IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

WILLIAM HUGH PRICE,

Respondent.
_____/

CASE NO. 65,069

(1084C15)

RESPONSE BRIEF OF THE FLORIDA BAR

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STATEMENT OF THE CASE

Respondent was charged with trafficking in cannabis in excess of one hundred pounds which is a first degree felony following an incident on July 1, 1980. He was tried three separate times in the Tenth Judicial Circuit in 1981. The first two trials ended in mistrials and he was acquitted by a jury after the third trial on September 2, 1981.

A Bar monitor file which had been opened in Tallahassee was closed subsequent to that acquittal. In September, 1983, the Assistant State Attorney who prosecuted the case filed a complaint with The Florida Bar's Orlando office. It appears that a series of miscommunications during the preceding two years had left him with the impression the Bar had been proceeding. Probable cause was subsequently consented to in January, 1984, and the Bar's complaint filed in March, 1984. Hearings were held before the referee on July 25, 1984 and December 4, 1984. His report dated February 15, 1985 was thereafter filed.

In his report, the referee recommends the respondent be found guilty of violating Article XI, Rule 11.02(3)(a) of The Florida Bar's Integration Rule for conduct contrary to honesty, justice and good morals. He also recommends the respondent be

found guilty of violating the following Disciplinary Rules of The Florida Bar's Code of Professional Responsibility: 1-102(A)(3) for engaging in illegal conduct involving moral turpitude; 1-102(A)(4) for engaging in dishonest conduct and 1-102(A)(6) for engaging in other misconduct that reflects adversely on his fitness to practice law. As discipline, the referee recommends respondent be disbarred from the practice of and pay the costs of these proceedings currently totalling $846.75.

Thereafter, the respondent filed a petition for review in early March, 1985 when these proceedings commenced.

ISSUE ON APPEAL

WHETHER THE REFEREE'S RECOMMENDATION RESPONDENT BE FOUND GUILTY AND DISBARRED FOR HIS ACTIONS AFTER TAKING RESPONDENT'S LIVE TESTIMONY AND READING THE TRANSCRIPTS OF TESTIMONY OF THE PREVIOUS THREE JURY TRIALS SHOULD BE UPHELD.

STATEMENT OF THE FACTS

Respondent accepts the referee's statement of the facts which will be stated and augmented. U. S. Customs agents, acting on a series of anonymous tips which ultimately specifically identified the respondent by name and description and included his aircraft identification number and destination, intercepted that aircraft piloted by the respondent on July 1, 1980 after it landed in Sebring, Florida. The aircraft was loaded with approximately 571 pounds of marijuana. Respondent's flight had originated in Jamaica.

The agents observed respondent's airplane land at the Sebring Airport. After landing, it was approached by a white van driven by James Devlin. The agents observed Mr. Devlin get out of the van, go to the side of the airplane, open a door and then come around to greet and shake hands with the respondent. Mr. Devlin then went to the back door of the white van. Shortly thereafter, both the respondent and Mr. Devlin were arrested.

At each trial both the respondent and Mr. Devlin denied greeting one another or shaking hands. Each testified they had never met one another prior to the encounter. The referee chose

to believe the testimony of the Customs agents and not the respondent or Mr. Devlin.

The respondent testified at his trials and in the discipline proceeding that he was a victim of unknown forces and participated in the importation scheme only after being threatened with harm to both himself, his ex-wife and children by three unknown Jamaicans who confronted him when he arrived at his aircraft in the early morning hours of July 1, 1980 preparatory to flying back to the United States. According to the respondent, the Jamaicans had placed bails of marijuana in the back of the airplane and then threatened him if he did not allow the plane to be loaded with additional marijuana and agree to take it to the Sebring Airport in the United States. Respondent further testified that the Jamaicans advised him that they could monitor the progress of the airplane and that he could not deviate without their knowing it. Thereafter, the respondent flew the aircraft to the Sebring Airport. He did not attempt to deviate from his flight plan or alert any authorities to his "predicament." After landing the aircraft, he was arrested.

The referee rejected the respondent's testimony. He also stated in his report that it appeared Mr. Price, Judith Miller,

who is also a member of The Florida Bar, and James Devlin were actively engaged in and participated in a conspiracy to import marijuana into the United States. All were then from the Gainesville area. She had gone to Jamaica with respondent on June 28, 1980, with another, obstensibly on a business venture, but preceded him back to the United States by commercial aircraft. She reserved two rooms at the Sebring Holiday Inn for herself and Mr. Devlin who was there purportedly to pick up some oriental rugs being flown into Sebring for a Mr. Wall. Mr. Wall was an apparent Gainesville investor and acquainted with Ms. Miller. Respondent had flown him back to Gainesville from Sebring on return from Jamaica on an earlier business trip. He further found that the respondent committed perjury in his testimony in the criminal cases and in the discipline proceeding. These proceedings then commenced.

