IN THE SUPREME COURT OF FLORIDA

FILED
AUG 1986
CLERK, SUPREME COURT
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THE FLORIDA BAR,	)	
Complainant,	)	Supreme Court Case No. 67,793
v.	)	
ANDREW PAVLICK,	)	
Respondent,	)	

On Petition for Review of
the Referee's Report in a
Disciplinary Proceeding.

ANSWER BRIEF OF RESPONDENT

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INTRODUCTION

In this brief, The Florida Bar will be referred to as either "The Florida Bar", "the Bar", or "Complainant"; Andrew Pavlick will be referred to as the "Respondent" or "Pavlick"; Louis Merhige will be referred to as "Mr. Merhige", or "Lou Merhige" and proceedings before Horace W. Gilmore on October 26, 1984, in United States of America v. Andrew Pavlick, Case No. 84-20350 will be referred to as "Michigan Court Proceedings."

Abbreviations utilized in this brief are as follows:

"Tr." refers to the Transcript of Proceedings dated April 23, 1986

"R.R. Sec." refers to the Report of Referee, identified by Section

"COMPL. EX." refers to Complainant's Exhibits attached to the Transcript of Proceedings dated April 23, 1986

"Rule" refers to article XI, Integration Rule of The Florida Bar

STATEMENT OF THE CASE

The respondent essentially accepts the statement of the case as stated by The Florida Bar in their brief.

STATEMENT OF FACTS

PAVLICK was admitted to The Florida Bar in 1973 (TR 55) and, except for the period of his current suspension, has practiced law in Florida since then. He specialized in negligence work, primarily handling railroad cases.(TR 55,99) Except for a grievance complaint involving a fee dispute with a client, PAVLICK has had no ethics complaints, or grievances made against him as an attorney. He has never been convicted of any crime except that which is the subject of these proceedings. (TR 56)

In 1979, PAVLICK was hired to represent three clients who were defendants charged with smuggling marijuana in a case pending in the United States District Court in New Orleans. Their names were Willis, Love and Peiser. He associated a New Orleans criminal lawyer, Lou Merighe, to act as co-counsel. The case went to trial in October, 1979 and resulted in the conviction of all three defendants. Subsequently, two of the three defendants had their convictions overturned. Immediately following the trial, someone acting on behalf of the prosecutors in the case walked into the courtroom and served Willis, Love and Peiser with a subpoena to testify before a United States Grand Jury. Pavlick made the suggestion to the prosecutor in the case that the matter could be handled on an informal basis, in a "debriefing," hoping that by cooperating his

clients would receive lighter sentences. Agreement was reached for a debriefing to take place within the next few days. (TR 58, 104)

The trial in New Orleans ended on a Thursday in October of 1979. PAVLICK flew back to Miami that evening after deciding to meet with Merighe and their three clients, Willis, Love and Peiser, that following weekend Oct. 13,14, 1979 in Tallahassee (where they resided) to discuss the testimony that they would give at the debriefing. (TR 59) Merighe went to Tallahassee and met with the clients. PAVLICK did not go. In fact, the Friday following the conclusion of the trial in New Orleans, PAVLICK took depositions in Miami, and the next day, a Saturday, he met with a contractor Mr. Paul Leach, to discuss the construction of an office building.(TR 60, 95)

PAVLICK attended the debriefing in New Orleans on Oct. 18, 1979.(TR 59) It was there that he heard, for the first time, that his clients had some connection with a man named Ignacio "Iggy" Azpeitia. (TR 97) Sometime later, Merighe requested PAVLICK to send him a copy of a newspaper article regarding Iggy's death. PAVLICK had his law clerk, Roberta Fox, search the microfiche records of The Miami Herald to find the article, (TR 62) then mailed it to Merighe on October 30, 1979, several days after the debriefing took place.

