



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
October 21, 2020, 3:00 p.m.**

Virtual Meeting
held via WebEx Software

MINUTES

PRESENT:

Commissioners Present

Alternate Chairwoman Kathleen Pantle
Commissioner Robert Loeb
Commissioner James Mullenix
Commissioner Barry Miller
Commissioner Steven Miller

Commissioners Absent

Commissioner Tim Touhy
Alternate Commissioner Autry Phillips
Commissioner Marilyn Baldwin
Commissioner Stephen Thurston
Alternate Commissioner Craig Futterman

Staff Present

Rob Olmstead (Executive Director)
DeAndrea Brown (Administrative Assistant)

I. Call to Order/Members Present

On October 21, 2020, at approximately 3:00 p.m., the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC or Commission) was called to order. Present were commissioners noted above and absent were commissioners noted above. With five commissioners present, a quorum was achieved. Acting/Alternate Chair Pantle noted that, pursuant to Gov. Pritzker's Executive Order and a determination that an in-person meeting would be impractical and imprudent due to the COVID-19 pandemic, today's meeting was being held virtually via video conference.

II. Approval of Minutes

APPROVED 12.16.2020

Chair Pantle noted that the August minutes were not yet ready for approval and tabled consideration of them until the December meeting.

III. Executive Director's Report

Director Olmstead noted that posting for new positions had been accomplished and TIRC had forwarded applicants' resumes to the Human Rights Commission for screening. He noted interviews would begin as soon as those screened applications were returned.

Olmstead also noted that the Commission was in the midst of its bi-annual audit and there was likely to be one finding determining that the Commission does not have a full slate of Commissioners appointed. Olmstead noted that the Commission does not have the power to appoint Commissioners, only to recommend candidates, which it has done.

IV. Chief Financial Officer's Report

HRC CFO Dr. Ewa Ewa was absent, so Director Olmstead noted that he and the Dr. Ewa would soon sit down and make TIRC's request for the 2022 budget, but no numbers had yet been finalized.

V. Claims

1) Lazzaro Gutierrez, No. 2013.130-G

Director Olmstead introduced Sam Sullivan of Kirkland & Ellis, who researched the Gutierrez claim. Olmstead noted the case was somewhat unusual. K&E recommended summary dismissal, with which the director agreed. Sullivan recounted the facts of the case. Gutierrez was charged with the attempted murder of two police officers and pled guilty Oct. 10, 2006, about 2 years after the crime. The allegation by Gutierrez was that he had been beaten and coerced into a confession. A review of the pre-trial transcripts in the case revealed that there was an overabundance of physical and eyewitness evidence against Gutierrez in addition to the confession. Before Gutierrez pled guilty, his attorney filed a motion to suppress, but it was not litigated before the plea. Before accepting Gutierrez' plea, however, the Judge in the case noted the pending motion and noted Gutierrez could first litigate his motion to suppress and then decide whether to plead. Gutierrez opted to plead guilty without litigating the motion first. Sullivan noted that the Commission has previously determined that guilty pleas can be referred to court if the confession was significant element that led to the plea. Here, Sullivan noted, the confession was specifically considered and an affirmative decision was made not to litigate its suppression before pleading guilty. In light of those specific facts, it does not seem the confession played a significant element in Gutierrez' plea, and therefore was not used to obtain the conviction. For those reasons, Sullivan recommended dismissal for lack of jurisdiction.

Alternate/Acting chair recounted the facts and arguments and expressed her agreement with the recommendation. Commissioner Barry Miller noted he doesn't generally agree that a plea negates the possibility that the confession was used to obtain the conviction, but in these unique circumstances, he agreed it did. Commissioner Mullenix agreed with the recommendation as well. Commissioner Steve Miller expressed opposition to the proposed denial because he felt that the statute calls only for the confession to be used to obtain the conviction, and he felt its mention at the colloquy satisfied that requirement.

