison system, his "mental illness" persisted and was further exacerbated. In support, they refer to the conclusions of six mental health experts, three psychiatrists and three psychologists, who evaluated Mr. Abdur' Rahman subsequent to his 1987 capital trial, and all of whom diagnosed him with Post-Traumatic Stress Disorder and/or Borderline Personality Disorder.[17] According to the Petitioners, these experts also agree that persons suffering from Mr. Abdur' Rahman's condition can experience psychotic or dissociative episodes under stress, and further, that Mr. Abdur' Rahman's history of hysterical blindness, suicide attempts and self-mutilation was symptomatic of these "mental illnesses."[18]

30. Finally, the Petitioners state that notwithstanding his "mental illness," prison records covering the 11 years Mr. Abdur' Rahman served for the murder of Michael Stein reflect no further instances of violence. They claim that Mr. Abdur' Rahman was a responsible and productive citizen following his release from prison until February 17, 1986 when he became involved in the offense that resulted in the killing of Patrick Daniels and the stabbing of Norma Norman.

31. In the context of the factual circumstances alleged above, the Petitioners contend that the United States is responsible for violations of Mr. Abdur' Rahman's rights under Articles I, XVII, XVIII and XXVI of the American Declaration, on three main grounds. First, the Petitioners argue that executing a "mentally ill" person violates Articles I, XVII, XVIII and XXVI of the Declaration. They claim in this regard that an individual with limited understanding of his actions or the law cannot be held to the same standard as a person who knowingly, intentionally, and intelligently violates the law. Similarly, they argue that an individual with limited understanding of the death penalty or of the concept of death cannot be held to the same standard as an individual with a clear understanding of capital punishment.

32. In support of their position, the Petitioners cite several international instruments which they claim require the criminal justice system to acknowledge the unique status of persons with mental disabilities, particularly in cases involving capital punishment. These instruments include the 1971 U.N. General Assembly Declaration on the Rights of Mentally Retarded Persons,[19] the 1975 U.N. General Assembly Declaration on the Rights of Disabled Persons,[20] and statements made by the European Union in opposition to the death penalty, including the execution of persons with mental disabilities.[21] The Petitioners also refer to Advisory Opinion OC-3/83 of the Inter-American Court of Human Rights, in which the Court included among

[17] Petitioners' petition dated February 27, 2002, p. 22, referring to diagnoses by Dr. Robert Sadoff, a nationally recognized forensic and clinical psychiatrist, Dr. Robert Nurcombe, at the time a Nashville clinical and forensic psychiatrist, Dr. George W. Woods, a nationally recognized forensic and clinical psychiatrist from California, Dr. Raymond Winbush, an academic psychologist from Fisk University, Dr, Diana McCoy, a forensic psychologist from Knoxville, and Dr. Daniel Martell, a forensic psychologist from California retained by the Tennessee Attorney General in Mr. Abdur' Rahman's case.

[18] Petitioners' petition dated February 27, 2002, p. 22.

[19] Petitioners' petition dated February 27, 2002, p. 27, citing U.N. General Assembly Declaration on the Rights of Mentally Retarded Persons, GA Res. 2856 (XXVI), U.N. Doc. A/8429 (1971).

[20] Petitioners' petition dated February 27, 2002, p. 27, citing U.N. General Assembly Declaration on the Rights of Disabled Persons, GA Res. 3447 (XXX) (1975), Art. 11 (providing that "[d]isabled person shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account").

[21] Petitioners' petition dated February 27, 2002, p. 28, citing European Union, Annual Report on Human Rights 89-85 (2000) (stating that the European Union "seeks to ensure that in countries where the death penalty has not been abolished executions are carried out in accordance with those generally accepted safeguard standards. It particularly pays attention to: […] persons suffering from any form of mental disorder […]).

Downloaded from worldcourts.com subject to terms and conditions

the limitations applicable to states parties to the American Convention which have not abolished the death penalty the requirement that "certain considerations involving the person of the defendant, which may bar the imposition or application of the death penalty, must be taken into account."[22]

33. In the circumstances of the present case, the Petitioners contend that as a result of the "mental illness" suffered by Mr. Abdur' Rahman he was unable to assist his counsel in preparing for his trial, thus denying him due process at trial and rendering his execution cruel, infamous or unusual punishment contrary to Articles I, II, XVII, XVIII and XXVI of the Declaration. While he knew he was with Devalle Miller, his co-defendant, at the time that Mr. Daniels was killed, he had no memory of what precipitated Mr. Daniels' death. The Petitioners claim in this connection that the prosecution claimed that they had found blood on his clothes while withholding a lab report showing that no blood was found on this clothes and that Mr. Abdur' Rahman had no means to dispute the claim.

34. The Petitioners also argue that Mr. Abdur' Rahman was further denied his right to due process and to a fair trial as a result of his "mental illness" when his trial counsel called him to testify in his own defense during the sentencing phase of trial. According to the Petitioners, Mr. Abdur' Rahman's trial counsel had never mentioned to him or prepared him for the fact that he would testify during the course of trial and this lack of substantive and emotional preparation put Mr. Abdur' Rahman under great stress, with the trial transcript showing evidence of him dissociating in the middle of the most crucial time of his trial.

35. The second ground upon which the Petitioners challenge Mr. Abdur' Rahman's legal proceedings is on the basis that he was denied his right to be tried in accordance with established procedures and his right to due process of law when the State of Tennessee's prosecutor withheld exculpatory evidence and lied to the jury in order to convict him. The Petitioners claim in this connection that it is well established under United States law that the role of the prosecutor is to seek justice, not win at all costs even if that means lying, and that the prosecution was required to disclose exculpatory evidence to the defense. In the circumstances of the present case, the Petitioners claim that, had the prosecution disclosed to the defense and the jury the existence of the lab report indicating that no blood was found on Mr. Abdur' Rahman's cloths, it may have affected the outcome of the trial, as it is unthinkable that Mr. Daniels' assailant could have escaped without being covered in blood when Mr. Daniels was stabbed in the heart and the crime scene was covered in blood.

36. The Petitioners also claim that the prosecution withheld evidence concerning the nature of Mr. Abdur' Rahman's prior conviction for murder by portraying it as involving a gang turf war in prison, rather than an effort to put an end to repeated homosexual rapes as the prosecution had been informed by the prosecutor and the trial transcript from the previous case. The Petitioners also claim that the prosecutor further misled the jury by telling them in closing argument at the sentencing phase that there was no evidence that Mr. Abdur' Rahman was "mentally ill," when the prosecutor was well aware that Mr. Abdur' Rahman's sole defense during his 1972 trial was based upon his "mental illness," and when the prosecution was in possession of documents describing bizarre behavior on the part of Mr. Abdur' Rahman at the time of his arrest and failed to provide this information to the defense or to the jury.