PAVLICK advised his clients, Willis, Love and Peiser, to

tell the truth at the debriefing session. (TR 40-80) PAVLICK did not discover the falsity of the Iggy story told by his clients at the debriefing session until sometime around the middle of 1984, just prior to his indictment by the Office of the United States Attorney in the Eastern District of Michigan. (TR 97, 131)

Shortly after his clients' convictions in New Orleans, PAVLICK had been requested by the prosecutor there to identify the person by whom he was hired. Believing he was ethically prohibited to do so, he asserted the attorney/client privilege. The United States District Judge in New Orleans agreed with him. (TR 65,66) Thereafter, the prosecutor in New Orleans sought review of that decision by the United States Circuit Court of Appeals for the Fifth Circuit. That court affirmed the decision of the District Judge. Frustrated in their attempt to have PAVLICK divulge the name of the person by whom he was retained, the prosecutor in New Orleans obtained approval of the United States Department of Justice to seek _en banc_ review of the Fifth Circuit panel's decision. The _en banc_ hearing was held in Texas. (TR 108,109) PAVLICK argued the case before the _en banc_ panel, as he had done before the District Court and the Fifth Circuit panel. The Government's case was argued by attorneys from the Department of Justice in Washington, D.C., whose assistance was enlisted by the prosecutor in New Orleans. The _en banc_ panel of the Fifth Circuit reversed the decision of the earlier panel. Thereafter, PAVLICK advised the prosecutor in New Orleans of the identity of the person who had retained him to represent the

three criminal defendants. (TR 64, 67, 80)

The matter did not end there. Sometime in the middle of 1984, the Office of the United States Attorney in the Eastern District of Michigan began an investigation of PAVLICK and Merighe which centered around their representation of Willis, Love and Peiser and, specifically, of the fabricated story told by Willis, Love and Peiser at the debriefing session in New Orleans back in October of 1979. Before his indictment, PAVLICK was confronted with the fabricated story. He denied having been in Tallahassee for any meetings with Merighe, Willis, Love and Peiser to concoct a story about Iggy. He denied telling his clients to lie to the government investigators at the debriefing. He denied knowing that the Iggy story was fabricated at the time he sent the newspaper article to Merighe. (TR 40,50) He offered to agents of the Federal Bureau of Investigation that he would submit to a polygraph examination. (TR 70, 74, 132) The F.B.I. declined.

Nevertheless, the prosecutor in Michigan had PAVLICK indicted on two separate counts charging him with conspiracy to import marijuana and conspiracy to possess with intent to distribute and distribution of marijuana. The indictment was filed <u>one day</u> before the applicable statute of limitations would have run on those offenses. The government was apparently irritated because of the delay occasioned by PAVLICK's assertion of the attorney/client privilege through three different levels of Federal courts, as well as his successful appeals of two of the three convictions

in the underlying criminal case in which he represented Willis, Love and Peiser. (TR 108, 109) Years before he was indicted, PAVLICK had already revealed to the prosecutor in New Orleans the identity of the person who had retained him and paid his fee. (TR 64, 67, 80)

After filing the indictment, the prosecutor in Michigan realized he could not prove his case against PAVLICK. He advised PAVLICK that he would recommend to the Department of Justice in Washington, D. C. that the charges against PAVLICK be dismissed, and a recommendation was in fact made. But the Department of Justice, remembering the protracted court proceedings PAVLICK had put them through, refused to grant the request. (TR 67,84, 106) So the prosecutor in Michigan told PAVLICK that he would have to plead to something in lieu of the charges pending against him. He handed him the United States Code, in an effort to convince PAVLICK to plead guilty to any lesser charge. The discussion between the prosecutor and PAVLICK's attorney centered around the possibility that PAVLICK might plead to a mailbox crime, or a game violation, or some other similarity unrelated charge. (TR 81, 110) Still, The Department of Justice insisted that PAVLICK must plead to a felony, else the charges filed against him would not be dismissed. The prosecutor in Michigan once again scoured the United States Code to find a seldom used criminal offense created in the post-Civil War era, to-wit, "accessory after the fact to a misprison of a felony." In plain English, the charge means, not as much as that someone witnessed a crime and did not report it, but that he or she heard or

knows through a secondary source that a crime has been committed and fails to report it, having a duty to do so.

