2026 IL App (1st) 221388-U

No. 1-22-1388

Filed October 14, 2026

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. HARVEY ALLEN, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 86 CR 93 Honorable Charles P. Burns, Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Quish and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's decision is vacated and the matter remanded for further proceedings on a TIRC referral where the court's order was based on a standard overruled by a subsequent supreme court decision.

¶ 2 Harvey Allen appeals the circuit court's denial of his claim under the Illinois Torture Inquiry and Relief Commission Act (TIRC) (775 ILCS 40/1 *et seq*. (West 2024)). In doing so, the trial court applied the standard in *People v. Wilson*, 2019 IL App (1st) 181486, which was in effect at that time. While this case was pending, the Illinois Supreme Court issued its decision in *People*

v. Fair, 2024 IL 128373, overruling *Wilson*. For the following reasons, we vacate the trial court's decision and remand the case for a new hearing consistent with *Fair*.[1]

¶ 3 I. BACKGROUND

¶ 4 Allen was convicted of four counts of murder and one count of arson for starting a fire in an apartment building in December 1985. He was sentenced to natural life imprisonment.

¶ 5 While in police custody, Allen gave an oral statement admitting to setting fire to the apartment unit of someone who "f*** him out of a dope buy." Before Allen's trial, he filed a motion to suppress his statement, alleging detectives coerced him to confess. His motion included allegations of physical abuse, threats, and coercion. Allen claimed that during a search of his home, officers twisted his arms and dragged him up and down stairs. Later, at Area 1 headquarters, Allen was placed in an interrogation room and left overnight without food. When given a hamburger the next afternoon, a detective told Allen he would receive the death penalty if he did not confess and suggested that Allen say he did not intend to kill anyone. The detective kicked Allen when he said he wanted a lawyer. Allen was kept in an interrogation room for a second night, without being allowed to use the restroom. In the early morning of December 9, 1985, a detective struck Allen in the groin with his knee and held a sharp object to Allen's throat. Later, a man identifying himself as an assistant state's attorney (ASA) told Allen he would "make a deal" with him: in exchange for a confession, Allen would avoid the death penalty and spend only six years in prison. Allen repeatedly requested an attorney, but his requests were ignored and the interrogation continued.

¶ 6 On his counsel's advice, Allen did not testify at the evidentiary hearing on his motion. ASA James Kogut and several detectives testified regarding the investigation of the fire, how Allen came to be in custody, and the circumstances in which he confessed. Allen's counsel argued that

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

the confession should be suppressed because his requests for a lawyer were ignored, or, alternatively, that the confession was involuntary, as Allen had been deprived of sleep, food, and use of the restroom over 45 hours in custody. Although allegations of physical abuse were included in the written motion he had filed, counsel did not mention them at the hearing.

¶ 7 The trial court found that Allen had not been deprived of the ability to sleep, eat, drink, or use the restroom. The court further found that Allen had not made a clear request to consult a lawyer prior to his confession, and even if he had, Allen initiated the conversation. The court's ruling did not address the allegations of physical abuse contained in the written motion. Ultimately, the court found Allen's confession was voluntary.

¶ 8 On direct appeal, Allen claimed, among other things, that the trial court erred in denying the motion to suppress statements. We found the trial court did not err in finding that Allen's confession was voluntary. *People v. Allen*, 249 Ill. App. 3d 1001, 1016-17 (1993). Allen's conviction and sentence were affirmed. *Id*. at 1020.

¶ 9 Subsequently, Allen filed three unsuccessful petitions for postconviction relief. In a 2011 petition, he claimed his confession was coerced when he was dragged up and down the stairs of his home, hit, kicked in the groin, and had a sharp object pressed against his throat. Allen asserted that Special State's Attorney Edward Egan's report (the Egan report) into misconduct by officers under the command of Jon Burge provided cause to present the claim in a successive postconviction petition. The trial court denied Allen leave to file. This court affirmed, finding that the Egan report did not provide cause to permit a successive petition. *People v. Allen*, 2014 IL App (1st) 120209-U, ¶ 31. We also observed that even if Allen's confession had been suppressed, the result of his trial would not have been different because of the other evidence presented. *Id*. ¶ 32.