37. Finally, the Petitioners argue that defense counsel's failure to provide Mr. Abdur' Rahman with effective representation violated his right to be tried under due process of law and in accordance with preexisting laws. The Petitioners state that every court that examined Mr. Abdur' Rahman's trial found that his trial counsel was ineffective. In particular, trial counsel undertook no investigation into the case or Mr. Abdur' Rahman's background prior to trial and as a result they failed to learn of the existence and relevance of the tests on the clothing seized from Mr. Abdur' Rahman's home at the time of his arrest. They also failed present any evidence during the guilt/innocence phase of the trial and called only two unprepared witnesses, Mr. Abdur' Rahman and his wife, during sentencing. Moreover, the Petitioners claim that Mr. Abdur' Rahman effectively had no defense at trial, while during his state post-conviction and federal habeas corpus

[22] Petitioners' petition dated February 27, 2002, pp. 28-29, citing Advisory Opinion OC-3/83, Restrictions to the Death Penalty, Inter-Am. Ct. H.R. (ser. A), Nº 3 (1983).

Downloaded from worldcourts.com subject to terms and conditions

proceedings counsel uncovered a voluminous history of trauma suffered at the hands of his parents and while he was incarcerated as a teenager and young adult, as well as evidence that Mr. Abdur' Rahman suffered from "mental illness." Further, the Petitioners claim that eight of the jurors who convicted and sentenced Mr. Abdur' Rahman to die now say that if they were aware of Mr. Abdur' Rahman's "mental illness," the trauma he suffered, and the evidence that was withheld or distorted by the prosecution, they would not have sentenced him to death.[23]

38. In response to the Commission's request following the adoption of admissibility report 39/03 for observations on the merits of their petition, the Petitioners provided the Commission with copy of a "Brief Amicus Curiae of National Mental Health Association, National Alliance for the Mentally Ill of Tennessee, National Association of Black Social Workers, National Association of Social Workers, National Association of Black Social Workers, Tennessee Chapter, and Tennessee Voices for Children, Inc." The amicus brief was filed support of Mr. Abdur' Rahman's petition before the U.S. Supreme Court for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit. In the brief, the authors argued that the Sixth Circuit was wrong in concluding in its judgment of September 13, 2000 that Mr. Abdur' Rahman was not prejudiced by his counsel's deficient performance, because his trial counsel's deficient performance deprived Mr. Abdur' Rahman of his fundamental right to have the sentencer give a reasoned moral response to his evidence, and because the majority of the Sixth Circuit panel attached an aggravating label to evidence that actually militated in favor of a penalty lesser than death.

39. Based on these submissions, the Petitioners contend that the State is responsible for violating Mr. Abdur' Rahman's right to life, liberty, and personal security under Article I of the Declaration, his right to recognition of his juridical personality and civil rights under Article XVII of the American Declaration, his right to a fair hearing under Article XVIII of the American Declaration, and his right to due process of law under Article XXVI of the American Declaration.

B. Position of the State

40. As indicated above, the Commission transmitted the pertinent parts of the Petitioners' petition to the State on March 7, 2002 with a request that it provide information relevant to the Petitioners' complaints within 60 days. Despite this request and the Commission's subsequent communications concerning the precautionary measures adopted in favor of Mr. Abdur' Rahman, including its March 19, 2003 renewed request for a response to the Petitioners' petition, the Commission did not receive any information or observations from the State concerning the admissibility or merits of the allegations contained in Mr. Abdur' Rahman's complaint. Further, by note dated July 8, 2003 the Commission transmitted to the State the additional submissions provided by the Petitioners on the merits of their petition with a request for any observations that the State deemed relevant on the merits of the case within two months. As of the date of the present report, the Commission had not received any observations from the State on the merits of the Petitioners' complaint.

IV. ANALYSIS

A. Standard of Review

41. Before addressing the merits of the present case, the Commission wishes to reaffirm and reiterate its well-established doctrine that it will apply a heightened level of scrutiny in deciding capital punishment cases. As the right to life is widely-recognized as the supreme right of the human being, respect for which the enjoyment of all other rights depends, the Commission considers that it has an enhanced obligation to ensure that any deprivation of life that occurs through the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration. This heightened scrutiny test is consistent with the restrictive approach taken by

[23] Petitioners' petition dated February 27, 2002, Appendix A (Notice of Filing of Juror Affidavits, attaching affidavits of jurors Bonnie M. Meyer, Alice Stoddard, Jimmy Swarner, Scarlett McAllister Smith, and Yolanda Howard).

Downloaded from worldcourts.com subject to terms and conditions

other international human rights authorities to the imposition of the death penalty, and has been articulated and applied by the Commission in previous capital cases before it.[24]

42. This approach requires strict adherence to the rules and principles of due process and fair trials in the context of capital cases. The Commission has previously emphasized that the irrevocable and irreversible nature of the death penalty renders it a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.[25]

43. The Commission also notes that this heightened scrutiny test applicable to death penalty cases is not precluded by the Commission's fourth instance formula. According to this formula, the Commission in principle will not review the judgments issued by domestic courts acting within their competence and with due judicial guarantees.[26] Where a possible violation of an individual's rights under applicable inter-American human rights instruments is involved, however, the Commission has consistently held that it is competent to review these claims.[27]

44. The Commission will therefore review the Petitioners' allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, due process, and a fair trial as prescribed under the American Declaration have been properly respected by the State.

45. In addition, in evaluating the factual allegations in the petition, the Commission takes into account the fact that the State did not provide a substantive response to the merits of the Petitioners' petition within the maximum period set by the Commission under Article 38 of the Commission's Rules of Procedure. As a consequence, in accordance with Article 39 of the Commission's Rules, the facts alleged in the Petitioners' petition will be presumed to be true provided that the evidence does not lead to a different conclusion.

B. Right to Due Process and to a Fair Trial

46. In their petition, the Petitioners have alleged that Mr. Abdur' Rahman is the victim of violations of his right to due process and to a fair trial under Articles I, II, XVI, XVII and XXVI of the Declaration. In particular, they contend that Mr. Abdur' Rahman was deprived of his right to a fair trial when the prosecutor made false representations and withheld exculpatory evidence, including the results of lab tests indicating that the coat worn by Mr. Abdur' Rahman did not contain any blood despite the fact that the crime scene was spattered with blood. They also contend that Mr. Abdur' Raman was not adequately

---

[24] *See e.g. William Andrews v. United States, supra,* paras. 170-171; Case 11.743, Report Nº 38/00 (Baptiste v. Grenada), Annual Report of the IACHR 1999, paras. 64-66; Case 12.023, Report Nº 41/00 (McKenzie *et al*. v. Jamaica), Annual Report of the IACHR 1999, paras. 169-171, referring in part to Woodson v. North Carolina, 449 L Ed 944, 961 (U.S.S.C.); Juan Raul Garza v. United States, Case 12.243, Report Nº 52/01, Annual Report of the IACHR 2000, para. 100. *See similarly* Advisory Opinion OC-16/99, supra, para. 135 (noting the existence of an "internationally recognized principle whereby those States that still have the death penalty must, without exception, exercise the most rigorous control for observance of judicial guarantees in these cases," such that "[i]f the due process of law, with all its rights and guarantees, must be respected regardless of the circumstances, then its observance becomes all the more important when that supreme entitlement that every human rights treaty and declaration recognizes and protects is at stake: human life."); Champagnie, Palmer and Chisholm v. Jamaica, Communication Nº 445/991, U.N. Doc. CCPR/C/51/D/445/1991 (1994), para. 9 (finding that in capital punishment cases, "the obligations of states parties to observe vigorously all the guarantees of a fair trial set out in Article 14 of the Covenant [on Civil and Political Rights] admits of no exception.").