The new charge was hastily written up on the same day that a plea hearing was held before the United States District Judge in Michigan. Portions were penciled in. PAVLICK was charged by way of information. A plea agreement was drafted which dismissed the two-count indictment for conspiracy to smuggle and distribute marijuana. At the plea hearing, the prosecutor set forth those facts which he believed he could prove in furtherance of his case against PAVLICK. Those facts included the testimony of Merighe, which was offered to prove, not that PAVLICK was present at a meeting in Tallahassee in October of 1979 with his clients and Merighe, (The other persons who were at this meeting apparently testified that there was only one attorney (Merighe) who attended the meeting.) but rather that PAVLICK was present at a "pre-meeting" meeting at which the story about Iggy was concocted between PAVLICK and Merighe, Merighe stating that it was PAVLICK's idea. (TR 73, 133) (Merighe was never convicted of anything; he traded testimony that was unfavorable to PAVLICK for immunity.) As a former federal prosecutor, he was apparently able to reach an understanding with the prosecutor in Michigan. (TR 132) Unlike PAVLICK, Merighe at no time agreed to submit to a polygraph examination and significantly refused to do so. (TR 132)

In response to the new charge, PAVLICK entered an "Alford plea." At the time he entered said plea, he believed that he

was protesting his innocence while intelligently concluding that his interests and those of his family (his wife and three little children) required the entry of a plea to avoid the risk of greater punishment. (TR 83) His wife was present with him at the time and it was she who unwaveringly recommended that he plead to the lesser charge (TR 50) PAVLICK never knew or considered that The Florida Bar would seek his disbarment as a result. He understood that there would be an investigation into his conviction and, in fact, he consulted Florida counsel shortly upon his return here.

Following the plea hearing, PAVLICK continued to protest his innocence through a course of action which included letters written by his attorney in Michigan, Dave Domouchel, to the United States District Judge who sentenced PAVLICK. At the sentencing hearing the United States District Judge expressed reluctance in accepting the plea from PAVLICK because PAVLICK obviously disputed the underlying facts of the offense with which he was charged. (TR 56, 84, 118, 127)

Before his confinement to Eglin Air Force Base, PAVLICK wrote to The Florida Bar and made full and complete disclosure of his conviction in Michigan. (TR 126) He wound up his practice of law and so advised the Bar. He was separated from his wife and children for a period of approximately four months at Eglin and during that time he was entrusted with bookkeeping and administrative duties. (TR 87) Also during that period of time, he experienced a severe weight loss (approximately 50 pounds). (TR 96)

It was an extremely sad time for him and his family because of their separation and the shame both he and they experienced as a result of his confinement.

PAVLICK's wife, who never stopped believing in his innocence, says that he put the interest of his family ahead of his own when he plead to the charge in Michigan. She described him as a consecrated and self-sacrificing family man and as a community man. (TR 52)

The polygraph examination to which PAVLICK ultimately submitted bears out that he was never in Tallahassee to meet with Merighe, Willis, Love or Peiser; that he did not participate in the fabrication of a story for his clients to tell to government investigators at the debriefing session; that he knew nothing about the fabricated story when he sent the newspaper article about Iggy to Merighe; and that he advised his clients to tell the truth to government investigators at the debriefing session. (TR 40-49) Upon completion of his probationary period, the Governor of the State of Florida restored to PAVLICK his constitutional and civil rights. (TR 94)

SUMMARY OF ARGUMENT

A full hearing was held after complete discovery including a deposition of the respondent.

The referee considered all relevant facts, law and arguments including the testimony of polygraph operator Mr. George Slattery. The referee recommended in part that respondent be suspended for two years and thereafter be automatically reinstated. The respondent would respectfully request this Honorable Court to accept the referee's recommendations.

