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**REPORT No. 114/20**  
**PETITION 422-12**  
REPORT ON INADMISSIBILITY

CLARKE DERRICK FRAZIER  
UNITED STATES OF AMERICA

Approved electronically by the Commission on April 24, 2020.

**Cite as:** IACHR, Report No. 114/20, Petition 422-12. Inadmissibility. Clarke Derrick Frazier.  
United States of America. April 24, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Clark Derrick Frazier
Alleged victim	Clark Derrick Frazier
Respondent State	United States of America
Rights invoked	Articles II (Right to equality before law) XVII (Right to recognition of juridical personality and civil rights) XVIII (Right to a fair trial) XXVI (Right to due process of law) of the American Declaration on the Rights and Duties of Man

**II. PROCEEDINGS BEFORE THE IACHR<sup>1</sup>**

Filing of the petition	March 19, 2012
Notification of the petition	February 17, 2016
State's first response	November 10, 2016
Additional observations from the petitioner	August 29, 2017, September 7, 2017

**III. COMPETENCE**

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<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
Exhaustion or exception to the exhaustion of remedies	Yes
Timeliness of the petition	Yes

**V. SUMMARY OF ALLEGED FACTS**

1. This petition alleges violations of due process arising out of criminal proceedings that ultimately eventuated in the conviction of the alleged victim for first degree murder.

2. Mr. Clark Derrick Frazier, the petitioner and alleged victim, claims that his conviction for murder (and subsequent term of imprisonment) in the State of Tennessee was vitiated principally by ineffectiveness of his trial counsel. According to the petitioner, in 2004, he was arrested and charged with the first degree murder/first degree felony murder of Rosario Salas Angel in Robertson County, Tennessee. Ultimately, the petitioner pleaded guilty to second degree murder in March 2007 pursuant to a plea agreement negotiated by his counsel with the prosecutor. Under the terms of the plea agreement, the petitioner was

<sup>1</sup> The observations submitted by each party were duly transmitted to the opposing party.

sentenced to 25 years imprisonment. According to the record, this guilty plea became final on April 8, 2007. The petitioner however claims that his guilty plea/conviction was vitiated primarily by ineffective assistance of counsel.<sup>2</sup> According to the record, the petitioner contends that he felt coerced to plead guilty by his trial counsel, and that trial counsel failed to fully explain the consequences of entering a guilty plea. The petitioner also claims that at the time of arrest, he was under the influence of alcohol and prescription medication, and that as a result, his subsequent confession was involuntary. On May 10, 2007, after the plea became final, Mr. Frazier filed a motion to withdraw his guilty plea. On September 14, 2007, he voluntarily withdrew that motion before it was reviewed by a court.

3. According to the record, the petitioner unsuccessfully challenged his conviction by three disparate judicial proceedings: (a) post-conviction petition before the trial court; (b) habeas corpus proceedings; and (c) petition for writ of error coram nobis.<sup>3</sup> With respect to the first judicial proceedings, the petitioner filed a petition before the trial court in January 2008, which was heard and dismissed. The court found that the petitioner's claims about inadequate assistance of counsel (and related issues) were without merit. This decision was affirmed by the Tennessee Court of Criminal Appeals on May 5, 2009. The petitioner appealed to the Tennessee Supreme Court which denied leave to appeal in August 2009. According to the judgment of the Court of Criminal Appeals of Tennessee, the issue of the petitioner's intoxication was unsuccessfully raised by defense counsel before the trial court in a preliminary hearing. On the advice of counsel, the petitioner subsequently agreed to accept the State's offer of a recommended sentence of 25 years imprisonment. Other judicial findings (principally by the post-conviction court<sup>4</sup>) included: (a) that trial counsel testified that the defense team had sent the Petitioner every piece of evidence they received during discovery (including DNA evidence); (c) the Petitioner admitted that, if he received the report of the DNA results about the paper towels, he did not pay any attention to it; (d) in light of all the other evidence against the Petitioner, the Petitioner failed to prove that introduction of the evidence may have resulted in a different judgment. According to the record, during the guilty plea proceedings (before the trial court), the petitioner's stated that no one had threatened or coerced him into entering his plea; and he acknowledged that he was satisfied with his counsel's representation

4. With regard to the habeas corpus proceedings, the petitioner filed a petition in the U.S. District Court for the Middle District of Tennessee, again principally on the basis of ineffective assistance of counsel.<sup>5</sup> This petition was ultimately dismissed as untimely by the Court in August 2010. A subsequent appeal to the U.S. Court of Appeals for the Sixth Circuit was ultimately denied in May 2011. Finally, Mr. Frazier filed a petition for a writ of error coram nobis in the State Circuit Court for Robertson County, Tennessee, on June 15, 2011. The petition alleged that Mr. Frazier "was entitled to a new trial because he was not aware, prior to his plea, that items collected from the crime scene had been tested for DNA and that the Petitioner's DNA was not found on some of the items (such as paper towels). This petition was dismissed at first instance, and subsequently by the Tennessee Court of Criminal Appeals and ultimately by the Supreme Court of Tennessee (in July 2016).

