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**REPORT No. 189/22**  
**PETITION 1963 -16**  
REPORT ON INADMISSIBILITY

OMAR ASKIA ALI (aka EDWARD SISTRUNK)  
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 3, 2022.

**Cite as:** IACHR, Report No. 189/22, Petition 1963-16. Inadmissibility. Omar Askia Ali (aka Edward Sistrunk). United States of America. August 3, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Omar Askia Ali (aka Edward Sistrunk)
<b>Alleged victim:</b>	Omar Askia Ali (aka Edward Sistrunk)
<b>Respondent State:</b>	United States of America <sup>1</sup>
<b>Rights invoked:</b>	No specific provisions invoked

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	Sept 26, 2016
<b>Additional information received at the stage of initial review:</b>	April 27, 2017, September 29, 2017
<b>Notification of the petition to the State:</b>	November 6, 2019
<b>State's first response:</b>	May 6, 2020
<b>Additional observations from the petitioner:</b>	January 11, 14, 2021

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration of the Rights and Duties of Man <sup>3</sup> (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**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in terms of Section VI

**V. ALLEGED FACTS**

1. The petitioner is an African American who alleges that potential black jurors were excluded from a jury that ultimately convicted him of multiple offences. The petitioner alleges that this exclusion violated his right to due process and to equal protection under the law.

2. According to the record, in 1981 the petitioner was tried again on the same charges. During the jury selection, the petitioner's new defense counsel objected to the prosecutor's use of peremptory challenges to remove potential black jurors. The trial court overruled the objections in accordance with the then-prevailing U.S. Supreme Court decision of *Swain v. Alabama*<sup>4</sup>. Under *Swain*, the defendant, to show a violation of the Equal Protection Clause of the U.S. Constitution, was required to show a pattern and practice of racial discrimination in jury selection across multiple prosecutions. This evidence was not tendered by

<sup>1</sup> Hereinafter "the United States", "the U.S." or "the State."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>3</sup> Hereinafter "Declaration" or "American Declaration."

<sup>4</sup> 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965).

petitioner during his second trial. As a result, petitioner went to trial with an all-white jury, following which he was again convicted of first-degree murder, and related offenses, and again sentenced to a term of life imprisonment.

3. From the record, it appears that in 1985 the petitioner appealed his conviction and sentence to the Superior Court of Pennsylvania, which dismissed his appeal. It appears that that the petitioner and/or his appellate counsel did not pursue the issue relating to the exclusion of potential black jurors from the jury. The petitioner subsequently applied to the Pennsylvania Supreme Court for review of the dismissal of his appeal by the Superior Court of Pennsylvania. This application was dismissed by the Pennsylvania Supreme Court in 1987. While the petitioner's application was pending, the U.S. Supreme Court, in 1986, decided the case of *Batson v. Kentucky*<sup>5</sup> ("Batson"), ruling that the Equal Protection Clause of the U.S. Constitution is violated whenever a state prosecutor exercises a peremptory challenge to exclude a juror because of solely based on their race. One year after deciding *Batson*, but before the Pennsylvania Supreme Court had ruled on the petitioner's application for review), the United States Supreme Court decided the case of *Griffith v. Kentucky*<sup>6</sup> ("Griffith"). This ruling determined that that the *Batson* decision applied to all cases pending on direct review at the time the *Batson* decision was issued. Accordingly, the record indicates that if the petitioner's jury selection claim had been pressed on direct appeal, and the state supreme court had granted review, the *Batson* decision would apply to the petitioner's case.

4. In 1992 the petitioner filed an application under the Pennsylvania Post-Conviction Relief Act ("PCRA"), raising two issues: whether he was entitled to relief under *Batson*; and whether he was denied effective assistance of appellate counsel due to counsel's failure to pursue the jury selection equal protection issue on direct appeal. The application was filed before the Court of Common Pleas (hereinafter the "PCRA court").

5. The PCRA court held a hearing in 1992, which led to a dismissal of the petitioner's application. The Court held that with respect to the first claim, the petitioner was not entitled to relief under *Batson* because the issue had not been urged on appeal. The court nonetheless found that, even if *Batson* applied, the prosecutor had "presented credible and racially neutral reasons for each peremptory challenge she exercised," and that she "did not exercise peremptory challenges in a purposefully racially discriminatory manner." With respect to the second issue, the court held that performance of the petitioner's appellate counsel was not ineffective because she was not required to predict future developments in the law.