The respondent will restate in the same form each argument offered by The Florida Bar. The respondent does not thereby accept the validity or correctness of The Florida Bar's argument but does so only for the purpose of continuity in making his response.

ARGUMENT

I. THE REFEREE ERRED IN FAILING TO CONSIDER RESPONDENT'S FELONY CONVICTION AS CONCLUSIVE PROOF OF THE OFFENSE CHARGED.

The above stated argument is repeated in the same form as stated by the Florida Bar.

The repondent would state that the referee did indeed accept and consider the conviction of the repondent and stated so in his report.

> The Complaint against the Respondent, ANDREW PAVLICK, arises as the result of said Respondent entering an "Alford" plea on October 26, 1984 in the United States District Court for the Eastern District of Michigan Southern Division, Case No. 84-20350 to misprision (sic) of a felony in violation of Title 18, United States Code, Section 3 (Accessory After the Fact), as a result of which, he was sentenced to one year in custody to be released as if on parole after the serving of one third of term and a $250.00 fine.

The referee is allowed and indeed required to view the circumstances of mitigation behind the conviction in order to fulfill his function in making appropriate recommendation or punishment.

The Florida Supreme Court stated:

> The important factor is not whether there has been actual adjudication of guilt, but whether the attorney has been given a chance to explain the circumstances surrounding his plea of nolo contendere and otherwise contest the inference that he engaged in illegal conduct.

Florida Bar v.Lancaster 448 So_2 1019 (Fla. 1984)

The respondent entered an "Alford" plea and by doing so

contested and denied to both the trial judge in the underlying matter and to the referee his guilt of any criminal wrongdoing. Respondent further took and passed a polygraph test administered by Mr. George Statlery, the very person used by the United States Attorney's office in South Florida. (TR 40) (Compl. Ex: 1)

The only person to accuse the respondent of criminal wrongdoing was Mr. Louis Mehrige. (TR 79)

Mr. Mehrige refused to be given a polygraph examination. (TR 132)

Respondent's willingness to enter an "Alford" plea to the reduced charge of a misprison of a felony in violation of title 18, USC Sec. 3 (Accessory after the fact) was induced by the concerns of his wife and concerns for his three young daughters ages 8, 5, and 3. By doing so respondent's risk of incarceration was reduced from ten years to 120 days, plus a $250.00 fine.

ARGUMENT

II. THE REFEREE ERRED WHEN HE DENIED THE FLORIDA BAR AN OPPORTUNITY TO PRESENT REBUTTAL TESTIMONY.

The above stated argument is repeated in the same form as stated by the Florida Bar.

The Florida Bar was first advised of this matter by correspondence, dated June 26, 1985 and was thereafter provided with a full and complete recitation of all facts by correspondence dated June 26, 1985 which was further supplemented on July 12, 1985 with attachments. (Compl. Ex 8, 9) The Florida Bar filed its complaint on October 18, 1985.

On October 29, 1985 Chief Justice Boyd referred this matter to Judge Moriarty, as a referee requesting a report in 180 days. On November 4, 1985 the respondent filed a detailed answer to the complaint.

The Florida Bar responding to production request stating they would have no witnesses (TR 151)

A final hearing was held April 23, 1986.

The respondent was continuously available to be deposed and was in fact deposed by the Florida Bar and stated essentially

the same testimony in deposition that he did at the hearing.

Nearing the conclusion of the hearing the referee made inquiry of the Florida Bar if they wished to call any rebuttal witnesses they answered "no" (TR 135 Line 12)

The Florida Bar did request a delay to call a witness or two to elaborate or give a more "complete version" (TR 135,142)

The Florida Bar acknowledged that the testimony they sought to introduce was "not so much at variance" (TR 148) with existing evidence but sought to introduce "things that never came out before" (TR 148)

The Florida Bar did not claim, nor does it claim in its brief, any surprise nor inability to obtain ahead of time whatever testimony it sought to introduce and have it available for this hearing.