[25] *See e.g.* McKenzie *et al*. v. US, *supra*, para. 188, citing, *inter alia*, Woodson v. North Carolina, 449 L Ed 944, 961 (U.S.S.C.).

[26] *See* Report Nº 39/96 (Santiago Marzioni v. Argentina*)*, Annual Report of the IACHR 1996, p. 76, paras. 48-52. *See also* Report Nº 29/88 (Clifton Wright v. Jamaica), Annual Report of the IACHR 1987-88, p. 154.

[27] *See e.g.* Marzioni v. Argentina*, supra;* Wright v. Jamaica*, supra;* Baptiste v. Grenada*, supra,* para. 65*;* McKenzie *et al*. v. Jamaica*, supra,* para*.* 170.

Downloaded from worldcourts.com subject to terms and conditions

represented by counsel throughout his trial and that every court that has collaterally reviewed his case has reached this conclusion.

47. In this connection, the Commission considers that certain factual allegations are pertinent to evaluating whether Mr. Abdur' Rahman's criminal proceedings satisfied the standards of due process prescribed under the American Declaration. In particular, based upon the Petitioners' allegations, and in the absence of contradictory information or evidence from the State, it appears that Mr. Abdur' Rahman's proceedings were characterized by the following relevant circumstances described below.

48. The petition alleges, and the judicial decisions on the record confirm, that the state post-conviction trial and appeal courts, the Federal District Court and the Federal Court of Appeals all concluded that Mr. Abdur' Rahman's representation during the guilt and innocence phases of his trial was deficient. Among the instances of deficient performance was the fact that Mr. Abdur' Rahman's trial counsel performed absolutely no investigation into the circumstances surrounding the offense or Mr. Abdur' Rahman's background.

49. Further, the record indicates that considerable information and evidence is available, and was available at the time of the trial, concerning Mr. Abdur' Rahman's circumstances and those of his offense, that was not known to or investigated by his defense counsel and that was not presented to the jury determining his guilt and punishment. Among this material was information that was not discovered by or disclosed to defense counsel indicating that the coat alleged to have been worn by Mr. Abdur' Rahman during the crime contained no blood stains, as well as details of Mr. Abdur' Rahman's mental, educational, prison and military background. This information, which has not been contradicted by the State, included evidence indicating that throughout his childhood, Mr. Abdur' Rahman was subjected to inhumane and shocking treatment, mostly at the hands of his father. Mr. Abdur' Rahman continued to suffer abuse during his adolescence years, particularly following his incarceration in 1969 at the Federal Reformatory in Petersburg, Virginia, where he was not provided with any treatment and supervision, suffered from episodes of "hysterical blindness," and made a number of suicide attempts. Mr. Abdur' Rahman also became the victim of repeated homosexual rape. This culminated in the 1972 murder of inmate Michael Stein at the hands of Mr. Abdur' Rahman, pursuant to which the court that tried Mr. Abdur' Rahman for the murder recommended "commitment to institution where defendant may receive psychiatric treatment."[28] Mr. Abdur' Rahman was then placed in the federal penitentiary system rather than an institution where he could receive treatment, continued to be the victim of homosexual rape at various placements throughout the federal prison system, and continued to suffer instances of hysterical blindness as well as suicide attempts.

50. Also according to the information before the Commission, during the course of Mr. Abdur' Rahman's childhood, adolescence, and incarceration in the federal prison system, his mental disability persisted and was further exacerbated, as confirmed by the conclusions of six mental health experts who evaluated Mr. Abdur' Rahman subsequent to his 1987 capital trial. According to the record, all of these experts diagnosed Mr. Abdur' Rahman with Post-Traumatic Stress Disorder and/or Borderline Personality Disorder.[29] They also indicated that persons with this kind of disability could experience psychotic or dissociative episodes under stress, and that Mr. Abdur' Rahman's history of hysterical blindness, suicide attempts and self-mutilation was symptomatic of these mental conditions.[30] Notwithstanding his mental disability and the fact that he was not provided with proper treatment, prison records covering the 11 years Mr. Abdur' Rahman served for the murder of Michael Stein reflect no further instances of violence, and he was

[28] Petitioners' petition dated February 27, 2002, p. 20.

[29] Petitioners' petition dated February 27, 2002, p. 22, referring to diagnoses by Dr. Robert Sadoff, a nationally recognized forensic and clinical psychiatrist, Dr. Robert Nurcombe, at the time a Nashville clinical and forensic psychiatrist, Dr. George W. Woods, a nationally recognized forensic and clinical psychiatrist from California, Dr. Raymond Winbush, an academic psychologist from Fisk University, Dr, Diana McCoy, a forensic psychologist from Knoxville, and Dr. Daniel Martell, a forensic psychologist from California retained by the Tennessee Attorney General in Mr. Abdur' Rahman's case.

[30] Petitioners' petition dated February 27, 2002, pp. 22-23 and Appendix B. pp. 26-28.

Downloaded from worldcourts.com subject to terms and conditions

a responsible and productive citizen following his release from prison until the incident involving Patrick Daniels and Norma Norman.

51. In addition, the record indicates that due in part to these circumstances, neither Mr. Abdur' Rahman nor his attorney were apprised of the results of a crime lab report prepared at the prosecution's request indicating that no evidence of blood was found on the wool coat seized from Mr. Abdur' Rahman's apartment at the time of his arrest and which he was alleged to have worn at the time of the murder. This was the case despite the fact that the murder scene was spattered with blood and an expert had suggested that the perpetrator would necessarily have been stained with blood.

52. Notwithstanding the potential relevance of these factors, according to the record, the only judicial body to hold an evidentiary hearing on these factors was the U.S. District Court for the Middle District of Tennessee, which concluded that Mr. Abdur' Rahman had received ineffective assistance of counsel at all stages of his trial, and that this resulted in prejudice in the sentencing phase of his trial due to counsel's failure to present mitigating evidence despite its availability. This finding was overturned on appeal by the U.S. Court of Appeals for the Sixth Circuit, however, which considered that Mr. Abdur' Rahman ultimately was not prejudiced by the deficient performance of his counsel and therefore that there were no grounds to interfere with his conviction or sentence.[31]

53. In light of these facts, the Commission must determine whether the circumstances of Mr. Abdur' Rahman's criminal proceedings satisfy the requirements of the standards and protections within the inter-American human rights system. In this connection, several aspects of the system's doctrine and jurisprudence are particularly pertinent to the due process claims raised by the Petitioners. As suggested above, the Commission considers that Articles I, XVIII and XXVI of the Declaration must be interpreted and applied in the context of death penalty prosecutions so as to give stringent effect to the most fundamental substantive and procedural due process protections.[32] Of particular pertinence in the present complaint, the essential requirements of substantive and procedural due process include the right to adequate time and means for the preparation of his defense,[33] and the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing and to communicate freely and privately with his counsel.[34]

54. The Commission has held that these protections apply to all aspects of a defendant's criminal trial, regardless of the manner in which a state may choose to organize its criminal proceedings.[35] Consequently, where, as in the present case, the State has chosen to establish separate proceedings for the

[31] Abdur-Ali Abdur' Rahman v. Bell, 2000 FED App. 0319P (6th Cir.)(13 September 2000).

