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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

vs. CASE NO. 77,961

SAM E. BARKET,

Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Appellant was convicted by a jury in the Circuit Court, Fourth Judicial Circuit, in Jacksonville, Duval County, Florida, in March, 1991 of the charge of sexual battery under Florida Statutes 794.011 (1)(b) and 800.04. Mr. Barket appealed the conviction and the First District Court of Appeal affirmed same.

By this Honorable Court's order of May 8, 1991, Mr. Barket was suspended from the practice of law effective June 7, 1991, giving him thirty (30) days to close his law firm.

The Honorable James L. Tomlinson, Circuit Judge, Eighth Judicial Circuit, in Gainesville, Alachua County, Florida, was appointed referee and on December 10, 1992, he conducted a hearing on the complaint filed by the Florida Bar. The Honorable Judge Tomlinson developed cancer of the throat and was undergoing treatment for same and his report was delayed until August 31, 1993. The Report of Referee, in pertinent part, recommended to this Honorable Court that Mr. Barket be disbarred.

STATEMENT OF THE FACTS

On August 22, 1989, Mr. Barket was arrested by officers of the Jacksonville Sheriff's Office at the home of Mr. C. Lee Daniel, a 50-year-old white male. Mr. Daniel was alleged to have participated in bringing a 15-year-old female, Ms. S[redacted] W[redacted] into the state of Florida for the purposes of sexual intercourse and prostitution. Mr. Barket was arrested without a warrant on the accusation of Ms. W[redacted] that Mr. Barket had sexual intercourse with her some time during early June, 1989. Mr. Barket had previously been convicted of a felony-receiving stolen property--in August, 1975.

Mr. Barket testified that he did not know the alleged victim at the time of the alleged offense. Further, no proof was presented in the lower court trial that Mr. Barket knew, or should have known, that Ms. W[redacted] was only 15-years-old.

SUMMARY OF THE ARGUMENT

Should Mr. Barket be disbarred because of his felony conviction of sexual battery on a 15-year-old female?

Mr. Barket's disbarment did not involve the practice of law nor his ability to practice law and does not adversely reflect his honesty, trustworthiness or fitness to practice law.

Since Mr. Barket was charged with sexual battery on a 15-year-old female in August, 1989, he has exhibited great remorse. Following his conviction in May, 1991, he was sentenced to three years in prison. He appealed the sentence to the lower court in October, 1992, and the Honorable Lawrence D. Fay reduced such sentence to one year and one day in the state prison. At the sentencing, the judge noted that Mr. Barket appeared very remorseful for his alleged crime. The judge also noted the many friends, family members and former clients sitting in the courtroom that day in support of Mr. Barket.

Mr. Barket was released from prison in April, 1993, and commenced probation which included psychosexual counseling. He has satisfactorily performed all conditions of such probation.

Mr. Barket will be 63-years-old this month and he is a broken, depressed man without a future. He has now been without a job since June, 1991; he has been subjected to the embarrassment of having his family and friends know he was convicted of a sexual

offense; he has served time in prison; and now, he faces permanent disbarment.

Mr. Barket has suffered enough. Disbarment is unwarranted and inconsistent with the punishment of other lawyers who have committed similar offenses.

ARGUMENT

Should Mr. Barket be disbarred because of his felony conviction of sexual battery on a 15-year-old female?

The commission of a felony does not in itself mandate disbarment. The Florida Bar v. Pavlick, 504 So.2d 1231, 1235 (Fla. 1987). See also The Florida Bar v. John, 509 So.2d 285 (Fla. 1987); The Florida Bar v. Chosid, 500 So.2d 150 (Fla. 1987); The Florida Bar v. Carbonaro, 464 So.2d 549 (Fla. 1985). The finding of guilt on a charge of sexual misconduct does not mandate disbarment either. The Florida Bar v. Turner, 369 So.2d 581 (Fla. 1979).

In the instant case, Mr. Barket's conduct in no way involved the practice of law or breach of professional responsibility to clients or litigants. The Florida Bar v. Louis C. Corbin, 540 So.2d 105 (Fla. 1989). In Corbin, Respondent, while a circuit court judge in Jacksonville, Duval County, Florida, pled nolo contendere to the charge of attempted sexual activity with a child twelve (12) years of age or older, but less than eighteen (18) years of age, over whom he had familial or custodial authority.

The Corbin referee recommended that Mr. Corbin be found guilty of violating Rule 4-8(b) of the Rules Regulating the Florida Bar and neither party contested such recommendation. The only issue that remained was whether a three-year suspension was appropriate

and both parties agreed that the commission of a felony does not in itself mandate disbarment.

The Florida Bar asserted that only disbarment was appropriate for a felony conviction involving a crime of sexual misconduct by a sitting circuit court judge, but because of mitigating circumstances, the referee concluded that Mr. Corbin "has been and is being punished" and recommended a three-year suspension.

In summary, the punishments of a three-year suspension for Mr. Corbin who had full knowledge of his victims' minority and disbarment for Mr. Barket who reasonably believed the alleged victim was more than 18 years of age are grossly inconsistent. Also, Mr. Corbin was a judge, a high profile public servant, while Mr. Barket was only a lawyer--one among thousands--whom the great majority of the local population had never heard of. Further, there are just as many mitigating circumstances in Mr. Barket's case as Mr. Corbin's and as the referee in Corbin noted, Mr. Barket "has been and is being punished."

CONCLUSION

Respondent's counsel submits that disbarment of Mr. Barket is unwarranted and inconsistent with the punishment of attorneys found guilty of similar offenses. Further, the fact that Mr. Barket was convicted of a felony in 1961--more than 30 years ago--should not be a mitigating factor. Mr. Barket is almost 63-years-old, in failing health, has no job, has served time in prison, has attended psychosexual counseling, has been fined, and has been suspended from the practice of law for 2½ years--he has been punished enough.

REQUEST FOR ORAL ARGUMENT

Respondent Barket requests oral argument in this cause.

Respectfully submitted,

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Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and copies of the foregoing has been furnished, by U.S. Mail, to the Clerk of the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1925; with copies to **The Honorable James L. Tomlinson**, Circuit Judge, Alachua County Courthouse, Gainesville, Florida 32601; and **James N. Watson, Jr., Esq.**, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 3rd day of December, 1993.

Attorney