There is of course a serious question as to whether the testimony they sought to introduce could even be characterized as "rebuttal."

Judge Moriarty exercising his discretion, in light of the Supreme Court's 180 day requirement to resolve this matter (the hearing took place on the 176 day. (TR 155)) properly denied the Florida Bar's request to continue the hearing. (TR 149)

ARGUMENT

III. THE REFEREE ERRED IN FAILING TO REQUIRE PROOF OF REHABILITATION THROUGH REINSTATEMENT PROCEEDINGS PURSUANT TO ARTICLE XI, RULE 11.10(4), INTEGRATION RULE OF THE FLORIDA BAR.

The above stated argument is repeated in the same form as stated by the Florida Bar.

The referee had before him testimony that the respondent was married for 14 years with three young daughters (TR 50,51) that respondent's wife did not want him to go to trial in Michigan. (TR 52) That respondent put his family's interest ahead of his own. (TR 53) That respondent was active in youth groups. (TR 54) That respondent had no prior ethical complaints (TR 56), no prior malpractice actions (TR 56), no prior criminal convictions. (TR 56) Respondent acted in good faith with the Florida Bar regarding this conviction. (TR 126) Respondent holds no animosity toward anyone. (TR 105) Respondent has voluntarily both before and after this conviction performed voluntary community service for disabled children and students. (TR 92)

Respondent has already been suspended from active practice of law for almost two years with associated hardships to his family, socially and financially.

The referee had substantial unrebutted evidence of rehabilitation before him when he recommended automatic reinstatement following a two year period of suspension.

The Supreme Court has ultimate authority to render judgment in disciplinary proceedings. F.S.A. Const. Art. 5 § 23

The Supreme Court stated:

> The degree of punishment in each case where violations of Canons of Professional Ethics are involved depends entirely upon the factual situation presented by the record in that particular case. Over the years this Court has not found any areas of black and white as to the degree of punishment to be imposed in all cases. Rehabilitation as well as punishment is involved in every case. Such factors call upon the total experience of the Justices of this Court in determining the appropriate judgment in each instance.

<u>The Florida Bar</u> v. <u>Scott</u> 197 So_2 518 At. 520

Article 11, Rule 11.10
Integration Rule of the Florida Bar states:

DISCIPLINE BY SUPREME COURT

The judgments entered, finding members of The Florida Bar guilty of misconduct, shall include <u>one</u> or more of the following disciplinary measures: (Emphasis supplied)

The Supreme Court has authority to select any one or more of the allowable disciplinary measures but is not obligated to select more than one. This court could select suspension, without also requiring as a second item, a reinstatement proceeding.

This argument would appear to be in conflict with Article 11 Rule 11.10 § 4 Integration Rule of the Florida Bar which states:

> . . . A suspension of three months or less shall not require proof of rehabilitation or satisfactory passage of The Florida Bar examination; a suspension of more than three months shall require proof of rehabilitation; . . .

The Respondent suggests there is a potential conflict between the above cited rules contained in Article 11 of the Integration Rules and between this Court's above cited constitutional authority and Rule 11.10 § 4. The Integration Rule of The Florida Bar.

The respondent would assert that this Court should accept the least restrictive interpretation and not deny itself the flexibility of imposing a reinstatement proceeding where appropriate and not imposing a reinstatement proceeding where appropriate.

ARGUMENT

IV. RESPONDENT SHOULD BE DISBARRED BASED UPON HIS CONVICTION OF A FELONY AND THE ABSENCE OF SUBSTANTIAL MITIGATING FACTORS.

The above stated argument is repeated in the same form as stated by The Florida Bar.

PAVLICK has been suspended from the practice of law for almost 2 years as the result of the "automatic suspension" provision of Article XI, Rule 11.07(4), Integration Rule of The Florida Bar.

