

OEA/Ser.L/V/II.
Doc. 95
31 May 2019
Original: English

REPORT No. 86/19
PETITION 961-07
REPORT ON INADMISSIBILITY

MICHAEL OWEN HERON
UNITED STATES OF AMERICA

Approved electronically by the Commission on May 31, 2019

Cite as: IACHR, Report No. 86/19, Petition 961-07. Inadmissibility. Michael Owen Heron.
United States of America. May 31, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Michael Owen Heron
Alleged victim:	Michael Owen Heron
Respondent State:	United States
Rights invoked:	None specified

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	July 27, 2007
Additional information received at the stage of initial review:	October 1, 2007; May 7, 2008; February 2, 2009; June 14, and August 9, 2010
Notification of the petition to the State:	August 20, 2010
State's first response:	July 23, 2015
Additional observations from the petitioner:	October 31, 2016
Notification of the possible archiving of the petition:	April 11, 2016
Petitioner's response to the notification regarding the possible archiving of the petition:	May 2, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None under the terms of section VII
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 9, 2006
Timeliness of the petition:	Yes

V. ALLEGED FACTS

1. The petitioner (and alleged victim), Michael Owen Heron ("Mr. Heron") is Jamaican national who has been incarcerated in the State of New York since 1980, as a result of convictions for two murders that were recorded against him in 1980. The petitioner states that his nickname is "Gilligan". He was initially indicted for these murders in November 1979, but tried separately for each murder. At the conclusion of the first trial in May 1980, the petitioner was sentenced to 20 years to life in prison. At the conclusion of the petitioner's second trial in August 1980, he was sentenced to 25 years to life in prison. In aggregate, the petitioner states that his sentence is 45 years to life.

2. The petitioner alleges that his convictions were vitiated by a number of due process irregularities which have resulted in violations to several of his rights, including the right to liberty, inhumane

¹ The observations submitted by each party were duly transmitted to the opposing party.

treatment, protection from arbitrary arrest, fair trial, name, equal protection and the right to due process. More particularly, the petitioner alleges that (a) the arresting police officers and the prosecutors falsely accused him of being one "Michael Dunbar", also known as "Gilligan", an alleged political operative instructed by Jamaican officials to kill two individuals in New York state; (b) the prosecutor relied on false eyewitness testimony from witnesses, three of whom later recanted their testimony; (c) the prosecutor relied on false testimony from the arresting officers that the petitioner's true identity was "Michael Dunbar" (also known as "Gilligan"), and not Michael Owen Heron (also known as "Gilligan"); (d) the prosecutor relied on false testimony from the arresting officers that the petitioner had "implicated" himself in the crimes.

3. According to the petition, there are two Jamaican nationals with the name Michael Dunbar, both with criminal records (in Jamaica). One of them is also known as "Gilligan". This information is contained in correspondence received by the petitioner from the Jamaica Consulate General in New York City.

4. Upon indictment, the petitioner alleges that he applied to the Supreme Court of the State of New York, Bronx County to set aside his arrest for lack of probable cause. The petitioner states that his application was dismissed on March 20, 1980, with the court finding, inter alia, that the petitioner's "Identity...was eminently clear to the police before he was arrested".² During his trials, the petitioner asserts that defense put before the Court at both trials was his insistence of innocence, and that he had been mis-identified as Michael Dunbar (also known as Gilligan). The petitioner also asserts that he denied implicating himself in any crime to anyone including all the witnesses who testified against him. As mentioned before, the petitioner contends that three eyewitnesses subsequently recanted their testimony. The petitioner names these persons as Karl Francis, Leonard Forrest, and Carol Wade.