[32] *See similarly* Advisory Opinion OC-16/99, *supra*, para. 136 (concluding that "[b]ecause execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result.").

[33] Universal Declaration of Human Rights, Art. 11(1); International Covenant on Civil and Political Rights, Art. 14(3)(b); American Convention on Human Rights, Art. 8(2)(c); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 6(3)(b).

[34] Universal Declaration of Human Rights, Art. 11(1); International Covenant on Civil and Political Rights, Art. 14(3)(b), (d); American Convention on Human Rights, Art. 8(2)(d); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 6(3)(c).

[35] *See* Garza v. United States, *supra*, para. 102. Likewise, the Commission has concluded in the context of the American Convention on Human Rights that the due process guarantees under Article 8 of the Convention apply to the sentencing phase of the victim's capital prosecution so as to guarantee him an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of his or her case. *See* Baptiste, *supra*, paras. 91, 92; McKenzie et al., *supra*, at paras. 204, 205.

Downloaded from worldcourts.com subject to terms and conditions

guilt/innocence and sentencing stages of a criminal prosecution, the Commission considers that due process protections nevertheless apply throughout.[36]

55. According to this Commission and other pertinent authorities, the right to effective assistance of counsel is crucial to the fairness of a proceeding, in part because it is intimately connected with the right of a defendant to adequate time and means for the preparation of his or her defense. This requires, first and foremost, that counsel be competent and effective.[37] It also requires that all arrested, detained or imprisoned persons be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship, and in full confidentiality. In addition, it entails a defendant's prerogative to have a lawyer present for all important stages of a proceedings, as well as his or her right to have an attorney present when giving a statement or undergoing interrogation.[38]

56. Concerning the sentencing stage of a capital proceeding, the Commission has determined that the right not to be arbitrarily deprived of life, the right to humane treatment, and the right to due process under both the American Declaration and the American Convention permit the imposition of the death penalty as a form of punishment only after a defendant has had an adequate opportunity to present, and the sentencing authority has had an opportunity to consider, evidence and arguments as to whether the death penalty may not be an appropriate or permissible form of punishment in the circumstances of a particular offender or offense.[39] The Commission has therefore found that imposing capital punishment in a manner that conforms with the provisions of the American Convention and the American Declaration requires an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is a permissible or an appropriate form of punishment in the circumstances of their case.[40]

57. Applying these principles and standards to the circumstances of Mr. Abdur' Rahman's case, the Commission considers first that judicial authorities of the State have consistently found that Mr. Abdur' Rahman failed to receive competent legal representation during the guilt/innocence and sentencing phases of his legal proceedings. The State has not disputed these findings, and the Commission sees nothing on the record that would lead it to a different conclusion.

58. As noted above, the Commission considers that under international human rights standards of due process applicable to criminal proceedings, the right to the effective assistance of counsel is an invariable requirement. The Commission has previously recognized that a state cannot be held responsible

[36] The Commission has similarly found in the context of the American Convention on Human Rights that the due process guarantees under Article 8 of the Convention apply to the sentencing phase of the victim's capital prosecution so as to guarantee him an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of his or her case. *See* Baptiste, *supra*, paras. 91, 92; McKenzie et al., *supra*, at paras. 204, 205. *See similarly* Eur. Comm. H.R., Jespers v. Belgium, 27 D.R. 61 (1981) (applying the principle of equality of arms to sentencing proceedings).

[37] *See similarly* Eur. Court H.R., Artico Case, Judgment of 13 May 1980, Ser. A Nº 37, para. 33 (finding that the European Convention is intended to guarantee rights that are theoretical or illusory but rights that are practical and effective).

[38] IACHR, Report on Terrorism and Human Rights, para. 237, citing, *inter alia*, I/A Court H.R., Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, Series C Nº 52, para. 139; UN Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev1 at 118 (1990).

[39] *See, e.g.,* Case Nº11.826, Report Nº 49/01, Leroy Lamey *et al*. v. Jamaica, Annual Report of the IACHR 2001, para. 126; Case Nº 12.067, Report Nº 48/01, Michael Edwards v. The Bahamas, Annual Report of the IACHR 2000, para. 137. Similar findings have been made by the Inter-American Court of Human Rights and the UN Human Rights Committee. I/A Court H.R., Hilaire, Constantine and Benjamin *et al*., v. Trinidad and Tobago, Judgment of June 21, 2002, Ser. C. Nº 94, para. 103; UNHRC, Eversley Thompson v. St. Vincent and the Grenadines, UNHRC, Communication Nº 806/1998 (October 18, 2000).

[40] *See, e.g.,* Case Nº11.826, Report Nº 49/01, Leroy Lamey *et al*. v. Jamaica, Annual Report of the IACHR 2001, para. 139; Case Nº 12.067, Report Nº 48/01, Michael Edwards v. The Bahamas, Annual Report of the IACHR 2000, para. 151.

Downloaded from worldcourts.com subject to terms and conditions

for all deficiencies in the conduct of state-funded defense counsel, owing to the independence of the legal profession and the State's corresponding lack of knowledge or control over the manner in which a defense attorney may represent his or her client.[41] National authorities are, however, required to intervene if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention.[42] In a case such as the present, where the national courts themselves have determined that counsel provided to the defendant was manifestly incompetent and this finding is supported by the evidence on the record, the Commission considers that there has been a violation of the right to due process for which the state is responsible. This violation does not depend upon a demonstration of prejudice to the defendant concerned.[43]

59. Further in this regard, where a State has failed to afford a capital defendant competent counsel, the Commission considers that the criminal proceedings shall be considered to have been deprived of their efficacy from the outset and thereby invalidate the defendant's conviction, absent a showing by the State to the contrary. In this connection, the Commission takes into account the fact that it is the duty of the state to provide counsel if the accused does not defend himself personally or engage his own counsel within the time period established by law. Also pertinent is the central role that competent and effective legal representation plays in the course of criminal proceedings, particularly those that may result in the imposition of capital punishment. Without proper legal representation, numerous other essential elements of due process may be effectively denied to a defendant, including the right to adequate time and means for the preparation of his or her defense and the right to examine witnesses present in court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.

60. In the present case, the State has not established that Mr. Abdur' Rahman received a fair trial notwithstanding its failure to provide him with competent counsel. To the contrary, the Commission considers that according to the information available, the incompetence of Mr. Abdur' Rahman's representation, together with other deficiencies in his proceedings, impacted negatively upon the fairness of his trial. In particular, the facts indicate that as a result of the incompetence of his counsel, no inquiries were made concerning the fate of the clothing seized from Mr. Abdur' Rahman's home at the time of his arrest. This, together with the failure of the prosecution to fulfill its disclosure obligations, deprived Mr. Abdur' Rahman of the benefit of potentially exculpatory evidence in the form of a police lab report indicating that no blood had been found on the coat seized from his apartment and which he was alleged to have been worn during the crime. The results of the lab test were clearly relevant to Mr. Abdur' Rahman's potential role in the crime. Indeed, the prosecution itself expressed concerns that the results of this lab report constituted a weakness in their case to the extent that the report could not be reconciled with the manner in which the murder was committed.[44]

---

[41] *See* Case Nº 11.826, Report Nº 49/01, Leroy Lamey et al. *v. Jamaica*, ANNUAL REPORT OF THE IACHR 2000, paras. 216-217. See similarly Eur. Court H.R., *Kamasinski v. Austria*, 19 December 1989, Series A. Nº 168 para. 65; U.N.H.R.C., *Young v. Jamaica*, Communication Nº 615/1995 (1997).

