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REPORT No. 227/22
PETITION 392-16
REPORT ON INADMISSIBILITY

MAX PHARR
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 27, 2022.

Cite as: IACHR, Report No. 227/22, Petition 392-16. Inadmissibility.
Max Pharr. United States of America. August 27, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Max Pharr
Alleged victim:	Max Pharr
Respondent State:	United States of America ¹
Rights invoked:	None specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	March 2, 2016
Additional information received at the stage of initial review:	November 16, 2016, December 21, 22, 2016, and January 13, 2017
Notification of the petition to the State:	October 23, 2019
State's first response:	May 6, 2020
Additional observations from the petitioner:	January 11, 2021, and Nov 3, 2021

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 of the Rights and Duties of Man ³ (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
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes (in terms of Section VI)
Timeliness of the petition:	Yes (in terms of Section VI)

V. ALLEGED FACTS

1. The petitioner is currently serving a life sentence in the State of Georgia, having been convicted of rape on June 23, 1995, before the Superior Court of Bibb County. He complains that he was coerced into pleading guilty despite suffering from psychiatric disorders. He claims that these disorders rendered him incompetent to stand trial. He also claims that his defense counsel failed to provide him adequate legal assistance (in failing to protect him from being coerced into pleading guilty).

2. According to the petitioner, during the criminal proceedings against him, his defense counsel successfully applied to the trial court to appoint a psychologist (a Dr. Lower) to evaluate, and report on his mental condition/mental competence. However, the petitioner claims that this report was inadequate and unreliable because his defense counsel failed to provide "some five hundred pages of medical records" that

¹ Hereinafter "the United States" or "the State".

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "American Declaration."

documented the petitioner's history of psychiatric illnesses. The petitioner alleges that the report of Dr. Lower indicated (on the matter of mental competence) that the petitioner "*can communicate with his attorney in a manner adequate to aid in the preparation of his defense.*"

3. However, the petitioner also states that his defense counsel also obtained an independent expert (Dr. Christopher Tillitski) to also evaluate the petitioner's mental condition and present a report to the trial court. Allegedly, this report to the trial court documented several psychiatric disorders on the part of the petitioner (including hallucinations and post-traumatic stress disorder). The petitioner argues that this report by Dr. Tillitski established that he was incompetent to stand trial or enter a plea.

4. The petitioner contends that: (a) he was mentally incompetent to stand trial or to enter a plea; (b) he was "coerced" into pleading guilty and sentenced to what he alleges to be an "illegal" term of life imprisonment. The petitioner generally claims that the proceedings against him were conducted in violation of his right to due process. In this regard the petitioner claims, for example, that his attorney provided inadequate legal assistance. Apart from failing to provide documentation to Dr. Lower, the petitioner also contends (among other things) that his attorney failed to: (a) obtain a competency hearing; (b) protect him from being coerced into pleading guilty; and (c) failed to procure an "insanity defense." Generally, the petitioner contends that he was wrongfully sentenced to a term of life imprisonment and thus deprived of due process.

5. According to information supplied by the petitioner he filed "*a motion to correct an illegal sentence*" before the Superior Court of Georgia on July 20, 2016, but that this was dismissed on September 6, 2016. The petitioner states that he appealed this decision to the Court of Appeals of Georgia, but that this appeal was dismissed on December 12, 2016.

6. The State rejects the petition as inadmissible primarily on the following grounds: (a) failure to exhaust pursue and exhaust domestic remedies; (b) untimeliness; (c) failure to state facts that tend to establish a violation of the American Declaration; and (d) adjudication of the petition would violate the Commission's fourth instance doctrine.

7. By way of background, the State indicates on June 23, 1995, the petitioner entered a plea of "*guilty but mentally ill*" to charge of rape, following which the petitioner was sentenced to a term of life imprisonment by the Superior Court of Bibb County (in the State of Georgia). The State further asserts that course of the criminal proceedings, defense counsel (for then petitioner) became aware of mental health issues that affected the petitioner. As a result, defense counsel applied to the trial court for a psychological evaluation. This application was granted, and a psychological evaluation was subsequently conducted at the Central State Hospital (in the State of Georgia). The State submits that defense counsel was not satisfied with the results of the report. Consequently, he hired an independent psychological evaluator, a Dr. Christopher Tillitski, to review the petitioner's mental status and medical records. According to the State Dr. Tillitski's evaluation indicated that Petitioner was able to assist in his defense.

8. The State submits that the petitioner did not file a direct appeal against his conviction. Instead, the State indicates that the petitioner on July 30, 2002, the petitioner filed a habeas corpus petition before a Superior court (in Georgia). The habeas corpus petition raised fifteen grounds, including the ground that the petitioner's guilty plea was not voluntary and that he received ineffective assistance of counsel. Following an evidentiary hearing, the habeas corpus petition was denied on May 7, 2004. In denying the state petition, the state habeas court made the following findings of fact: upon appointment to petitioner's case, counsel conducted an extensive investigation into the facts and circumstances surrounding the charges. Counsel interviewed witnesses and examined all the evidence against the petitioner. The evidence against the petitioner included a signed confession, video surveillance of the parking lot depicting the petitioner abducting a young woman and taking her car, and DNA evidence showing that the petitioner committed the crime. The victim also identified the petitioner in a police line-up and a voice identification line-up.

9. According to the State, the petitioner subsequently filed an application for a certificate of probable cause to appeal with the Supreme Court of Georgia, which was denied on January 12, 2005. The

petitioner subsequently filed a motion to withdraw his guilty plea in the Superior Court of Bibb County, which was dismissed as untimely on August 3, 2010. Petitioner then filed an application for discretionary appeal in the Supreme Court of Georgia on August 30, 2010. On September 17, 2010, the Supreme Court of Georgia transferred Petitioner's application to the Court of Appeals of Georgia, which in turn dismissed the application on December 16, 2016.

