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IN THE SUPREME COURT OF FLORIDA

FILED
MAY 20 1967

THE FLORIDA BAR,)
Complainant,)
v.)
DENNIS P. SHEPPARD)
Respondent.)

SUPREME COURT
Deputy Clerk
Supreme Court Case
No. 69,008

ON PETITION FOR REVIEW OF
THE REFEREE'S REPORT IN
A DISCIPLINARY PROCEEDING

INITIAL BRIEF OF COMPLAINANT SUPPORTING
PETITION FOR REVIEW

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INTRODUCTION

In this brief, The Florida Bar, Complainant, will be referred to as either "The Florida Bar" or "The Bar".

Dennis P. Sheppard, Respondent, will be referred to as either "Dennis P. Sheppard," "Mr. Sheppard" or "Respondent."

Abbreviations utilized in this brief are as follows:

"GC-T" refers to transcript of proceedings before Grievance Committee "I" dated April 30, 1986.

"T" refers to Transcript of Proceedings before the referee dated December 5, 1986.

"RR" refers to Report of Referee dated January 20, 1987.

"Memo" refers to Complainants Memorandum concerning Discipline dated December 24, 1986.

STATEMENT OF THE CASE

On May 29, 1985, Respondent was arrested in Dade County, Florida and charged with the Unlawful Possession of Cannabis (GC-T.14). As a result of this arrest, The Florida Bar initiated a disciplinary action against Respondent.

On April 30, 1986, Grievance Committee "I" found probable cause that Respondent violated the Disciplinary Rules of the Code of Professional Responsibility (GC-T.30). A complaint was filed pursuant to article XI of the Integration Rules of The Florida Bar. On July 16, 1986, the Chief Justice of the Supreme Court of Florida appointed Judge Susan Lebow as referee in said case. On September 25, 1986, the matters set forth in Complainant's Request for Admissions were deemed admitted (T. 4-5, 159-160).

On December 5, 1986 a final hearing was held concerning the above-mentioned case at Miami, Florida and the Report of Referee was mailed to this Court on January 20, 1987.

The Referee found Respondent guilty of violation of the Code of Professional Responsibility, Disciplinary Rule 1-102(A)(3), engaging in illegal conduct involving moral turpitude (RR Par. III). The Florida Bar requested that Respondent be suspended for a period of eighteen (18) months with proof of rehabilitation prior to being readmitted (memo). However, the Referee recommended that Respondent be suspended for a period of twelve (12) months with proof of rehabilitation prior to being readmitted (RR. Par. IV)

On April 1, 1987 The Florida Bar mailed a Petition for Review, contesting the Referee's recommendation as to discipline.

STATEMENT OF THE FACTS

On May 29, 1985, Respondent was stopped by a Florida State Trooper in Dade County, Florida and subsequently arrested for possession of marijuana (T.7). The Florida State Trooper found in the car driven by Respondent 298 grams of marijuana, an attache case with approximately \$10,000.00 in cash and a notebook with names and addresses (T. 7,8).

Respondent admitted that he sold marijuana (T.9). Respondent sold such marijuana for \$750.00 per pound and had been doing so for a month (T.9). During the month of May, 1985, Respondent sold \$25,000.00 of marijuana and made a \$3,000.00 profit. (T.13). The reason Respondent gave for selling marijuana was that friends wanted it, Respondent knew people to buy it from, with profit as part of such motive (T. 10-11, 16-17).

Respondent is an alcoholic and has been for over twenty (20) years (T. 12, 16-17, 21-23). Respondent tried to bring his drinking problem under control by smoking marijuana (T. 23,25). Respondent's smoking of marijuana led him into an environment conducive to dealing such marijuana for a price to friends. (T. 26-27).

Respondent presented thirteen (13) witnesses on his behalf (T.49-148). The Bar presented one witness, the arresting officer (GC-T. 9-16).

The Referee found Respondent guilty of violation of the Code of Professional Responsibility, Disciplinary Rule 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude] (RR. Par. III). In fact, Respondent did not contest the factual allegations of the complaint and admitted to these facts. (T. 4, 160).

SUMMARY OF ARGUMENT

The Florida Bar requested the referee to suspend Mr. Sheppard for eighteen (18) months. Accordingly, the Bar considers an eighteen (18) month suspension to be a more appropriate form of discipline than the twelve (12) month suspension, inter alia that was recommended by the Referee. A twelve (12) month suspension is too lenient when considering the serious nature of the violation.

ARGUMENT

AN EIGHTEEN MONTH SUSPENSION WITH PROOF OF REHABILITATION IS MORE APPROPRIATE THAN THE DISCIPLINE RECOMMENDED BY THE REFEREE GIVEN THE SERIOUS NATURE OF THE VIOLATION.

The Referee recommended that Dennis P. Sheppard be given a twelve (12) month suspension and be required to show proof of rehabilitation before being reinstated as a member in good standing in The Florida Bar (RR, Par. IV).

However, this Court is not bound by the Referee's recommendations for discipline. The Florida Bar v. Weaver, 356 So.2d 797, 799 (Fla. 1978), accord, The Florida Bar v. Mueller, 351 So.2d 960, 966 (Fla. 1977). Therefore, this Court has the authority to impose the eighteen (18) month suspension that was requested by the Bar (Memo).