[42] *Id.*

[43] *See similarly* Artico Case, *supra*, para. 35 (indicating that a violation of the European Convention on Human Rights, including the right to effective counsel, is conceivable even where no damage arises). *See also* Eur. Court H.R., Alimena Case, Judgment of 19 February 1991, Ser. A Nº 195D, para. 20.

[44] Petitioners' petition dated February 27, 2002, Appendix I, p. 3 (including among the weaknesses in the case against Mr. Abdur' Rahman the following observations:

T.B.I Lab Report was unable to find any blood staining on the long wool coat worn by Jones. Photographs of the decedent's house show blood spattering all over the kitchen. Either the defendant removes his coat before he began to stab these people, the defendant had his coat cleaned, the defendant replaced the coat found by the police with another coat (which is not likely since he would have obviously gotten rid of the shotgun) or if the defendant did wear his coat the entire time he obviously was not present when the stabbing occurred. Also, the police seized a pair of work pants during the search of the defendant's apartment which had red spots all over it which was found not to contain any human blood stain. The red particles on the defendant's pants came from red dye used at the Publishing Board where the defendant worked. In his confession Miller stated that the stabbing of the deceased did not produce the blood that was spattered but that the blood that was spattered occurred as the deceased gasped for air after the defendant had gone to the second victim and begun to stab her.)

Downloaded from worldcourts.com subject to terms and conditions

61. The record also shows that Mr. Abdur Rahman's attorney failed to conduct any investigation into his client's background, including his history of mental disabilities. As a consequence, no evidence was presented in Mr. Abdur' Rahman's defense, which, according to the Petitioners, might have included defenses based upon "insanity and diminished capacity." While it is not possible to conclude whether such defenses would ultimately have been pursued or successful, the strict standard of due process in capital proceedings requires that such defenses should at least have been the subject of informed consideration in favor of Mr. Abdur' Rahman.

62. The Commission has reached similar conclusions in respect of the sentencing phase of Mr. Abdur' Rahman's criminal proceedings. It is apparent from the record that the ineffectiveness of Mr. Abdur' Rahman's counsel deprived him of a sentencing hearing that was consistent with the principles and standards of the Commission's jurisprudence. In this regard, the information before the Commission indicates that mitigating evidence existed at the time of Mr. Abdur' Rahman's trial concerning his background and mental condition. The jurisprudence of the inter-American system, as outlined above, required that Mr. Abdur' Rahman be provided a fair hearing before the sentencing court in which he was entitled to present submissions and evidence in respect of all potentially mitigating circumstances relating to himself and his offense, and the court imposing the sentence was afforded discretion to consider these factors in determining whether the death penalty was a permissible or appropriate punishment. In the present case, however, no mitigating evidence was presented to or considered by the jury, due to the failure of Mr. Abdur' Rahman's counsel to conduct proper inquiries in this regard.

63. Based upon the above analysis, the Commission finds the State responsible for violating Mr. Abdur' Rahman's rights under Articles XVIII and XXVI of the Declaration due to the State's failure to provide Mr. Abdur' Rahman with competent counsel during his trial. Further, the Commission finds the State responsible for a violation of Mr. Adbur' Rahman's right under Article XVIII of the Declaration to protection by the courts from acts of authority that violate his fundamental constitutional rights, due to the failure of the courts in the United States to provide Mr. Abdur' Rahman with an effective remedy for the incompetence of his counsel.

64. The Commission also finds that these serious violations of due process should be considered to have deprived Mr. Abdur' Rahman's criminal proceedings of their efficacy from the outset and thereby invalidate his conviction and sentence. As a result, the Commission finds that the only adequate remedy in the circumstances of Mr. Abdur' Rahman's case is the convocation by the State of a new trial and, if convicted, a new sentencing hearing, in which Mr. Abdur' Rahman has the benefit of competent and effective counsel to present his case.[45]

B. Right Not to be Subjected to Cruel, Infamous or Unusual Punishment

65. The Petitioners also argue that Mr. Abdur' Rahman has a mental disability, and executing a person with a mental disability violates Articles I, II, XVII, XVIII and XXVI of the Declaration. They claim in this regard that an individual with limited understanding of his actions or the law cannot be held to the same standard as a person who knowingly, intentionally and intelligently violates the law, and similarly that an individual with limited understanding of the death penalty or of the concept of death cannot be held to the same standard as an individual with a clear understanding of capital punishment.

66. Given the Commission's findings concerning the invalidation of Mr. Abdur' Rahman's conviction and sentence, it does not consider it necessary to determine this aspect of Mr. Abdur' Rahman's claim at present. At the same time, the Commission considers that the evidence concerning Mr. Abdur' Rahman's mental health is serious and compelling and should be taken into account in any future criminal proceedings against him. Accordingly, in the event that Mr. Abdur' Rahman is re-tried, evidence concerning

[45] *See* I/A Court H.R., Castillo Petruzzi et al., Judgment of May 30, 1999, para. 219.

Downloaded from worldcourts.com subject to terms and conditions

his mental health must be taken into account in relation to the possible defenses available to Mr. Abdur' Rahman's and, if convicted, the appropriate punishment for his crime.

V. PROCEEDINGS SUBSEQUENT TO REPORT 54/03

67. On October 9, 2003, the Commission adopted Report 54/03 pursuant to Article 43 of its Rules of Procedure, setting forth its analysis of the record and its findings and recommendations in this matter.

68. Report 54/03 was transmitted to the State by note dated October 27, 2003, with a request that the State provide information as to the measures it had taken to comply with the recommendations set forth in the report within a period of two months, in accordance with Article 43(2) of the Commission's Rules. By communication of the same date, the Petitioners were informed in accordance with Article 43(3) of the Commission's Rules that the report had been adopted.

69. By communication dated December 23, 2003 and received by the Commission on January 5, 2004, the State delivered a response to the Commission's request for information. In its response, the State indicated that, in its view, the Commission did not comply with its Rules of Procedure in adopting the present report. In particular, the State asserted that in June 2003 both it and the Petitioners informed the Commission that the United States Court of Appeals for the Sixth Circuit had agreed to consider Mr. Adbur' Rahman's case in an *en banc* hearing and that the State would respond to the Petitioners' allegations after the Sixth Circuit had ruled. The State therefore requested that the Commission reconsider its decision and await the exhaustion of domestic remedies before issuing a final report.