The chair asked if any members of the victim's family or claimant's family were present. None were.

Alternate/Acting Chair Pantle held a roll-call vote. Commissioners Loeb, Barry Miller, James Mullenix and Pantle voted to summarily dismiss; Commissioner Steven Miller voted not to summarily dismiss the claim. By a vote of 4-1, the claim was dismissed.

2) Sean Tyler, No. 2011.094-T

Director Olmstead introduced University of Chicago law student Amiri Lampley, who investigated and analyzed the claim. Both Olmstead and Lampley recommended referral. Olmstead noted crime-victim notification had been performed in the case. Olmstead noted Tyler was convicted of the 1992 shooting of a 10-year-old boy, the unintended victim in a gang shooting. Tyler was found guilty of murder on a theory of accountability. Olmstead noted that Tyler signed a confession, but then went to the hospital directly from the police station lockup, complaining of vomiting blood. Olmstead noted in his initial suppression testimony, Tyler accused Det. Clancy of hitting him in the chest to obtain a statement, but had more recently focused on other detectives involved in the case. Olmstead noted there were inconsistencies to Tyler's stories, but the allegations of receiving blows to the chest was generally consistent over the years. Olmstead noted that the Illinois Appellate Court has already granted Tyler a 3rd-stage hearing on his abuse claims. Olmstead noted reasons to doubt Tyler's story, including the unlikely claim that an ASA had left a blank space on the confession form and later wrote in a paragraph after Tyler signed the document. Medical evidence also did not prove abuse, and TIRC's pathologist consultant thought the records might reflect malingering. However, Tyler's medical expert felt the records could support his allegations. Olmstead felt the case was a close call but still a referral, while Lampley felt it was a much more convincing case for referral. No family members of the victim were present or requested to speak. After discussion by commissioners, and a statement to the Commission by Tyler, Alternate/Acting Chair Pantle called a roll-call vote. Commissioners Barry Miller, Loeb, Mullenix, Steven Miller and Pantle voted unanimously to refer the claim to court.

3) Carl Hemphill, No. 2014.203-H

Director Olmstead introduced University of Chicago Law Student Ellen Goff, who investigated the claim with him. Olmstead noted this was a somewhat unique recommended summary dismissal in that it was a summary dismissal with a credibility determination rather than a recommended summary dismissal based solely on jurisdictional grounds. Olmstead recounted the facts of the case. Hemphill was convicted of murdering Terry Sales after filing a suppression motion alleging only Miranda violations and coercion, but no physical abuse. There were no claims of physical abuse in appeals or post-conviction petitions. However, in his TIRC claim form, Hemphill alleged being slapped, beaten in the chest, arms and legs, having his fingers bent back and being slapped in the head. However, in his interview with TIRC, he claimed none of those acts, only that had been slapped in the back of the head and had a detective put "light" pressure around his neck via draping his arm over Hemphill's shoulder and neck. Confronted with the differences, Hemphill admitted in his TIRC interview that all the claim form allegations were false except the slap on the head claim. Olmstead noted that Hemphill's private trial attorney is deceased, and unavailable for interview to corroborate or deny Hemphill's claim that he told the attorney about the alleged physical abuse. Because no meaningful further investigation could be undertaken, Olmstead recommended that absence of an initial outcry about physical abuse and the admission about fabricating the claim form allegations made Hemphill so unreliable as to warrant summary dismissal. He noted that Goff disagreed and turned the presentation over to her. Goff argued that summarily dismissing the claim on a non-jurisdictional basis would set a bad precedent for the Commission, and that further investigation should be undertaken and a formal inquiry initiated. She noted the long

pattern and practice evidence against Detectives Pesavento and Karl, the accused officers in the case. She also noted Hemphill's codefendant also alleged abuse, and that Hemphill's attorney was eventually disbarred.

Alternate/Acting Chair Pantle expressed support for summary dismissal. Commissioner Mullenix expressed reservations about summarily dismissing the claim given the pattern and practice history against the detectives.