6. According to the record, the petitioner appealed the decision of the PCRA court to the Superior Court of Pennsylvania, which affirmed the decision of the PCRA court. Subsequently, in 1995 the Supreme Court of Pennsylvania dismissed an application by the petitioner for a review of the decision of the Superior Court of Pennsylvania.

7. The petitioner then filed a federal habeas corpus petition which was initially heard by a (federal) magistrate judge. The magistrate judge ruled in favor of the petitioner, holding that the record did not support the state court's finding of fact regarding the state's peremptory challenges. A federal district court subsequently ratified the ruling of the magistrate judge and ordered that the petitioner be retried or released. However, in 1996 the U.S. Court of Appeals for the Third Circuit reversed the district court, finding that federal courts were barred from hearing the petitioner's federal claims on their merits "absent a showing of cause and prejudice or a demonstration that [the petitioner] was innocent of the crimes for which he was convicted." The record also indicates that the petitioner also applied to the United States Supreme Court for certiorari, but this was denied on January 10, 2005.

8. According to the record, the petitioner filed another PCRA petition on May 31, 2016. In support of his petition, the petitioner invoked the case of *Foster v Chatman*<sup>7</sup> (a 2016 decision of the U.S.

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<sup>5</sup> 476 U.S. 79 (1986).

<sup>6</sup> 479 U.S. 314 (1987).

<sup>7</sup> 136 S.Ct. 1737 (2016). In this case, the appellant (Timothy Foster) had previously invoked the case of *Batson* before the state courts of Georgia to challenge the removal of all the black potential jurors during his trial for murder. He subsequently produced new evidence in

[continues ...]

Supreme Court). The petitioner argued that this decision established a new rule of law: that no ineffectiveness [of counsel] needs to be shown where there is any peremptory strike used for the purpose of excluding a person of a certain race. The petitioner argued that this rule was retroactive and would therefore apply to his case. He also argued that the retroactive application of the rule would serve to exempt him from any time limitations relating to the filing of PCRA petitions. The petitioner's PCRA petition was dismissed on November 29, 2017, by the Court of Common Pleas of Philadelphia principally on the ground of untimeliness. A subsequent appeal to the Superior Court of Pennsylvania was dismissed on October 3, 2019. The Superior Court of Pennsylvania held, *inter alia*, that (a) the PCRA petition was untimely; and (b), that the decision of *Foster v Chatman* did not establish any new rule of law that had retroactive application (as claimed by the petitioner).

9. The State contends that the petition is inadmissible primarily for: (a) failure to exhaust domestic remedies; (b) untimeliness; and (c) violation of the fourth instance doctrine.

10. With respect to domestic remedies, the State submits firstly that the petitioner did not pursue the jury selection equal protection claim upon direct appeal following his 1981 trial. According to the State, by failing to raise the issue on direct appeal, the petitioner was precluded from later doing so during collateral review. As result, the State submits that the petitioner did not exhaust his domestic remedies. The State also contends that the petitioner has continued to litigate this issue in the state courts of Pennsylvania, and in so doing is actively pursuing domestic remedies. Accordingly, the State submits that this also demonstrates that the petitioner has not exhausted domestic remedies, in accordance with Article 31 of the Commission's Rules of Procedure.

11. The State further contends that even if the petitioner exhausted domestic remedies, that his petition to the IACHR is untimely. In this regard, the State asserts that the petition was received by the Commission on September 22, 2016, almost thirty years after his conviction became final on June 24, 1987. The State indicates that Sistrunk's judgment of sentence became final on this date, 60 days after the Pennsylvania Supreme Court denied the petitioner's application for review of the dismissal of his appeal by the Superior Court of Pennsylvania. The State also notes that the petitioner's application for federal habeas corpus was dismissed in 1996 by the U.S. Court of Appeals for the Third Circuit; and that a subsequent application to the U.S. Supreme Court (for certiorari) was dismissed on January 10, 2005. According to the State, this is the latest date upon which the petitioner could be considered to have exhausted his domestic remedies within the meaning of Article 32 of the Commission's Rules of Procedure. The State submits that the petition was not filed until more than 11 years later, and thus, falls outside of the six-month deadline prescribed by Article 32.