70. In respect of the State's observations, the Commission noted that in its Report 39/03 dated June 6, 2003, the Commission decided to admit the claims in Mr. Adbur' Rahman's petition relating to Articles I, XVII, XVIIII and XXVI of the American Declaration and to continue with the analysis of the merits of the case. At that time, Mr. Abdur' Rahman was scheduled to be executed on June 18, 2003 and the Commission determined that the claims in Mr. Adbur' Rahman's petition were not barred by the exhaustion of domestic remedies requirement, because the information provided by the Petitioners verified that Mr. Abdur' Rahman has pursued both appeal and post-conviction review proceedings before the State's courts, including the U.S. Supreme Court, and because the State had failed to provide any observations or information respecting the admissibility of Mr. Abdur' Rahman's claims, thereby implicitly or tacitly waived its right to object to the admissibility of the claims in the petition based upon the exhaustion of domestic remedies requirement.[46]

71. Further, on July 8, 2003 the Petitioners provided the Commission with their additional observations on the merits of the case in accordance with Article 38(1) of the Commission's Rules, and in a note of the same date, the Commission requested that the State provide its additional observations on the merits of the petition, also in accordance with Article 38(1) of the Rules.

72. Given the Commission's finding that the claims in the petition were admissible, and in light of the procedures followed subsequent to that finding, it was apparent that the Commission intended to proceed with the merits of the case as required under the terms of Articles 38-43 of the Commission's Rules.

73. The State correctly observed that following the adoption of the admissibility report, the Petitioners informed the Commission that the U.S. Court of Appeals for the Sixth Circuit had granted Mr. Abdur' Rahman a stay of his June 18, 2003 execution in order to re-hear his appeal *en banc*.[47] The Commission also understood that the hearing before the Sixth Circuit took place in December 2003 and that, as of the date of this report, a decision remains pending. In accordance with the doctrine of the inter-American system,

[46] Case 12.422, Report 39/03, Abdur'Rahman v. United States, Annual Report of the IACHR 2003, para. 28.

[47] In contrast to the State's submissions, the Commission does not have a record of having received notice from the State of the Sixth Circuit's decision or an indication by the State that it would respond to the Petitioners' allegations after the Sixth Circuit ruled.

Downloaded from worldcourts.com subject to terms and conditions

however, this development does not preclude the Commission from considering the merits of the complaint. More particularly, as the State waived its right to object to the admissibility of the petition on the ground of exhaustion of domestic remedies prior to the decision on admissibility, the State is precluded from raising the objection at the merits stage of the process.[48] Further, the Commission has indicated in previous decisions that the situation that must be taken into account in order to determine whether remedies under domestic law have been exhausted is that which exists at the time of adopting a decision on admissibility.[49] The Inter-American Court has similarly held that possible remedies that arise under internal law after the state has had an opportunity to address an alleged violation of the American Convention do not prevent the Commission or the Court from considering whether the State is internationally responsible for that violation, as the State's responsibility arises immediately upon the occurrence of the infringement.[50]

74. Finally, the Commission observed that its approach in determining the merits of the present case was particularly appropriate in light of the fact that the complaint involves the imposition of a death sentence, in circumstances in which the State has not agreed to implement precautionary measures adopted by the Commission on March 7, 2002. In this regard, it has been the Commission's experience that in the absence of respect for its precautionary measures, its ability to determine the merits of capital complaints is frequently undermined through the implementation of death sentences within a limited period of time after the lifting of a stay by the domestic courts.[51]

75. Accordingly, the Commission did not accept the State's contention that the Commission failed to observe its Rules of Procedure in the present matter and should refrain from proceeding further with the case until the Sixth Circuit has rendered a decision.

76. Further, the State had not provided the Commission with information concerning the measures taken by it to comply with the recommendations contained in report 54/03, in which the Commission requested that the State provide Mr. Abdur' Rahman with an effective remedy, including a re-trial in accordance with fundamental principles of due process or, where this is not possible, his release, and that the State review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including ensuring that they are provided with competent and effective counsel. The Commission remained of the view that these recommendations are particularly significant in light of evidence indicating that Mr. Abdur' Rahman has a mental disability, where the international community has acknowledged a special responsibility on the part of States to protect the rights and interests of persons with mental disabilities, including those who are serving sentences of imprisonment for criminal offenses or who are otherwise detained in the course of criminal proceedings or investigations against them.[52]

---

[48] *See, e.g.* I/A Court H.R., *Loayza Tamayo Case*, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

[49] *See, e.g.* Case 11.830, Report 52/00, Dismissed Congressional Employees (Peru), Annual Report of the IACHR 2000, para. 21.

[50] *See, e.g.*, I/A Court H.R., Case of Gómez Paquiyauri, Judgment of July 8, 2004, Ser. C No. 110, para. 75.

[51] *See, e.g.*, Case 11.193, Report 97/03, Gary Graham, now known as Shaka Sankofa v. United States, Annual Report of the IACHR 2003, paras. 30-34; Case 12.240, Report 100/03, Douglas Christopher Thomas v. United States, Annual Report of the IACHR 2003, paras. 44-46; Case 12.412, Report 101/03, Napoleon Beazley v. United States, Annual Report of the IACHR 2003, paras. 51-53

[52] *See, e.g.,* Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Cases, G.A. Res. 46/119, 46 U.N. GAOR Supp. (No. 49) at 189, U.N. Doc. A/46/49 (1991), Principle 20 "Criminal offenders: 1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such illness. 2. All such persons should receive the best available mental health care as provided in Principle 1. There Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in paragraph 5 of Principle1. 3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility. 4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11."

Downloaded from worldcourts.com subject to terms and conditions

77. On October 20, 2004, the Inter-American Commission approved Report Nº 80/04 containing the final conclusions and recommendations indicated *infra*. As set forth in Article 47.2 of its Rules of Procedure, on November 5, 2004, the IACHR transmitted the report to the parties with a time period of one month to present information on compliance with the final recommendations.

78. By letter dated December 4, 2004, the United States reiterated its request that the Commission reconsider its decision and await the exhaustion of domestic remedies. In this respect, the State indicated that Mr. Abdur' Rahman's case was still being re-examined by the United States Sixth Circuit Court of Appeals and therefore both the Commission's ruling and its subsequent recommendation of remedy were premature.

79. In order to proceed to adopt a decision on publication and to verify the status of the precautionary measures granted in favor of Mr. Abdur' Rahman on March 7, 2002, by note of March 29, 2006, the Commission requested both parties to provide information concerning the nature and status of any domestic proceeding pending in Mr. Abdur' Rahman's case, within a period of 30 days.

80. By letter received on April 28, 2006, the Petitioners informed that two proceedings were pending on Mr. Abdur' Rahman's behalf. On one hand, on February 15, 2006, the alleged victim filed a Petition for a Writ of Certiorari with the United States Supreme Court seeking review of an adverse decision by the Tennessee Supreme Court in the appeal of a civil case challenging the constitutionality of the Tennessee lethal injection execution protocol. On the other hand, an appeal was pending before the Sixth Circuit Court of Appeals to determine whether numerous unresolved claims of prosecutorial misconduct would be considered. According to the Petitioners, "[all] parties and courts agree that the district court erred in refusing to hear the claims, but the claims remain unconsidered." The Petitioners further stated that:

> In this travesty of injustice, the following remain true: (1) It is unclear which, Abdur' Rahman or his co-defendant, was responsible for the death of the victim; (2) no court has ever reviewed the bulk of Abdur' Rahman's claims of prosecutorial misconduct; (3) the High Court of this state has never reviewed his clams of ineffective assistance of counsel or his claims of prosecutorial misconduct; and, (4) every state and federal court that has reviewed Abdur' Rahman's claims on ineffective assistance of counsel has acknowledged that Abdur' Rahman's attorneys were constitutionally deficient in their performance at trial.

