

No. 1-14-2125

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Respondent-Appellee,)	
)	
v.)	No. 86 CR 901
)	
HARVEY ALLEN, JR.,)	
)	Honorable Charles P. Burns,
Petitioner-Appellant.)	Judge Presiding.
)	

JUSTICE DELORT delivered the judgment of the court, with opinion.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court properly dismissed a referral of a petition for relief under the Illinois Torture Inquiry and Relief Commission Act, based on the law as it existed at the time of the dismissal. However, we vacate the dismissal order so that the circuit court may reconsider the referral in light of newly-enacted legislation which expands the jurisdiction of the Commission.

¶ 2 This case is before us pursuant to a supervisory order issued by our supreme court which directed us to reconsider our judgment in *People v. Allen*, 2016 IL App (1st) 142125 (*Allen V*¹) “in light of the enactment of Public Act 99-0688, which amends portions of the Illinois Torture Inquiry and Relief Commission Act (775 ILCS 40/1 *et seq.*), eliminating reference to Commander Jon Burge.” *People v. Allen*, No. 12077 (Sept. 28, 2016).

¶ 3 Petitioner Harvey Allen, Jr. was convicted of four counts of murder and one count of arson stemming from an incident which occurred on December 7, 1985. He was sentenced to natural life imprisonment. In our earlier opinion, we set forth the extensive procedural history of his claims. See *Allen V*, 2016 IL App (1st) 142125 ¶¶ 2-4. We provide a brief summary herein only to provide context to our disposition.

¶ 4 Allen filed a claim pursuant to the Illinois Torture Inquiry and Relief Commission Act (Act) (775 ILCS 40/1 *et seq.* (West 2012)), alleging that his conviction resulted from evidence which was physically coerced at the hands of Chicago police officers. The Torture Inquiry and Relief Commission (Commission) determined that there was “sufficient evidence of torture” to “conclude the Claim is credible and merits judicial review for appropriate relief.” The Commission transmitted its conclusion to the chief judge of the circuit court of Cook County “for assignment to a trial judge for consideration” as required by the Act. 775 ILCS 40/50 (West 2012). Upon such a referral, the trial court normally conducts a hearing which is similar to a third-stage evidentiary hearing under the Illinois Post-Conviction Hearing Act. *People v. Christian*, 2016 IL App (1st) 140030, ¶ 78; see also 725 ILCS 5/122-1 *et seq.* (West 2012). Even if the Commission conducts an evidentiary hearing of its own, the Commission’s factual

¹ In our earlier 2016 opinion, we designated the four earlier appellate court dispositions of Allen’s claims as *Allen I, II, III*, and *IV*. To maintain consistency, we will refer to the 2016 opinion as “*Allen V*.”

findings from that hearing do not collaterally estop the trial court from making contrary findings. *Christian*, 2016 IL App (1st) 140030, ¶ 92.

¶ 5 After the chief judge of the circuit court of Cook County received this referral, he transmitted it to a judge for consideration. The State then filed a motion to dismiss it, arguing that because the referral did not link any conduct of Burge or his subordinates to Allen’s confession and conviction, the Act did not apply. The circuit court agreed and dismissed it, stating that the Commission’s findings failed to indicate any nexus between its recitation of Burge’s history and Allen’s processing, resulting in “a kind of disconnect.” The court recognized that Allen had the right to “file a postconviction petition or successive postconviction petitions,” but that the referral was not “in compliance with the [Act]” or its stated purposes. We affirmed the dismissal, finding that the Act, as it then existed, only applied to claims relating to conduct of former Chicago Police Commander John Burge or his subordinates. *Allen V*, ¶ 17. Allen then filed a petition for leave to appeal with the supreme court.

¶ 6 A few weeks after this court issued *Allen V*, legislation was introduced in the General Assembly to abrogate *Allen V*’s central holding. It was approved by both houses of the General Assembly and signed by the Governor. Public Act 99-0688 (Pub. Act. 99-0688 (eff. July 29, 2016)), expands the scope of the Act to include any claim of a torture-induced confession occurring in Cook County, not merely those “committed by Commander Jon Burge or any officer under the supervision of Jon Burge.”

¶ 7 On September 28, 2016, our supreme court issued a supervisory order directing this court to vacate its judgment in *Allen V* and to reconsider it in light of the enactment of Public Act 99-0688. On November 18, 2016, we issued an order vacating the judgment in *Allen V*.

¶ 8 The circuit court dismissed the referral on the sole basis that it did not allege any facts showing that Allen's confession was coerced by Burge or his subordinates. Because the legislature expanded the Commission's purview to include claims such as Allen's, the Commission's referral in Allen's case now stands on a different basis than it did before. Accordingly, we vacate the order dismissing the referral and remand the case to the circuit court for further proceedings consistent with this order and Public Act 99-0688.

¶ 9 Vacated and remanded.