The Florida Bar believes that an eighteen (18) month suspension is more appropriate than a twelve (12) month suspension due to the serious nature of Mr. Sheppard's misconduct. This misconduct involves Mr. Sheppard, who knows he is an officer of the Court and has taken an oath to uphold the law, knowingly and intentionally violating the law by admittedly selling and distributing marijuana.

It is normally the Court's position that an attorney involved in drug trafficking be dealt with harshly. As stated by the Supreme Court in The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985), "illegal drug activities are a major blight on our society nationally, statewide and locally."

Thus the Court warned, "Members of the Bar should be on notice that participation in such activities beyond professional obligations will be dealt with severely."

Following such stated position, the Supreme Court has held as follows on cases involving attorneys and illegal drug activities:

In The Florida Bar v. Kline, 475 So.2d 1237 (Fla. 1985), the Supreme Court disbarred Mr. Klein for having in his possession cannabis in the amount of 2,000 pounds or more, but less than 10,000.

The Supreme Court disbarred an attorney for attempting to act as a drug procurer. The Florida Bar v. Hecker, 475 So.2d 1240, 1243 (Fla. 1985). The court, in discounting any lesser punishments stressed that "respondent deliberately set out to engage in illegal activity for pecuniary gain". Likewise, Mr. Sheppard, in the case at bar, engaged in illegal activity for pecuniary gain (T. 11).

In The Florida Bar v. Price, 478 So.2d 812 (Fla. 1985), The Supreme Court disbarred Mr. Price for participating in a conspiracy to import marijuana.

In The Florida Bar v. Beasley, 351 So.2d 959 (Fla. 1977), The Supreme Court disbarred Mr. Beasley for delivering four pounds of marijuana to a client.

Moreover, the Supreme Court sanctions mere possession of marijuana by an attorney, even where trafficking and pecuniary gain are not involved.

In The Florida Bar v. Schram, 355 So.2d 788 (Fla. 1978), Mr. Schram was suspended for one year with proof of rehabilitation required prior to reinstatement for possession of a felony quantity of marijuana.

Mr. Sheppard not only had in his possession marijuana, an offense disciplined in and of itself with a one year suspension (The Florida Bar v. Schram, supra), but he admitted to trafficking in marijuana, of supplying marijuana to people, for pecuniary gain (T. 12). This is the exact conduct so strongly condemned by the Supreme Court. Such conduct which constitutes a "major blight on our society" The Florida Bar v. Hecker, 475 So.2d 1240, warrants harsh penalties for those attorneys who participate in such activities. Accordingly, a one year suspension, as recommended by the Referee, does not constitute discipline in accord with the Supreme Court's sentiments and sanctioning of such illegal drug activity.

Although it is normally the Court's position that an attorney involved in illegal drug activity be dealt with harshly, the Court will consider alcoholism and substance abuse as a mitigating factor when determining the proper sanction for such an attorney. As in The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), the Supreme Court suspended Mr. Rosen for three years rather than disbarment as requested by The Florida Bar, where the Court found that Mr. Rosen's involvement in illegal drug activities was a result of his own addiction to cocaine.

While alcoholism or drug addiction may be a mitigating factor, it does not mean that the violator should be excused

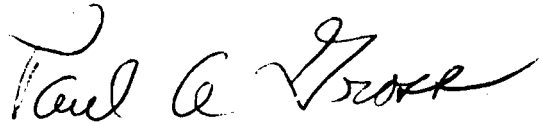
or disciplined with a mere "slap on the wrist." In The Florida Bar v. Knowles, 500 So.2d 140 (Fla. 1986) even though alcoholism played a role in Mr. Knowles misconduct, the serious nature of that misconduct resulted in Mr. Knowles being disbarred. Likewise, as stated above, in The Florida Bar v. Rosen, 495 So.2d 180 (Fla. 1986), Mr. Rosen was suspended for three years because of his trafficking in cocaine despite the mitigating circumstances concerning his own drug addiction. Although the mitigating circumstances saved Mr. Rosen from disbarment, it did not prevent him from receiving a three year suspension.

In the case at hand, the Referee apparently considered Mr. Sheppard's alcoholism a mitigating factor and recommended a suspension for one year. While The Florida Bar also considered Mr. Sheppard's alcoholism a mitigating factor in that it did not seek disbarment, it nevertheless believes a suspension of eighteen months is more appropriate, considering the serious nature of the violation.

CONCLUSION

Based upon the foregoing reasons and authorities, The Florida Bar submits that an eighteen (18) month suspension is more appropriate than the twelve (12) month suspension that was recommended by the Referee. Mr. Sheppard admitted to not only the possession of marijuana, but also that he had been trafficking marijuana and making a profit off of such sales. While Mr. Sheppard's own alcohol and substance abuse may be considered in determining the appropriate discipline, the more appropriate discipline would be suspension for eighteen (18) months with proof of rehabilitation required before reinstatement and payment of the costs of these proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Complainant's Brief was mailed to Sid J. White, Clerk of the Supreme Court, Supreme Court Building, Tallahassee, Florida 32301 and a copy of the foregoing was mailed to Edward A. Carhart, Counsel for Respondent, 717 Ponce de Leon Boulevard, Suite 331, Coral Gables, Florida 33134 this 28 day of April, 1987.


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