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REPORT No. 231/19
PETITION 178-13
REPORT ON ADMISSIBILITY

DOUGLAS MORIN
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 31, 2019.

Cite as: IACHR, Report No. 231/19, Petition 178/19. Admissibility. Douglas Morin.
United States of America. December 31, 2019



I. INFORMATION ABOUT THE PETITION

Petitioner	Douglas Morin
Alleged victim	Douglas Morin
Respondent State	United States of America ¹
Rights invoked	No Articles specified.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	February 5, 2013,
Additional information received during initial review	August 16, 2013, March 4, 2014, June 28, 2014, October 7, 2014; December 17, 2015
Notification of the petition	March 14, 2016
State's first response	June 2, 2016
Additional observations from the petitioner	April 19, 26, 28, 2016, September 14, 2016, February 2, 2017, June 16, 2017, August 28, 2017, September 7, 2017, October 17, 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 on 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	Articles II (right to equality before the law); XVIII (right to fair trial); Article XXV (human treatment in custody) and XXVI (due process of law) of the American Declaration.
Exhaustion or exception to the exhaustion of remedies	Yes, exception set forth in Article 31.2 (b) of the IACHR Rules of Procedure is applicable
Timeliness of the petition	Yes, in terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner and alleged victim, Douglas Morin, alleges that he was arrested on April 8, 2009 for armed robbery, following which he posted a bond of \$50,000. The petitioner states that he was re-arrested on April 30 for grand theft, following which he posted another bond of \$50,000. However, according to the petitioner, in June 2009, his bonds were later revoked, and he was remanded in custody where he alleged was subjected to beaten. Because of the above, the petitioner alleges that in 2011, he pleaded guilty to the offences of armed robbery and grand theft, following which he was sentenced to 10 years imprisonment. Broadly, the petitioner complains that his prosecution and subsequent conviction were vitiated by various due process violations, as well as other violations, including physical abuse while in custody.

2. The petitioner contends, inter alia, that (a) on June 27, 2010, he was beaten by staff at the Volusia County Jail (where he was in custody) and subsequently deprived of medical attention; (b) that the trial judge did nothing to investigate this beating when he appeared before her on July 14, 2010; (c) the arresting police officers illegally conducted warrantless searches of his home, vehicles, and person; and that the trial court ultimately acted to conceal this illegal conduct; (d) he was subject to ineffective assistance of counsel. On this last complaint, based on the documentation available, the petitioner refers to five different

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

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

³ Hereinafter "American Declaration".

lawyers – Edward Greco (preliminary hearing and arraignment); Richard Jackson (trial lawyer); Kevin Proul (trial lawyer); Richard Jackson (post-conviction proceeding); and Kimberley Nolan Hopkins (Appellate counsel). With respect to Kevin Proul, the petitioner claims that the trial court denied a motion from Mr. Proul seeking to recuse himself from the case after Mr. Proul allegedly declared that he did not consider himself capable of representing the petitioner. The petitioner also alleges that Mr. Proul failed to investigate or procure relevant defence evidence. With respect to Richard Jackson, the petitioner alleges that this attorney “mis-advised” him by telling him that the denial of the motion to withdraw his guilty plea would automatically be considered by the Appellate Court. With respect to Kimberly Nolan Hopkins, the petitioner contends that she failed to raise all of the relevant grounds of appeal, including the issue of the dismissal of the motion to withdraw the guilty plea. The petitioner also claims that Kimberly Nolan Hopkins did not communicate with him. Furthermore, the petitioner states that he ultimately pleaded guilty to the offences based partly on the advice of his trial lawyer that he (the petitioner) would be unlikely to receive a sentence of more than 34 months. Ultimately, however, the petitioner was sentenced to 10 years imprisonment.

3. Based on the record, the petitioner unsuccessfully took a number of judicial steps to challenge his conviction as well as to remedy the violations claimed. These steps included (a) pre-trial habeas corpus motion⁴; (b) Motion to withdraw plea⁵; (c) appeal (of conviction) to Fifth District Court of Appeal⁶; (d) appeal to Florida Supreme Court⁷. The final judicial remedy invoked by the petitioner was a federal motion for habeas corpus to the United States District Court, Middle District of Florida. This suit was filed on November 19, 2015 and ultimately dismissed on October 10, 2017.