¶ 10 Allen also filed a claim under the TIRC Act in 2011. He alleged that Detectives Steven Glynn, Brian Regan, and Richard Popovits abused him. Specifically, Allen claimed that while Glynn, Regan, and other officers were searching his apartment, Allen objected to the police seizing some of his property. Glynn and Regan "became angry and dragged" Allen "down the front steps of the apartment." Later that evening, Glynn and Regan were speaking to him in an interrogation room. Allen asked for a lawyer and questioning ceased, but as Glynn and Regan were taking him out the door of the interrogation room, they twisted his arms, punched him, and drove a knee into his groin. He was also "dragged down the rear steps next to the small interrogation room that lead to the lock-up area and back up again."

¶ 11 He further alleged that, at another point, Detective Popovits said, "this was a big case *** they knew I done it *** they were tired of fooling around *** and I better start cooperat[ing]." Popovits lunged at Allen. Allen felt "a combination of being punched or kneed in the groin with a sharp pain to my solar plex[us] area." Popovits told Allen to confess and make it easy on himself "or you can get yours now," and put a sharp object to Allen's throat. Popovits told Detectives Swistowicz and Carey that Allen wanted to talk with them, and "the three of them coached me into saying that I did it." Allen went along with their suggestions, but "after they seen they were not going to get too much more they ended the interrogation." "They also promised me a 6-year prison sentence instead of the death penalty, if I gave them a signed confession, because they believed that it was a[n] accidental murder."

¶ 12 The TIRC concluded: (1) Allen's torture claim was consistent with the allegation in his pretrial motion to suppress his confession, (2) Allen did not testify to those allegations at the pretrial hearing due to his lawyer's strategic decision, (3) "[t]he prosecution case against [Allen] without the confession was not strong, creating an incentive to coerce a statement," and (4) Allen's

torture claim was credible and merited referral for judicial review. *In re Claim of Harvey Allen*, TIRC No. 2011.017 at 2-3 (May 20, 2013).[2] Accordingly, TIRC referred the claim for judicial review in the Cook County Circuit Court pursuant to the TIRC Act. See 775 ILCS 40/45(c) (West 2024).

¶ 13 Initially, Allen's claim was dismissed because his claim lacked a factual connection to Jon Burge as required by the TIRC Act. We affirmed. *People v. Allen*, 2016 IL App (1st) 142125, ¶ 17. The legislature subsequently amended the TIRC Act to remove that requirement, and the supreme court issued a supervisory order directing this court to vacate its 2016 judgment. *People v. Allen*, No. 120777 (Ill. Sep. 28, 2016) (supervisory order). We remanded the matter for further proceedings in the circuit court. *People v. Allen*, 2016 IL App (1st) 142125-UB.

¶ 14 Allen's counsel caused subpoenas to be issued to the Chicago Police Department (CPD) for complaint register (CR) files related to Detectives Regan, Glynn, and Popovits, returnable to the court. At a December 2018 status hearing, the court indicated that CPD had delivered the CR files to the court. Allen's counsel had been excused from appearing and was not present. The court asked the ASA, "am I supposed to do an *in camera* inspection of these records?" and the ASA replied, "Yes." The court further asked the ASA why Allen wanted the materials and suggested they may contain employment records. The ASA informed the court the records were related to abuse allegations.

¶ 15 At the next status hearing, with Allen's counsel present, the court stated it had begun examining the records but needed additional time to complete its inspection. Allen's counsel noted that it had taken 18 months for the records to be produced.

[2]Available at https://tirc.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/Case%20Disposition%20Harvey%20Allen.1.0.pdf (last visited October 5, 2026).

¶ 16 At the following status hearing, the court stated that it had reviewed the CR files *in camera* and asked Allen's counsel what "type" of CRs she was seeking. Allen's counsel stated that she was seeking all CRs related to the three detectives. The court and defense counsel discussed the relevancy of the records, with defense counsel stating that any allegations of physical or psychological abuse or misconduct would be relevant, as well as any records which would bear on the officers' truthfulness or credibility. The court stated that the records were not relevant and thus, it would not turn them over to defense counsel. The court stated that it would have the records sealed and placed in the court file. The records are not included in the record on appeal.