Nothing in the Integration Rule makes it mandatory for all attorneys who are convicted of a felony to be disbarred. Instead, that policy is a creature of the Board of Governors of The Florida Bar. The Florida Supreme Court, which adopted the Integration Rule, has time and again stated that the question of whether or not to disbar requires case-by-case determination.

Indiscriminate application of the Bar's policy is particularly egregious in this case because it was shown that no one ever reviewed or heard the facts presented at the final hearing at any time before the Bar instituted these proceedings against PAVLICK.

PAVLICK has demonstrated through substantial and compelling evidence of mitigating circumstances that he should not be

disbarred.

The Florida Supreme Court has held that:

> Disbarment is the extreme measure of discipline that can be imposed on any lawyer. It should be resorted to only in cases where the person charged has demonstrated an attitude and a course of conduct that is wholly inconsistent with approved professional standards. To sustain disbarment there must be a showing that the person charged should never be at the bar. It should never be decreed where punishment less severe, such as reprimand, temporary suspension, or fine will accomplish the desired purpose.

(Emphasis supplied)

The Florida Bar v.Moore, 194 So_2 264, 261 (Fla. 1966).

Three criteria for determining the proper disciplinary sanction to be imposed against attorneys in an action brought pursuant to Article XI of the Integration Rules of The Florida Bar have been established. These are:

> First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgement must be severe enough to deter others who might be prone or tempted to become involved in like violations.

The Florida Bar v.Lord, 433 So_2 983, 986 (Fla. 1983).

It is respectfully submitted that upon the authority of

Moore and Lord, the circumstances justifying the disciplinary sanction of disbarment are totally absent from this case.

It is manifest from the facts proven at trial, which the Bar made no effort to rebut, that compelling circumstances exist in this case which mitigate against disbarment. For one thing, PAVLICK has already been sufficiently punished. Moreover, he continues to protest his innocence as evidenced by his successful submission to a polygraph examination, and maintains that he entered the "Alford" plea believing at the time that it was in the interest of his family to put the matter to rest in the manner in which it was done. At no time before his conviction has PAVLICK had any malpractice claims or ethical complaints made against him.

Accordingly, substantial and convincing evidence of mitigating circumstances why PAVLICK should not be disbarred was presented at final hearing.

The principles which govern this case are those announced by the Florida Supreme Court in The Florida Bar v.Carbonaro,464 So2 549 (Fla. 1985). Joseph L. Carbonaro entered a plea of guilty in the United States District Court for the Southern District of Florida to the felony charge of conspiracy to possess with intent to distribute quantities of cocaine. The Court found him guilty of the offense and placed him on probation for four years, withholding imposition of a sentence of confinement.

Thereafter, the Bar filed a formal complaint against Carbonero. A referee was appointed and a hearing was held.

The referee recommended that Carbonaro be found guilty of violating, among other things, Article XI, Rule 11.02(3)(a) and (b), Integration Rule of The Florida Bar. The referee recommended, as a disciplinary sanction, that Carbonaro be suspended for a period of three years.

In determining to recommend suspension rather than disbarment, the referee considered the following factors, among others:

1. The criminal act was an isolated incident in Carbonaro's life.

2. Carbonaro was a young man who had the ability to contribute exceptional legal talent to the community.

3. The criminal acts for which Carbonaro was convicted did not involve the violation of his client's trust.

4. Carbonaro suffered personal hardship, embarrassment, humiliation, publicity and the attendant financial hardshipts which accompany lack of employment opportunities for a suspended lawyer on federal probation.

5. Carbonaro evidenced a genuine commitment to initiate a course of both public service and commitment to work with legal services for the poor and to rehabilitate himself for a return to the practice of law.

6. The referee believed that the stigma of disbarment was a burden on Carbonaro which was not necessary to encourage reformation or rehabilitation and would not result in any greater protection of the public than would a three year suspension.