4. The State rejects the petition primarily on the ground that petitioner had not exhausted domestic remedies at the time that he filed his petition. The State notes following the petition, the petitioner continued to file and pursue domestic lawsuits that largely mirrored the same issues raised in the petition. The State contends that the rationale underlying the exhaustion doctrine is for international institutions to permit domestic proceedings to run their course, thus affording the State the opportunity to fashion any remedy under its domestic law.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner’s complaints revolve around his prosecution, conviction, and imprisonment for robbery and grand theft. The petitioner contends that he invoked several domestic remedies that were ultimately all dismissed. The final judicial remedy invoked was a federal motion for habeas corpus to the United States District Court, Middle District of Florida – which was dismissed in October 2017. On the other hand, the State contends that the petitioner had failed to exhaust domestic remedies at the time of the filing his petition (on February 5, 2013). The IACHR indicates that it is at the admissibility stage where the Commission determines the exhaustion of domestic remedies, hence federal motion was dismissed in 2017 domestic remedies have been exhausted.

6. The Commission notes that one of the allegations made by the petitioner relate to physical mistreatment while in custody, and the denial of medical treatment. Based on the record, the petitioner’s complaint was never investigated by the State. The Commission reiterates that under international standards applicable to cases like this one, where serious human rights violations such as physical abuse are alleged, the appropriate and effective remedy is precisely the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualize the persons responsible and attribute the corresponding responsibilities⁸. The Commission observes that the alleged acts at issue began in 2010 and its effects concerning the alleged lack of investigation and punishment of said acts to the alleged victim continue to this date. As a result, in light of the context and the characteristics of this case, the Commission concludes that it has sufficient elements to believe that the exception set forth in Article 31.2 (b)

⁴ Filed January 21, 2011; dismissed February 2012.

⁵ Filed June 1, 2011; dismissed February 2012.

⁶ Dismissed January 29, 2013.

⁷ Denied March 6, 2013.

⁸ See IACHR, Report No. 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 13.

of the IACHR Rules of Procedure is applicable in this case, and that the petition was filed in a reasonable time, under the terms of Article 32.2 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

7. The Inter-American Commission's Rules of Procedure do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the IACHR, based on the Inter-American system's jurisprudence, to determine in its admissibility report which provisions of the relevant instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

8. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, the alleged acts of physical mistreatment of the alleged victim, as well as the lack of investigation of said claims are not manifestly groundless and, if proved, may represent violations of the rights enshrined in Articles II (right to equality before the law); XVIII (right to fair trial); Article XXV (human treatment in custody) and XXVI (due process of law) of the American Declaration.

9. With respect to the allegations of ineffective assistance of counsel, The Inter-American Commission has previously indicated that the right to due process and to a fair trial includes the right to adequate means for the preparation of a defense, assisted by adequate legal counsel. Accordingly, adequate legal representation is a fundamental component of the right to a fair trial⁹. Having regard for the petitioner's allegations relating to the inadequacy of the counsel at trial¹⁰ and appellate¹¹ stages of the domestic proceedings, the IACHR considers that these allegations are not manifestly groundless and, if proved could also tend to establish a violation of Articles XVIII and XXVI of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles II, XVIII, XXV and XXVI of the American Declaration;

2. To notify the parties of this decision; to continue with the analysis on the merits; 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 December, 2019. Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola Noguera, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.

⁹ In IACHR Report No. 52/13, Cases 11.575 and 12.341, Clarence Allen Lackey et al; Miguel Angel Flores, and James Wilson Chambers (Merits), United States, July 15, 2013, the IACHR observed at para. 202 that: "The right to The right to legal representation provided by the State must be guaranteed in a manner that renders it effective and therefore requires not only that defense counsel be provided, but that defense counsel be competent in representing the defendant. The Inter-American Commission has recognized that a State cannot be held responsible for every shortcoming on the part of an attorney. The legal profession is independent of the State; hence, the State has neither knowledge of nor control over how defense counsel represents his or her client. Even so, the national authorities have an obligation to intervene if a failure by defense counsel to provide effective representation is manifest or is sufficiently brought to their attention. That obligation is all the greater when the legal representation is provided by the State.

¹⁰ Richard Jackson and Kevin Proul.

¹¹ Kimberly Nolan Hopkins.