5. The State argues that the petition is inadmissible principally because (a) it fails to state any facts that tend to establish a violation of the American Declaration and (b) that adjudication of the petition by the IACHR would violate the fourth instance formula. In support of its position, the State contends that the criminal justice system of the United States worked as it was intended to and the proceedings were conducted in compliance with U.S. law and consistent with the rights set forth in the American Declaration: Mr. Frazier was transparently and openly charged with a crime for which there was probable cause to believe he was the perpetrator, he was represented by counsel during the proceedings against him, the evidence was explained to

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<sup>2</sup> In this regard, the petitioner claimed that counsel was ineffective for a number of reasons including (a) failing to successfully have the petitioner's initial statement (confession) to the police suppressed; (b) failing to successfully suppress search warrants for DNA samples collected at the scene of the homicide; (c) failing to procure the recusal of a trial judge that the petitioner had threatened (with death).

<sup>3</sup> A writ of *error coram nobis* allows a court to reopen and correct its judgment if there is a substantial error not reflected in the original judgment which, if known at the time of judgment, would have prevented the judgment from being pronounced.

<sup>4</sup> As affirmed by the Tennessee Court of Criminal Appeals.

<sup>5</sup> In this regard, the petitioner also claimed that his conviction was based on the use of a coerced statement; and on the use of evidence obtained as a result of an unconstitutional search and seizure.

him and with the assistance of counsel, and he determined along with his counsel that he would plead guilty to one of the charged offenses to avoid going to trial. During the guilty plea proceedings, the State submits that the petitioner (a) affirmed that he understood the charges against him; (b) stated that he had reviewed and discussed the terms of his plea agreement with his trial counsel; (c) stated that no one had threatened or coerced him into entering his plea; (d) acknowledged that he was satisfied with his counsel's representation; (d) acknowledged that he had inflicted the wounds that caused the victim's death. With respect to the petitioner's claims about inadequate assistance of counsel, the State emphasizes the domestic courts fully considered and rejected these claims<sup>6</sup>; and that ultimately, the petitioner essential complaint is that the courts made the wrong decision when it considered his claims. The State also notes that the petitioner does not allege that any of these proceedings were substantively insufficient.

6. The State argues that the petitioner's dissatisfaction with the outcome of his domestic proceedings has led him to ask the Commission to reexamine claims that have already been considered, and been determined to be substantively baseless or untimely filed under the laws of the United States and the State of Tennessee. The State further contends that (a) the petitioner was guaranteed, and received, due process protections in his domestic proceedings; (b) he was not guaranteed, and did not receive a favorable result, because the evidence did not support his claims that his trial counsel rendered him ineffective assistance, or that his guilty plea was uninformed or coerced, or that evidence was withheld from him. Accordingly, the State concludes that any adjudication of the petition would violate the Commission's fourth instance formula. In response, the petitioner insists that his conviction was illegal and that the domestic tribunals have failed to either recognize or redress this status quo.

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

7. Based on the documents provided, the last decision taken in this matter is the July 2016 order of the Supreme Court of Tennessee denying petitioner's appeal from the dismissal of his writ of error coram nobis. The State does not argue that internal remedies were not exhausted. On the contrary, it notes that the alleged victim had access to justice although with results that were unfavorable to him. Given that the petition was received on March 19, 2012, the petition is considered timely. The IACHR reiterates its constant position according to which the situation that must be taken into account to establish whether domestic remedies have been exhausted is that existing when deciding on admissibility.

## **VII. COLORABLE CLAIM**

8. The petitioner's principal allegation relates principally to the issue of ineffective assistance of counsel, which he claims ultimately served to vitiate his guilty plea and subsequent conviction of second degree murder. Based on the record, the petitioner unsuccessfully raised his complaints in various appellate and review courts. The Commission notes that the conviction and sentencing of the petitioner resulted from a negotiated plea agreement (with the assistance of counsel); and that this negotiation took place over the course of almost a year.

9. 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. Based on available information, the Commission considers that the petitioner was accorded all due

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<sup>6</sup> The State provided copies of judgments issued by the domestic courts, including the judgment of the Court of Criminal Appeals of Tennessee that affirmed the dismissal of the post-conviction petition (that was heard by the trial court). Some of the findings affirmed by the Court of Criminal Appeals of Tennessee include: (a) the plea agreement was negotiated over a period of almost one year during which time the petitioner had the benefit of legal counsel in reviewing the plea agreement; (b) that the petitioner ultimately signed the plea agreement on the advice of counsel; (c) the petitioner was initially reluctant to agree to a plea agreement unless the period of imprisonment was 15 years (and not 25); (d) that his trial counsel advised him that this was unlikely because of previous convictions recorded against the petitioner and further, that a trial could expose him to the risk of a prison sentence of 25-40 years if found guilty; (e) that the petitioner accepted this advice and ultimately accepted the plea agreement for 25 years imprisonment; (f) that during the sentencing/guilty plea hearing, the petitioner told the trial court that he was voluntarily entering a plea of guilty and that he had not been coerced to do so; (g) that trial counsel unsuccessfully attempted to challenge the search warrants for DNA samples, however, there was clear eyewitness testimony that implicated the petitioner in the crime, and therefore DNA was irrelevant in establishing a case against the petitioner.

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 (in this case, II (Right to equality before law) XVII (Right to recognition of juridical personality and civil rights) XVIII (Right to a fair trial) XXVI (Right to due process of law)).

**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 24<sup>th</sup> day of the month of April, 2020. Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.