5. Following his convictions, the petitioner states that he invoked a number of remedies at the State and Federal levels but without success. In this regard, the petitioner states that:

- a) in 1983, the petitioner appealed both convictions to the New York State Appellate Division, but , his appeals were dismissed on May 12, 1983;
- b) A subsequent appeal to the New York Court of Appeals was dismissed on August 8, 1983;
- c) A motion for habeas corpus was filed before the United States District Court for the Southern District of New York which was dismissed. On August 15, 2005, a subsequent appeal to the United States Court of Appeals (Second Circuit) was also dismissed. Of note, the petitioner grounded his motion principally on the ground that one of the witnesses (Leonard Forrest) had recanted his testimony.

6. The petitioner also states that he subsequently applied to the United States Supreme Court for a writ of certiorari which was dismissed on January 9, 2006. However, according to the information supplied by the petitioner, the application for writ of certiorari was actually made before, and dismissed by the United States Court of Appeals for the Second Circuit (on January 9, 2006)³. The petitioner alleges that he was not notified of this decision until April of 2007.

7. According to the petitioner, he also filed administrative and judicial complaints against various law enforcement agencies including the Bronx County District Attorney's Office and the New York City Police, but without any success. He also alleges that he filed suit against various other New York City and New York State agencies for their failure to investigate his complaints in violation of his civil rights. This suit was ultimately dismissed by the United States Court of Appeals for the Second Circuit on February 23, 2010, for failure on the part of the petitioner to pay the docket fee.

8. The State dismisses the petition, contending that it does not find any basis for this matter to be considered under the Commission's Rules of Procedures. In this regard, the State asserts, none of the

² Decision of Supreme Court of the State of New York, County of Bronx, March 20, 1980.

³ See Exhibit F of petitioner's letter to the IACHR dated June 6, 2010.

documentation from petitioner appears to state any specific references to possible violations of the rights recognized in the American Declaration on the Rights and Duties of Man.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

10. In the present case, the alleged victim was convicted of two murders in 1980. Mr. Heron contends that his convictions were substantially based on fabricated evidence and deliberate mis-identification by police and prosecutors. He challenged his convictions in both State and Federal courts, culminating in the dismissal of an application for writ of certiorari on January 9, 2006 by the United States Court of Appeals for the Second Circuit. The petitioner states that he was not notified of the decision of the court until April 2007. The petition was received by the Commission on July 27, 2007. The State has not questioned the sequence of remedies filed, and based on available information, nor has it questioned the date on which the petitioner was notified of the United States Court of Appeals for the Second Circuit. Accordingly, (a) the Commission has determined that the requirement to exhaust all domestic remedies provided for under Article 31 (1) of the Commission's Rules of Procedure has been fulfilled; and (b) that the petition was submitted within the six-month deadline prescribed by Article 32 (1) of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

11. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as stipulated in Article 34 (a) of the Commission's Rules of Procedure, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 34 (b). The criterion for analyzing admissibility is different from that used for the analysis of the merits, given that the Commission only performs a prima facie analysis to determine whether the petitioner establishes an apparent or possible violation of a right guaranteed by the American Declaration. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

12. In addition, the IACHR's Rules of Procedure do not require petitioners to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. Rather, it falls to the Commission, based on the system's jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation if the alleged facts are proven sufficiently.

13. The petitioner alleges various due process violations in the context of his criminal convictions. All of these alleged violations were raised in various trials, appellate and review courts and rejected. The petitioner is dissatisfied with the outcome of the domestic judicial proceedings and now seeks relief from the Commission.

14. The Commission has observed that the interpretation of the law, the relevant proceeding, and the weighing of evidence, is among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR. In this regard, it should be recalled that the Commission does not have authority to review sentences handed down by domestic courts acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Declaration has been committed.

15. Based on available information, the Commission considers that the petitioner was accorded all due judicial guarantees, and that he has not provided sufficient evidence to indicate, prima facie, any violations of his due process rights as guaranteed by the American Declaration.

16. In light of the foregoing, the IACHR concludes that the petition should be ruled inadmissible, in keeping with Article 34 (a) of the Commission's Rules of Procedure and the application of the fourth instance formula.

VIII. DECISION

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31st day of the month of May, 2019.
(Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margaret May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.