10. The State indicates that the petitioner also filed an application for a federal habeas corpus (Section in the U.S. District Court for the Middle District of Georgia on July 5, 2012 (and amended applications) on July 23, 2012, and August 31, 2012. In this application, the petitioner alleged that his guilty plea was unconstitutional. In this regard, the petitioner did not contend that he had not committed the crime but claimed that the evidence showed that he did not have the requisite culpable state of mind due to his mental illness. The State submits that the petitioner's failed to file his application for federal habeas corpus within the one-year period of limitations prescribed by the Antiterrorism and Effective Death Penalty Act of 1996, and that accordingly, his application was ultimately dismissed on June 10, 2013, by the federal court.

11. The State submits that the petitioner has failed to exhaust domestic remedies and has otherwise failed to demonstrate that he is entitled to any exceptions to the requirement to exhaust domestic remedies. In this regard, the State indicates that the petitioner did not file a direct appeal of his conviction; nor did he file his application for federal habeas corpus in a timely manner. The State further asserts that the petitioner has provided no explanation for the extensive periods of time that followed between his conviction in 1995, his filing of a state habeas corpus petition in 2002, and his filing of a federal habeas petition in 2012. The State concludes that the petition is inadmissible because the petitioner has not satisfied his duty to demonstrate that he has "invoked and exhausted" domestic remedies under Article 20(c) of the Commission's Statute and Article 31 of the Commission's Rules of Procedure.

12. The State submits that even if the petitioner had exhausted domestic remedies, that his petition should be rejected as untimely. In this regard, the State notes that the Commission received the petitioner's petition on March 2, 2016, more than twenty years after petitioner's conviction and nearly three years after the petitioner's application for federal habeas corpus was rejected. The State submits that: (a) the petitioner has failed to provide facts sufficient for the Commission to conclude that the Petition was filed "*within a reasonable period of time,*" as required by Article 32(2) of the Commission's Rules of Procedure; and (b) the petitioner has provided no explanation for why he failed to file his petition within the requisite period. Accordingly, the state concludes that the petition is untimely and therefore inadmissible.

13. The State submits that the petition fails to state facts that tend to establish a violation of rights set forth in the American Declaration and is manifestly groundless. In this regard, the United States rejects the petitioner's claims that: (a) his rights to due process and equal protection of the laws were violated because he received ineffective assistance of counsel because trial counsel did not investigate his mental impairment; and (b) his guilty plea was not valid because his mental impairment was not considered. The State submits that during his representation, counsel for the petitioner became aware of the petitioner's mental health issues and arranged for a psychological evaluation (at Central State Hospital). Because counsel was not satisfied with the results of the report, he hired an independent psychological evaluator, Dr. Christopher Tillitski, to review the petitioner's medical records. Dr. Tillitski's evaluation indicated that Petitioner was able to assist in his defense. In its findings of fact and review of the record, the State affirms that the state habeas court determined that the petitioner's guilty plea was constitutional, and that petitioner did not receive ineffective assistance of counsel.

14. The State submits that review of the petition is barred by the Commission's fourth instance doctrine because the petition plainly 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, the petitioner makes the same claims that he raised before U.S. courts (i.e., ineffective assistance of counsel because trial counsel did not investigate his mental impairment and that his guilty plea was accepted without consideration of his claimed mental impairment). The State argues that these claims were carefully considered judicially (mainly by the state habeas court) which led to the determination that that the petitioner's guilty plea was constitutional, and that the petitioner did not receive ineffective assistance of counsel. The State further

submits that it is not the Commission's place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a state's domestic courts in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task.

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

15. The State argues that the petitioner failed to exhaust domestic remedies, and that the petition is otherwise untimely. However, the Commission notes that according to record, the petitioner had initiated domestic proceedings that were not concluded until December 12, 2016 (before the Court of Appeals of Georgia).

16. The Commission notes that the requirement of exhaustion of domestic remedies does not mean that the alleged victim has the obligation to exhaust every possible remedy available to them. The IACHR has maintained that if the alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled. Further, the Commission has established that the analysis of the requirements provided in Articles 31 and 32 of the Commission's Rules of Procedure is performed in the light of the situation in effect at the time a decision is issued regarding a petition's admissibility or inadmissibility. It often happens that, while a petition is being processed, the situation as regards exhaustion of domestic remedies changes. Nevertheless, the petition system assure that both the State and the petitioner have every opportunity to present information and arguments in this regard. The Commission therefore deems that the requirement established in Articles 31 (1) and 32 (1) of the Rules of Procedure have been met.

VII. ANALYSIS OF COLORABLE CLAIM

17. The Commission notes that this petition mainly alleges due process violations during criminal proceedings against the petitioner. In particular, the petitioner alleges that he was coerced into pleading guilty and deprived of adequate legal assistance.

18. 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.

19. From the record, it appears that the petitioner's claims were fully ventilated before the domestic courts (primarily habeas corpus proceedings) and rejected. The petitioner appears to be dissatisfied with the outcome of the domestic judicial proceedings and now seeks relief from the Commission. The Commission has observed that the interpretation of the law, the relevant proceeding, and the weighing of evidence, are, among others, functions 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.

20. 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. In view of these considerations, the Commission considers that the claims of the petitioner are manifestly unfounded.

21. 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.

VIII. DECISION

1. To find the instant petition inadmissible; and
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 27th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.