Upon the Bar's petition to review the referee's recommended discipline, the Florida Supreme Court, expressly discussing the criteria set forth in Moore and Lord, adopted the referee's recommendation stating:

> The Referee below found that the stigma of disbarment would be a burden on the respondent which is not necessary in this case to encourage reformation or rehabilitation, nor would it result in any greater protection of the public than would a three year suspension. We agree. Based upon the evidence and the Referee's findings of mitigating factors and the Respondent's demonstrated potential for rehabilitation, we approve the recommendations of the Referee.

464 So_2 at 551.

Accordingly, it is respectfully submitted that PAVLICK demonstrated through substantial compelling evidence of mitigating circumstances that he should not be disbarred.

Article XI, rule 11.07(4), Integration Rule of The Florida Bar, does not per se apply to PAVLICK. Accordingly, this Court has discretion, as in any other grievance matter, to determine what punishment will accomplish the desired purposes under the circumstances of this case.

While Article XI, Rule of The Florida Bar provides that an attorney's conviction of a felony results in an automatic suspension from the practice of law which remains in effect for three (3) years after the conviction becomes final, it is unclear what happens when the conviction is based on something less than a finding of guilty or even a guilty plea, such as a plea of _nolo contendere_ or an "Alford" plea. The latter was defined by the United States Supreme Court as "a plea containing a protestation of innocence when, as in the instant case, a defendant intelligently concludes that his interests require entry of guilty plea." _North Carolina v.Alford_,400 U.S. 25, 38 (1970).

Research yielded no cases decided by the Florida Supreme Court which dealt with that unique situation presented in this case where an attorney is convicted of a felony based upon his having entered an "Alford" plea.

In a related context, it has been held that the admission of a _nolo contendere_ plea into evidence in a disciplinary proceeding is proper because it is relevant to the attorney's fitness to practice law. _The Florida Bar v.Lancaster_, 448 So_2 1019 (Fla.1984). Review of cases involving an attorney's plea of _nolo contendere_ to criminal charges reveals that the Florida Supreme Court has approved _shorter_ periods of suspension than the three years "mandated" by Article XI,Rule 11.07(4),Integration Rule of The Florida Bar. _See_, _Lancaster_(2-year suspension); _and also see_ _The Florida Bar v.Miller_, 322 So_2 502(Fla.1975)(90-day suspension).

Of course, there is a critical difference between a plea of _nolo contendere_ and an "Alford" plea. "Nolo contendere" means that the defendant does not contest or challenge the matters with which he is charged, while with an "Alford" plea (PAVLICK's, in particular) he clearly does. PAVLICK did not urge the Referee to "go behind the conviction," as the Bar suggests. He merely asked the Referee to appreciate the true nature of his plea, which is consistent with his continuing denial of the underlying facts with which he was charged. It is exactly that which the Florida Supreme Court contemplated when it held that an attorney who has been convicted of a crime may explain the circumstances surrounding the offense and offer testimony in excuse or in mitigation of the disciplinary penalty. _The Florida Bar v.Fussell_, 179 So_2 852(Fla.1965).

This Court will not be departing from any well established principle if it affirms the referee's acommodations of suspension for two years. Even where an attorney has been found guilty of a felony as heinous as conspiracy to import marijuana, the Florida Supreme Court has approved discipline that is less severe than that prescribed by Article XI, Rule 11.07(4), Integration Rule of The Florida Bar. _The Florida Bar v. Pettie_, 424 So_2 734 (Fla.1982)(1 year suspension).

CONCLUSION

Based upon the facts and laws, this Court should (1) reject The Florida Bar's recommendation of disbarment, and (2) accept the Referee's recommendation of a two year suspension and automatic reinstatement.

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that the original and seven copies of the answer Brief of Respondent was mailed to Sid J. White, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32301, and that a true and correct copy was mailed to the following:

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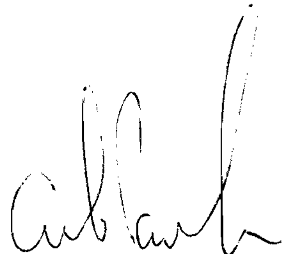

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