ARGUMENT

THE REFEREE'S RECOMMENDATION RESPONDENT BE FOUND GUILTY AND DISBARRED FOR HIS ACTIONS AFTER TAKING RESPONDENT'S LIVE TESTIMONY AND READING THE TRANSCRIPTS OF THE TESTIMONY OF THE PREVIOUS THREE JURY TRIALS SHOULD BE UPHELD

Notwithstanding the two year delay in initiating these proceedings which was caused by a mix-up between offices and miscommunications between the complaining individual and a local grievance committee member, the referee's findings of fact and recommended discipline should be upheld. Respondent complains that other than the transcribed records of the three prior criminal trials the referee considered only the respondent's live testimony at the two discipline hearings. He thereafter argues that the referee was acting in effect as an appellate court noting authority that an appellate court should not undertake to retry the case where a verdict is supported by substantial and competent evidence particularly where the evidence is conflicting. Respondent's argument misses the mark.

First, Bar discipline proceedings are governed by a lesser standard of proof than criminal proceedings. In Bar proceedings, the standard is one of clear and convincing evidence. See The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973) and

The Florida Bar v. Rayman, 238 So.2d 594 (Fla. 1970). Criminal proceedings, of course, are subject to the beyond a reasonable doubt standard. The differences are obvious.

Further, this is not an appellate review, this is a trial de novo in a separate forum applying a different evidentiary standard for a totally different purpose. In presenting his case, respondent elected to call no live witnesses other than himself and to stand on the transcribed testimony of the prior three proceedings. He cannot now complain that the referee has ruled against him. The fact that that evidence was submitted in the fashion it was is no different than a trier of fact deciding a case based on depositions and testimony of the defendant.

The referee's findings of fact enjoy the same presumption of correctness in these proceedings as do the findings of a civil trier of fact. See Fla. Bar Integr. Rule, art. XI, Rule 11.06(9)(a)(1). This Court has stated in The Florida Bar v. Carter, 410 So.2d 920 (Fla. 1982) that a referee's "...findings of fact should be accorded substantial weight and should not be overturned unless purely erroneous or lacking in evidentiary support." The Florida Bar v. Wagner, 212 So.2nd 770 (Fla. 1968). In The Florida Bar v. Hirsch, 359 So.2d 856 (Fla. 1978) the Court

noted a referee's findings should be upheld unless those findings are clearly erroneous or without support in the evidence. In this instance, respondent asserts the referee's findings are opinions and not facts. However, the referee made his findings rejecting the testimony given by the respondent and two others. In so doing, his findings are manifestly plain. Respondent did fly the load of marijuana into the United States and there were no sinister forces forcing him to do it. His motive was profit. They clearly warrant the recommendations of guilt and discipline.

This Court has noted that its role is to review a referee's report and pose an appropriate penalty if the finding of guilt is supported by the record. See The Florida Bar v. Hoffer, 383 So.2d 639 (Fla. 1980). In that opinion, the Court noted that, "the referee, as our factfinder, properly resolves conflicts in the evidence. See The Florida Bar v. Rose, 187 So.2d 329 (Fla. 1966)." See also Hirsch, supra. In those cases the evidence also was conflicting. In this matter, the referee evaluated his findings based on the written record of three prior trials, respondent's testimony and his demeanor.

The Bar concurs that disbarment is the ultimately and most severe discipline that can be imposed upon an attorney. See

e.g., The Florida Bar v. Hirsch, 342 So.2d 970 (Fla. 1977). The Bar submits the reasons in this case justifying the recommendation are weighty indeed, given respondent's activities as found by the referee. The Bar further submits the proof is ample. Respondent's guilt is clearly and convincingly supported by the evidence in the record.

Discipline is to serve three purposes. First, the judgment must be fair to society both to protect the public from unethical conduct and not to deny it of the services of a qualified lawyer due to an unduly harsh result. Second, it must be fair to the respondent being sufficient to punish breach of ethics and at the same time encourage reform and rehabilitation. Finally, it must be severe enough to deter others who might be prone or tempted to become involved in similar misconduct. See The Florida Bar v. Lord, 433 So.2d 983 (Fla. 1983) at page 986 and the cases cited therein. In this instance, the referee recommends the respondent be found guilty of conspiring and participating in the importation of marijuana in excess of one hundred pounds, a first degree felony. The fact that the respondent was acquitted after two mistrials does not negate the referee's findings. Misconduct is there.