Ms. DeLoach, Hemphill's attorney, left the meeting before having a chance to speak, but left a text comment expressing support for proceeding further with the investigation. No family members of the victim or claimant were present. Acting/Alternate Chair called for a roll-call vote and Commissioners Loeb, B. Miller, S. Miller and Pantle voted to summarily dismiss the claim. Commissioner Mullenix voted against summary dismissal. By a vote of 4-1, the claim was summarily dismissed.

4) Terrence Mack, No. 2014.474-S

Olmstead noted that Mack had acknowledged that his statements to police were not used to obtain his conviction, and that staff review of Mack's trial transcripts confirmed that. Because of that, Olmstead said, Mr. Mack's circumstances fell outside of TIRC's jurisdiction and he recommended summary dismissal. Acting/Alternate Chair Pantle called for a roll call vote and the claim was summarily dismissed by a vote of 5-0.

5) Lorenzo Hall, No. 2013.195-H

Olmstead noted that Hall alleged he was kicked and squeezed about the head and had made an immediate outcry to the Office of Professional Standards about physical abuse. He also attempted to enter evidence of abuse at his trial, proceeding *pro se*. Pictures demonstrated apparent blood on Hall's collar. However, none of the statements Mr. Hall made to police were used to obtain his conviction, and because of that, Mr. Olmstead recommended summary dismissal due to a lack of jurisdiction. However, Olmstead noted that the OPS complaint was never thoroughly investigated, and that further photographic and medical evidence may be available to substantiate Mr. Hall's claims of abuse. Olmstead therefore recommended exercising the Commission's discretion under the TIRC Act to recommend to the Civilian Office of Police Accountability that it consider reopening the investigation of the abuse claim. Olmstead also noted that the Act not only permitted the Commission to make such a referral to COPA, but required the Commission to report evidence of misconduct to the proper authorities. Under two separate roll-call votes, Commissioners unanimously voted to summarily dismiss the torture claim, but to also refer the matter and all evidence to COPA for possible re-examination by that agency.

6) Robinson, Arnel, No. 2017.491-R

Director Olmstead noted that Mr. Robinson did make an incriminating statement to police in that Robinson denied committing the murder of the victim, Mr. Alvarez, but had admitted incriminating facts such as being in the area of the crime and in the presence of the co-defendants. However, these statements were not introduced at trial or used to obtain other evidence against Mr. Robinson. However, in closing arguments, with no basis in evidence, the prosecutor misstated the evidence, and began to say that the defendant himself admitted incrimination, but then apparently corrected himself and finished by saying only that the defendant did commit the crime. Olmstead noted that the law assumes that the judge disregarded the inappropriate argument, and in fact, the judge later stated affirmatively in post-conviction proceedings that Robinson no incriminating statements were used to convict

Robinson. Because the evidence showed the mistaken statement of the prosecutor was not considered by the judge, there is no evidence that Robinson's statement was used to obtain his conviction, Olmstead said. He therefore recommended that Commissioners summarily dismiss the claim based on a lack of jurisdiction. On a roll-call vote, Commissioners voted 5-0 to summarily dismiss the claim.

7) Lynn Mhoon, No. 2019.660-M

Director Olmstead asked that this claim be removed from consideration so that he could make further attempts to contact Mr. Mhoon. No Commissioner objected and the claim was not considered.

VI. Public Comment

The chair called for public comments.

Ted Pearson of the Chicago Alliance Against Racist and Political Oppression expressed thanks for the work the Commission was doing, although not necessarily agreement with all outcomes.

Mark Clements of the Chicago Torture Justice Center also expressed appreciation for some of the decisions, but disagreed with the outcome in the Hemphill case.

VII. Adjournment

Commissioner Mullenix moved to adjourn; Commissioner B. Miller seconded. The commission voted unanimously by rollcall to adjourn.