IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
AUG 23 1990
CLERK, SUPREME COURT
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Deputy Clerk

THE FLORIDA BAR,

Complainant,

vs.

DANIEL DWIGHT MOODY,

Respondent.

Case No. 74,820

TFB File No. 90-00421-08

COMPLAINANT'S REPLY BRIEF

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ARGUMENT

The Florida Bar in its initial brief has outlined the law in Florida as it pertains to the requirements that an individual wishing to practice law in this state must possess his or her civil rights. The Respondent has in his brief explained the injustice he feels will occur if precedent is followed in his particular case. In support of his position Respondent argues that this Court should abandon its requirement that he have his civil rights restored before being reinstated. This is based upon the referee's recommendation, and Respondent's character and ability as a lawyer and upon the notion that by not reinstating Respondent this Court is allowing legislative and executive control over the duration of suspensions imposed by The Supreme Court.

As was pointed out in Respondent's brief, The Florida Bar does not argue that Respondent is of bad character or is an incompetent lawyer. What The Florida Bar does argue is that Respondent must have his civil rights restored before he is allowed to return to the practice of law following his suspension. The Court has stated quite clearly that the "restoration of civil rights is a prerequisite for reinstatement of a suspended attorney who has been convicted of a felony." The Florida Bar v. Pahules, 382 So.2d 650,651 (Fla. 1980).

Respondent speaks of the requirement that he possess his civil rights in terms of a sanction which if allowed produces a draconian effect upon him. This argument however distorts the basis for the

requirement that he possess his civil rights before practicing law. The discipline imposed by the Referee in this case goes to Respondent's conviction of two felonies which resulted in the death of another human being. The requirement that Respondent possess his civil rights goes to a fundamental prerequisite to practice law in this state. The need for an individual to have his civil rights was summed up quite clearly in the Referee's recommendation to the Court in the case of The Florida Bar v. Clark, 359 So.2d 863 (Fla. 1978) when he said "that it would be an anomalous situation to have an attorney entitled to practice before judges for whom he is not qualified to vote and juries upon which he is not qualified to sit." at 864.

Respondent's argument that the executive branch of government has control over the reinstatement of disciplined lawyers in the state is not completely accurate. Respondent's civil rights can be restored when he serves the sentence imposed upon him in conjunction with his criminal conviction. The Governor can restore Respondent's civil rights sooner than would occur if Respondent's sentence were to run its course but there is no requirement that he do so.

For justification of his position on executive control of disciplinary cases Respondent relies on the dissenting opinion of Justice England in the case, In re: Florida Board of Bar Examiners, 341 So.2d 503, (Fla. 1976). Four years after this decision Justice England joined the majority in the case of The Florida Bar v. Pahules, 382 So.2d 650 (Fla. 1980) which relied in

part on another case in which Justice England dissented, The Florida Bar v. Clark, 359 So.2d 863 (Fla. 1978) holding that:

> "We agree with the referee that rehabilitation will not be accomplished until he has successfully completed his probation. In addition, the petitioner does not allege, nor does the evidence show, that Mr. Pahules has had his civil right restored. Restoration of civil rights is a prerequisite for reinstatement of a suspended attorney who has been convicted of a felony. The Florida Bar v. Clark, 359 So.2d 863 (Fla. 1978)."

Respondent lost his civil rights in a criminal proceedings presided over by a member of the judiciary. He was sentenced according to the law by way of a plea and now asserts that the Governor of this state has control over his civil rights. It was not the Governor who committed the criminal act(s) for which he was convicted and it was not the Governor who entered the plea in Respondent's case which took away his civil rights. If the Governor does nothing and does not become involved with Respondent's case then the restoration of Respondent's civil rights will depend solely on him serving his sentence. This most certainly does not involve the Governor unless he chooses to become involved.

Respondent next argues that the difference between being adjudicated and not being adjudicated guilty should not be determinative of a sanction imposed in a disciplinary matter. This argument again clearly draws the line between a sanction imposed in a disciplinary matter and a prerequisite to the practice of law, that being an individual's civil rights. The absence of the

prerequisite of one's civil rights, following a felony conviction precludes the individual from practicing law until they are restored. See: The Florida Bar v. Clark, 359 So.2d 863,864 (Fla. 1978). The requirement that one meet the prerequisite in order to practice law is not a sanction but instead is a fundamental credential one must have to be allowed to practice law in Florida.

Under our system of government the legislature creates the laws under which we as citizen live. The legislature does not impose attorney disciplinary sanctions and cannot control their duration. The legislature can pass a law which takes away one's civil rights if violated however, this deprivation of rights goes to a lawyer's basic credentials as a citizen of this state and the fact he is deprived from practicing law flows from his lack of said rights. See: In re: Florida Board of Bar Examiners, 350 So.2d 1072, 1073 (Fla. 1977).

Respondent's argument based upon equity speaks of the me generation and how this prerequisite of having ones civil rights effects him. Respondent however ignores the requirement as it pertains to the remainder of The Florida Bar, those who possess their civil rights and on whose behalf The Florida Bar speaks. Surely it is inequitable to require the entire Florida Bar to possess their civil rights and not Respondent.

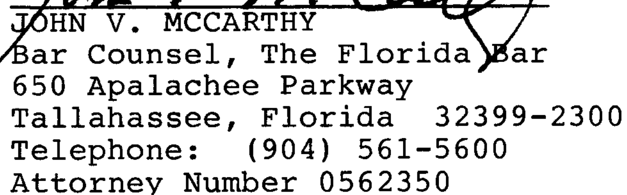
Respondent cites no law, except one dissenting opinion which supports the proposition that he does not need his civil rights to

resume the practice of law. Respondent's arguments based on case law describing discipline in similar cases misses the point. The Florida Bar is not arguing discipline but rather that Respondent possess his civil rights before being allowed to resume the practice of law. This is not a disciplinary matter but is a matter of having an individual having to possess the minimum credentials to practice law in Florida.

CONCLUSION

The legislature did not take Respondent's civil rights. He lost them by the conviction of a felony. The lack of Respondent's civil rights should preclude him from being reinstated to the practice until such time as they are restored. The fact that Respondent does not possess his civil rights means he does not have one of the prerequisites to be a practicing lawyer in Florida and therefore the Referee's recommendation regarding Respondent's reinstatement without his civil rights should be set aside and that Respondent be required, as are all members of The Florida Bar, to have his civil rights restored before being reinstated to the practice of law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Review regarding TFB File No. 90-00421-08B has been forwarded by certified mail #P 978 505 181 return receipt requested, to JOHN A. WEISS, Counsel for Respondent, at his record Bar address of Post Office Box 1167, Tallahassee, Florida 32302-1167, on this 17th day of Aug. 1990.

JOHN V. MCCARTHY
Bar Counsel

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John T. Berry, Staff Counsel, c/o John A. Boggs,
Director of Lawyer Regulation