In the recent past, this Court has had to deal increasingly with attorneys caught up in direct or indirect participation in the use of or smuggling into the United States of illegal narcotics. See e.g., The Florida Bar v. Levenstein, 446 So.2d 87 (Fla. 1984). That attorney resigned permanently for his role in assisting drug smugglers to launder the profits since permanent disbarment is not available to this Court. See also The Florida Bar v. Travelstead, 435 So.2nd 832 (Fla. 1983) where an attorney was disbarred for conspiring to smuggle large amounts of marijuana into the country and thereafter failing to appear for trial. In The Florida Bar v. Ryan, 394 So.2d 996 (Fla. 1981) the attorney was disbarred for similar misconduct as well as misappropriation of fees from his law firm. In The Florida Bar v. Wilson, 425 So.2d 2 (Fla. 1983) an attorney was disbarred for his conviction for soliciting to traffic in cocaine and attempted trafficking in cocaine through a client who was then incarcerated. In The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977) an attorney was disbarred for arranging the delivery of an amount of marijuana to a client.

The Bar does note that in the case of The Florida Bar v. Carbonaro, Case No. 64,228, February 21, 1985, the Court upheld a maximum three years' suspension as opposed to disbarment for an

attorney who pled guilty to the felony charge of conspiracy to possess with an intent to distribute quantities of cocaine in federal court. He was placed on four years' probation and suspended by this Court pursuant to Rule 11.07. However, that referee had made his recommendation based on several mitigating factors including a personality disorder for which the attorney had sought treatment, his youthfulness and remorse, the lack of connection with his law practice, his misguided desire to help his friends, his personal sufferings and his commitment to public service. He concluded that the stigma of disbarment was not justified. Note however, three members of the Court dissented and would have disbarred the respondent finding no factual difference between that case and Wilson, supra. Finally, in the case of The Florida Bar v. Pettie, 424 So.2d 734 (Fla. 1982), the Court rejected the referee's recommended discipline of disbarment and imposed a one year suspension with proof of rehabilitation required. In that instance, Mr. Pettie accomplished five acts which were legal but for his knowledge they were in furtherance of a smuggling conspiracy. He had turned himself in to law enforcement a week after the actual smuggling attempt occurred and the participants were arrested. He was not at the scene nor apparently a target of law enforcement when he contacted them. Thereafter, at considerable risk to himself and financial

hardship, he materially assisted law enforcement in breaking up a large scale smuggling ring leading to the conviction of almost all participants.

In this instance, the respondent never denied flying the marijuana into the United States and landing it at the Sebring Airport. He merely asserts that he was coerced into doing so. This referee rejected his testimony. Although the respondent's activities were not involved with his own law practice, they strike at the very fabric of today's society. He has demonstrated an attitude which is completely inconsistent with the high professional standards of The Florida Bar. It is conduct so contrary to those standards that respondent has demonstrated he is a member who should never be at the bar. It is conduct which clearly and amply warrants disbarment. Given the nature of the violations here, a judgment of disbarment will be fair to society. Secondly, no less discipline than disbarment will be sufficient to punish this type of breach. Any reform and reformation must be directed at readmittance subsequent to disbarment and not reinstatement. Third, the area of drug smuggling and trafficking is a most troublesome one in today's society. Indeed, a virtual war is being waged to stem the tide. Attorneys who surrender to enticement of vast illegal profits

must be cast out. The deterrent factor of disbarment alone justifies imposition of that discipline in this case.

The referee, using the clear and convincing standard applicable to Bar discipline cases, has found against the respondent and recommends he be disbarred. The record amply supports the referee's findings and the nature of the offense his recommendation. It should be upheld.

CONCLUSION

WHEREFORE, The Florida Bar prays this Honorable Court will review the referee's recommendation and uphold his findings of fact, recommendation of guilt and discipline and enter an order disbarring the respondent and also ordering him to pay the costs of these proceedings.

Respectfully submitted,

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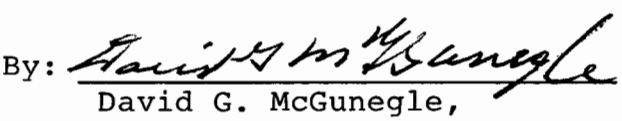
By: 
David G. McGunegle,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Response Brief of The Florida Bar has been furnished by mail to the Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301; a copy of the foregoing Response Brief of The Florida Bar has been furnished by mail to Jack T. Edmund, Counsel for Respondent, Post Office Box 226, Bartow, Florida 33830; a copy of the foregoing Response Brief has been furnished by mail to Staff Counsel, The Florida Bar, Tallahassee, Florida 32301 on this 25th day of March, 1985.

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