81. By letter dated September 10, 2008, the IACHR requested updated information from the Petitioners on Mr. Abdur' Rahman's situation, particularly with respect to their previous communication. Further, on June 24, 2013, the Commission sent a note to both parties requesting information on the measures taken by the Government of the United States to comply with the recommendations set forth in Report Nº 80/04. As of the date of this report, the IACHR has not received observations from either party.

82. According to publicly available information, on March 19, 2009, Mr. Abdur' Rahman filed an appeal in the US Court of Appeals for the Sixth Circuit over the denial of his habeas petition in Federal District Court. On August 17, 2011, in a 2-1 decision the Court denied the alleged victim's claims that prosecutors withheld evidence that could have convinced jurors to give him a life sentence instead of the death penalty.[53]

83. According to the decision of the Court of Appeals, after several appeals the district court granted Mr. Abdur' Rahman's motion to consider the merit of certain claims that it earlier concluded were procedurally defaulted in his initial petition.[54] Among several claims for relief, the alleged victim argued that the prosecution withheld two pieces of evidence before sentencing (pre-trial statements that Mr. Miller made to the prosecution concerning the SEGM's role in his murder of Daniels and Detective Garafola's police report describing Mr. Abdur' Rahman's self-destructive behavior at the time of his arrest). The district court finally

[53] Abu-Ali Abdur'Rahman v. Roland Colson, No. 09-5307 (6th Circ.)(August, 17, 2011). Available at: http://docs.justia.com/cases/federal/appellate-courts/ca6/09-5307/6111045207/0.pdf?1313759006

[54] Abdur' Rahman v. Bell, No. 3:96:0380, 2009 WL 211133 (M.S. Tenn. Jan. 26, 2009).

Downloaded from worldcourts.com subject to terms and conditions

denied relief and the US Court of Appeals for the Sixth Circuit granted a certificate of appealability to consider whether the district court properly rejected these two subclaims.

84. 8The Court of Appeals affirmed the district court's decision. Regarding the first claim, it stated that Mr. Abdur' Rahman could have impeached the credibility of Mr. Miller's testimony at trial given what he already knew about the SEGM and its influence, concluding that "Abdur' Rahman's decision not to do so was not the fault of the prosecution."[55] Concerning the second claim, the Court ruled that "the jury could just as easily have viewed Abdur' Rahman's head banging as evidence of his culpability rather than as mitigation" and therefore "any prejudice arising from the suppression of that evidence was immaterial."[56]

85. In his dissenting opinion, Circuit Judge Cole stated that "had Abdur' Rahman's lawyer unearthed the breathtaking deprivations and serious mental impairments that shaped Abdur' Rahman and used those events and disabilities to paint a human portrait, at least one penalty-phase juror would have voted to spare his life."[57]

86. Further, the alleged victim filed a Motion For Relief requesting that the Federal District Court reopen its judgment denying habeas corpus relief on claims previously found procedurally defaulted, pursuant to the *Martinez*[58] and *Trevino* decisions.[59] Mr. Abdur' Rahman alleged, *inter alia*, that the entire criminal proceeding "was infected with constitutional error from the outset through the final outcome" and requested to have the Court consider certain claims on the merits.[60]

87. On July 25, 2013, the Federal District Court denied Mr. Abdur' Rahman's petition. The Court held that "the Tennessee courts offer a meaningful opportunity for defendants to raise ineffective assistance claims during the direct appeal process, and therefore, the decisions in *Martinez/Trevino* do not apply to the Tennessee courts. While the more common approach is for a defendant to raise the ineffectiveness claim in post-conviction, numerous defendants have raised the claim in a motion for new trial instead."[61] With regard to the alleged victim's argument related to the fact that trial counsel represented him at the motion for new trial, and therefore, a conflict of interest prevented him from raising claims of his own ineffectiveness as part of that proceeding, the Court ruled that neither case considered the "conflict of interest" argument and that Mr. Abdur' Rahman had not cited any authority in which the Supreme Court or the Sixth Circuit had expanded the *Martinez/Trevino* decisions as suggested by the alleged victim.[62]

---

[55] Abu-Ali Abdur'Rahman v. Roland Colson, No. 09-5307 (6th Circ.)(August, 17, 2011), p.8.

[56] Abu-Ali Abdur'Rahman v. Roland Colson, No. 09-5307 (6th Circ.)(August, 17, 2011), p.12.

[57] Abu-Ali Abdur'Rahman v. Roland Colson, No. 09-5307 (6th Circ.)(August, 17, 2011). Dissenting opinion, Cole., p.14.

[58] In *Martinez* (*Martinez v. Ryan*, 132 S. Ct. 1309 (2012)) the U.S. Supreme Court determined that, where state procedure makes the post-conviction proceeding the first and only opportunity for a petitioner to raise an ineffective assistance of trial counsel claim (as is the case in the state of Arizona), post-conviction counsel's failure to raise the claim provides cause for the procedural default. The U.S. Supreme Court reversed, saying it was "recognizing a narrow exception" to the default rule established in a 1991 decision, *Coleman v. Thompson*.

[59] In *Trevino* (*Trevino v. Thaler*, 133 S. Ct. 1911 (2013)) the U.S. Supreme Court expanded the *Martinez* exception to cases originating in Texas, finding that even though the Texas courts do not prohibit a defendant from raising an ineffective assistance claim on direct review, the "structure and design of Texas system in actual operation [...] make it "virtually impossible" for an ineffective assistance claim to be presented on direct review."

[60] Abu-Ali Abdur'Rahman v. Wayne, No. 3:96:0380, U.S. District Court for the Middle District of Tennessee (July 25, 2013). Available at: http://docs.justia.com/cases/federal/district-courts/tennessee/tnmdce/3:1996cv00380/26982/369/0.pdf

[61] Abu-Ali Abdur'Rahman v. Wayne, No. 3:96:0380, U.S. District Court for the Middle District of Tennessee (July 25, 2013), p. 7.

[62] Abu-Ali Abdur'Rahman v. Wayne, No. 3:96:0380, U.S. District Court for the Middle District of Tennessee (July 25, 2013), p. 11.

Downloaded from worldcourts.com subject to terms and conditions

88. According to publicly available information, Mr. Lionel Barrett, the alleged victim's trial defense counsel, has admitted that Mr. Abdur' Rahman is on death row because of his ineffective representation. An article published by the Journal of the American Bar Association states that Mr. Barrett is now "pleading for forgiveness from his former client and apologizing to his colleagues in the bar"[63]; and withdrew from the practice of law in 2001.