¶ 17 After an evidentiary hearing, the trial court denied Allen's claim in a 38-page written order. Applying *Wilson*, 2019 IL App (1st) 181486, this court held, in part, that it was "entirely possible even with hearing [Allen's] testimony at the suppression hearing, the trial court judge could have still denied the motion to suppress statements." This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Allen argues the court's decision was manifestly erroneous and requests that we reverse it on the merits. In the alternative, he contends it was inappropriate for the court to conduct an *in camera* review of the CR files for relevancy and the court erred by failing to tender the CR files to his counsel. He requests that we either remand for disclosure of the files, disclose the files to appellant counsel under a protective order, or conduct our own *in camera* inspection.

¶ 20 In its ruling, the trial court relied on *Wilson*, holding that Allen's initial burden at this stage of proceedings under TIRC was the same as the petitioner's burden at a third-stage evidentiary hearing under the Post-Conviction Hearing Act. *Wilson*, 2019 IL App (1st) 181486, ¶ 52. The court explained that Allen was not initially required to prove that his confession actually resulted from coercion, but his initial burden was to show that the newly discovered evidence would likely have

resulted in the suppression of his statement. If Allen satisfied that burden, the State has the burden of proving Allen's statement was voluntary by a preponderance of the evidence. *Wilson,* 2019 IL App (1st) 181486, ¶ 53-54. If the State established a *prima facie* case that the statement was voluntary, the burden shifts back to Allen to present evidence that the confession was involuntary. *Wilson,* 2019 IL App (1st) 181486, ¶ 53-54.

¶ 21 However, while this appeal was pending, the Illinois Supreme Court decided *People v. Fair*, 2024 IL 128373. The court analyzed TIRC and cases applying it, concluding that "the plain language of [TIRC] requires the circuit court to determine whether a petitioner has shown by a preponderance of the evidence that (1) torture occurred and (2) resulted in a confession that was (3) used to obtain a conviction, not to assess the voluntariness of statements or other constitutional claims that can be raised in a postconviction petition. To the extent a court answers these questions in the affirmative, [TIRC] provides the court with wide-ranging authority to craft an appropriate remedy to root out and ameliorate the effects of the tortured confession." *Fair*, 2024 IL 128373, ¶ 79. The *Fair* court expressly overruled *Wilson* "which adopted a contrary standard." *Fair*, 2024 IL 128373, ¶ 79.

¶ 22 The *Fair* court also held that "[a] court analyzing whether a petitioner has shown torture occurred by a preponderance of the evidence must consider the totality of the circumstances, including any alleged violations that would not necessarily qualify as torture if viewed alone." *Id.* at ¶ 88. The court "emphasize[d] that police treatment of a petitioner must be sufficiently extreme to qualify as torture under [TIRC], but this threshold can be satisfied by a combination of different kinds of acts and omissions—including alleged mental as well as physical abuse—that cumulatively constitutes torture. When engaging in this inquiry, courts should be mindful of the history of police torture in Chicago that led to the legislature's creation of the Act and its remedial

purposes to identify victims and ameliorate the effects of those practices by 'establish[ing] an extraordinary procedure to investigate and determine factual claims of torture.' 775 ILCS 40/10 (West 2018)." *Fair*, 2024 IL 128373, ¶ 88. Because the hearing in this case was conducted under the *Wilson* standard and not the correct standard outlined by the court in *Fair*, we find that the appropriate remedy is to remand the matter for the circuit court to hold a new hearing consistent with the *Fair* standard. See *People v. Smith*, 2025 IL App (1st) 231740-U, ¶ 93.

¶ 23 Because of our resolution of this issue, we need not reach Allen's second argument concerning the trial court's *in camera* review of the CR files because we do not know what discovery the parties may wish to pursue particularly in light of the change in the applicable standard.

¶ 24 III. CONCLUSION

¶ 25 For these reasons, we vacate the order of the circuit court and remand the matter for further proceedings consistent with this order.

¶ 26 Vacated and remanded with directions.