12. The State argues that review of the petition is barred by the Commission's fourth instance doctrine because the petition constitutes an effort by the petitioner to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts. The State further submits that any adjudication by the Commission would amount to second-guessing the legal and factual determinations of U.S. courts, conducted in conformity with due process protections under U.S. law and U.S. commitments under the American Declaration. Accordingly, the State submits that the Commission is precluded from considering the petitioner's claims.

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

13. The State contends that the petitioner failed to exhaust domestic remedies. From the record it appears that the petitioner initially pursued domestic remedies (including an application under the PCRA) that culminated in 2005 when the United States Supreme Court dismissed an application for certiorari (to review earlier unfavorable decisions by federal courts). The record also indicates that more than a decade later, the petitioner again applied for relief under the PCRA, which was rejected by the courts as untimely (in 2019).

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habeas corpus proceedings that demonstrated that the exclusion of the black potential jurors solely on the basis of race. The state courts rejected Foster's application for habeas corpus. However, the Supreme Court held it had the jurisdiction to review the decisions of the state courts; and that the new evidence produced by Foster established purposeful discrimination, and that as a result, the state courts of Georgia had erred in denying his *Batson* claim that black jurors were struck from his jury pool on the basis of race.

14. The Inter-American Commission recalls that although, in principle, it is not necessary to exhaust extraordinary remedies in all cases, whenever the petitioner considers that these may have a favorable outcome in remedying the situation and he or she chooses to pursue them, such remedies must be exhausted in accordance with procedural rules in force, if conditions of access to them are reasonable. In the instant case, it appears that the petitioner had access to, and pursued this remedy culminating in an unfavorable decision by the United States Supreme Court (in 2005). The petitioner's subsequent application for the same relief was dismissed as untimely. In this regard, it appears to the Commission that the petitioner did have access to this remedy, but that he did not properly comply with the procedural requirements relating to timeliness. Accordingly, the Commission considers that regarding the second application under the PCRA, the petitioner did not properly exhaust domestic remedies; and that exhaustion of domestic remedies effectively occurred in 2005 with the decision of the United States Supreme Court. The Commission considers this decision from 2005 as the final ruling in petitioner's case, to the effect of assessing the admissibility of the present petition.

15. Therefore, given that the petition was received on November 6, 2019, it is untimely pursuant to Article 32 (1) of the Commission's Rules of Procedure, and that it is inadmissible.

## **VII. ANALYSIS OF COLORABLE CLAIM**

16. The Commission notes that this petition principally alleges violations of his right to due process and his right to equal protection violations arising out of the exclusion of potential black jurors from a criminal trial that resulted in his conviction and a sentence of life imprisonment. The petitioner contends, among other things, that the U.S. Supreme Court decision of *Batson* should have been retroactively applied to his case.

17. From the record, the Commission notes that all these allegations were adjudicated and rejected during multiple proceedings before various review and appellate courts. The petitioner is dissatisfied with the outcome of the domestic judicial proceedings and now seeks relief from the Commission. The Commission notes, that during the course of these proceedings, a court found that even if *Batson* had applied, the prosecutor had presented "credible and racially neutral reasons for each peremptory challenge she exercised," and that she "did not exercise peremptory challenges in a purposefully racially discriminatory manner."<sup>8</sup> The Commission also notes that the petitioner successfully obtained habeas corpus relief, which was subsequently overturned on appeal in 1996 by the U.S. Court of Appeals for the Third Circuit.

18. 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 judgements 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.

19. 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 rights as guaranteed by the American Declaration. Considering 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; and

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<sup>8</sup> 1992 decision of the PCRA court -which was subsequently upheld by the Superior Court of Pennsylvania. In 1995, the Supreme Court of Pennsylvania dismissed an application by the petitioner for a review of the decision of the Superior Court of Pennsylvania.

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 3<sup>rd</sup> day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.