89. 8During the 1970s and '80s, Mr. Barrett was reportedly widely recognized as the premier murder defense attorney in Middle Tennessee. He tried more murder and death penalty cases during those two decades than any other lawyer in Nashville. According to the ABA's article, Mr. Barrett filed an appearance on the case in March 1987, several months after he was retained, and he did not work on the case until May 11. His first documented activity occurred on June 1, when he reportedly wrote a letter to the trial judge apologizing for missing a court-ordered deadline for filing pretrial motions. "Somehow I had failed to note this date on my calendar," he wrote. At that point, Mr. Abdur' Rahman's trial was five weeks away. "I just didn't spend enough time on the case," Barrett said looking back. "I had a heavier caseload than I should have had. All of a sudden, the trial date was upon me."[64]

90. Furthermore, Mr. Barrett was absent from court the final day of jury selection. His opening statement before the jury was three paragraphs long; he had yet to interview a single witness or conduct any type of independent investigation on his client's behalf. "My biggest failure was that I did not explore more into the facts of his mental illness and mental history," said Mr. Barrett. "I should have spent a lot more time investigating the facts. I should have interviewed his family. I should have explored his mental illness. I should have told the judge the morning of the trial that I wasn't ready to go forward and just refused to do it." "What I really should have done," he says, "is not taken this case."[65]

91. According to publicly available information, on October 3, 2013, the State filed a Motion to Reset Execution Date for the alleged victim given that he had completed the standard three-tier appeals process. On November 22, 2013, Mr. Abdur' Rahman filed a response in opposition to the motion and a Motion for Certificate of Commutation. The response alleged that an execution date should not be set because:

> (1) Trial counsel was ineffective; (2) the State engaged in prosecutorial misconduct; (3) his sentence is disproportionate because a death sentence for drug-related killings violates evolving standards of decency; (4) there is an ongoing Federal Rule of Civil Procedure 60(b) motion pending in the federal courts; and (5) there is an ongoing challenge in state courts to the Department of Correction's newly adopted one-drug lethal injection protocol.[66]

92. On December 3, 2013, Mr. Abdur' Rahman filed a supplement to his response indicating that he is a plaintiff in West et al. v. Schofield et al., No. 13-1627-I (Davidson Chancery, filed Nov. 20, 2013), a declaratory judgment action challenging the constitutionality of the State's new one-drug lethal injection protocol, and that a trial date has been set for July 7, 2014. Therefore, Mr. Abdur' Rahman requested that the Court reset his execution date for a date following the resolution of the declaratory judgment action.

93. The Supreme Court of Tennessee issued its decision on January 31, 2014.[67] The Court found no legal merit to the first two claims given that those issues were raised and found to be without merit in the

[63] ABA Journal, Lawyer's Attempt to Keep His Head Above Water Landed a Client on Death Row, March 1, 2011. Available at: http://www.abajournal.com/magazine/article/lawyers_attempt_to_keep_his_head_above_water_landed_a_client_on_death_row/

[64] ABA Journal, Lawyer's Attempt to Keep His Head Above Water Landed a Client on Death Row, March 1, 2011.

[65] ABA Journal, Lawyer's Attempt to Keep His Head Above Water Landed a Client on Death Row, March 1, 2011.

[66] Abu-Ali Abdur' Rahman v. State of Tennessee, Supreme Court of Tennessee, No. 87W417, No. M1988-00026-SC-DPE-PD. Available at: http://www.tncourts.gov/sites/default/files/docs/rahman-order_setting_execution_date_1-31-14.pdf

[67] Abu-Ali Abdur' Rahman v. State of Tennessee, Supreme Court of Tennessee, No. 87W417, No. M1988-00026-SC-DPE-PD.

Downloaded from worldcourts.com subject to terms and conditions

direct and collateral appeals. Regarding the third claim, the Court ruled that the fact that a killing is drug related does not preclude capital punishment. Concerning the fourth claim, it held that a request for a stay of execution pending litigation of claims in federal court is more appropriately addressed to the federal courts. Finally, the Court considered that a short delay to allow the resolution of the declaratory judgment action challenging the constitutionality of the new lethal injection protocol was appropriate, and granted the motion. With regard to the commutation, the Court concluded that the alleged victim had failed to allege sufficient extenuating circumstances that would merit a certificate of commutation, denying the request. The Supreme Court of Tennessee set the execution date of Mr. Abdur' Rahman for October 6, 2015.

VI. FINAL CONCLUSIONS AND RECOMMENDATIONS

94. In accordance with the legal and factual considerations set out in this report, the Inter-American Commission reiterates its conclusions that the United States is responsible for the violation of the right to a fair trial (Article XVIII) and right to due process of law (Article XXVI) guaranteed in the American Declaration, with respect to Abu-Ali Abdur' Rahman.

95. Further, in light of the analysis and conclusions in the present Report, the Commission considers that the United States would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration, should it proceed with Mr. Abdur' Rahman's execution based upon the criminal proceedings under consideration in this report.

96. Abu-Ali Abdur' Rahman is the beneficiary of precautionary measures adopted by the Inter-American Commission under Article 25 of its Rules of Procedure. The Inter-American Commission reminds the State that carrying out a death sentence in such circumstances would not only cause irreparable harm to the person but would also deny his right to petition the inter-American human rights system through all stages up to and including compliance with the recommendations issued, and that such a measure is contrary to the fundamental human rights obligations of an OAS member state pursuant to the Charter of the Organization and the instruments deriving from it.[68]

97. Based upon the available information, the Commission finds that the State has failed to take measures to comply fully with the Commission's recommendations. Accordingly, on the basis of the findings of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES ITS RECOMMENDATIONS THAT THE UNITED STATES:

1. Provide Mr. Abdur' Rahman with an effective remedy, which includes a re-trial in accordance with fundamental principles of due process or, where this is not possible, his release.

2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including ensuring that they are provided with competent and effective counsel.

98. The Commission also hereby reiterates its request pursuant to Rule 25 of the Commission's Rules of Procedure that the United States take the necessary measures to preserve Mr. Abdur' Rahman's life and physical integrity pending the completion of the proceedings before the Commission in this matter, including implementation of the Commission's final recommendations.

[68] See: IACHR, Report No. 53/13, Case 12.864, Merits, Ivan Teleguz, United States, July 15, 2013, para. 138; IACHR, Report No. 81/11, Case 12.776, Merits, Jeffrey Timothy Landrigan, United States, July 21, 2011, para. 66; Report No. 52/01, Case No. 12.243, Juan Raúl Garza, United States, Annual Report of the IACHR 2000, para. 117; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Doc.OEA/Ser.L/V/II.11doc.21rev. (April 6, 2001) paras. 71 and 72. See also: International Court of Justice, *Case re. the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of March 3, 1999, General List, No. 104, paras. 22-28; United Nations Human Rights Committee, *Dante Piandiong et al. v. Philippines*, Communication No. 869/1999, UN Doc. CCPR/C/70/D/869.

Downloaded from worldcourts.com subject to terms and conditions

VII. PUBLICATION

99. In view of the foregoing considerations, and in accordance with Article 47 of its Rules of Procedure, the Commission decides to publish this report and include it in its Annual Report to the OAS General Assembly. In carrying out its mandate, the Commission will continue to evaluate compliance with the recommendations reiterated in this report until they are fully implemented.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of April, 2014.

Tracy Robinson
President

Rose-Marie Belle Antoine
First Vice-President

Felipe González
Second Vice-President

José de Jesús Orozco Henríquez
Commissioner

Rosa María Ortiz
Commissioner

Paulo Vannuchi
Commissioner

James L. Cavallaro
Commissioner

Let it be placed on record and let notice be given as agreed.

Emilio Álvarez Icaza L.
Executive Secretary

Downloaded from worldcourts.com subject to terms and conditions