

SUPREME COURT OF FLORIDA

No. 84,320

FLORIDA BOARD OF BAR EXAMINERS RE: J.A.S.

[July 6, 1995]

OPINION:

PER CURIAM.

J.A.S. asks this Court to review the recommendation of the Florida Board of Bar Examiners that he not be admitted to The Florida Bar. We have jurisdiction pursuant to article V, section 15 of the Florida Constitution.

Following a formal hearing, the Board found the following specifications to be proven:¹ 1) J.A.S. "engaged in a continuing pattern of criminal, illegal or improper conduct," as evidenced by a conviction for disorderly conduct in 1976, an arrest for simple assault in 1980 that was subsequently dismissed, a conviction for resisting arrest in 1983, and a conviction for loitering with the intent to use a controlled substance (heroin); 2) J.A.S. was dismissed from the police force based upon the heroin conviction; 3) In response to the Board's request for information, J.A.S. falsely stated that he did not have an alcohol problem; 4) J.A.S. gave responses that were false, misleading, or lacking in candor on several documents and applications, including his job application with the police department, his New Jersey driver's license application, an application to purchase a handgun, and his application for admission to law school; and 5) J.A.S. exhibited financial irresponsibility by defaulting on a student loan, which he subsequently repaid.

¹The Board originally prepared seven specifications, including several with numerous subparts. After the formal hearing, the Board determined that two specifications and five subparts of the specifications were not proven.

The Board found the following evidence of J.A.S.'s rehabilitation from his prior misconduct: he is active in Narcotics Anonymous and serves as a help line volunteer; he is a volunteer member of the guardian ad litem program; he volunteered his services as a carpenter after Hurricane Andrew struck Miami and also volunteered with the Dade County Bar Association; and he has "replaced his former anger with acceptance and now tries do things for others." Despite this evidence, the Board found that J.A.S. did not prove that "he has rehabilitated himself from his inability to tell the truth," as evidenced by inconsistencies in his testimony at the investigative and formal hearings.

The Board determined that the specification regarding financial irresponsibility, while proven, was not disqualifying. However, the Board found the other proven specifications to be individually and collectively disqualifying because they demonstrated J.A.S.'s lack of honesty, truthfulness, and candor.

J.A.S. asks this Court to reject the Board's recommendation. He argues that the record fails to establish recent, material conduct that impugns his moral character and fitness for admission. J.A.S. argues that, to the contrary, the record contains overwhelming evidence of his current good moral character.

While the proven specifications do reveal a pattern of misconduct by J.A.S., we note that none of the incidents are recent. We also find that the misconduct at issue stemmed from J.A.S.'s addiction problem, and that all of the incidents preceded the date when J.A.S. sought professional help three and a half years ago. The record reveals that J.A.S. has attended approximately eighty weekly meetings of Caduceus, a professional peer support group, since the summer of 1992. He signed a contract with Florida Lawyers Assistance, Inc. (FLA) on August 6, 1992, that required him to attend Alcoholics Anonymous/Narcotics Anonymous meetings, to seek outside psychological help, and to submit to monthly random drug tests. According to his FLA monitor, J.A.S. has exceeded the bare requirements of his contract and has also volunteered his services to Narcotics Anonymous. The results of the random drug tests, beginning in September 1992, have all been negative. J.A.S. was discharged successfully after five months of individual psychotherapy. He has abstained from drug use since January 1988 and from alcohol since January 1, 1992. The directors of FLA and Caduceus both testified that J.A.S. has a solid recovery program. J.A.S.'s admission to the Bar was endorsed by both of these witnesses, as well as his FLA monitor and private therapist. This record, as well as J.A.S.'s volunteer service to the community, adequately evidences his rehabilitation.

However, the Board states that J.A.S. "has not proven that he has rehabilitated himself from his inability to tell the truth," based upon inconsistencies in his testimony at the investigative and formal hearings. The Board points to only one discrepancy, and our review of the record does not reveal any others. This discrepancy is not significant and does not support the Board's conclusion that J.A.S. should not be admitted to the Bar. Thus, we approve J.A.S.'s petition for admission to the Bar based upon the rehabilitation he has demonstrated.

However, based upon the recommendations of the witnesses who testified before the Board and the nature of J.A.S.'s problems, we find that J.A.S. should be conditionally admitted to the Bar. See Fla. Bar Admiss. R., art. III, § 3(c), (f)(3). Accordingly, we admit J.A.S. to the Bar

conditioned upon his continued participation in the FLA program during the next three years.

It is so ordered.

OVERTON, SHAW, KOGAN and ANSTEAD, JJ., concur.

HARDING, J., concurs with an opinion, in which OVERTON, KOGAN and ANSTEAD, JJ., concur.

GRIMES, C.J., dissents with an opinion, in which WELLS, J., concurs.

WELLS, J., dissents with an opinion, in which GRIMES, C.J., concurs.

CONCURBY: HARDING

CONCUR: HARDING, J., concurring.

I write separately to address the issue of breach of public trust raised in the dissenting opinions. While I do not condone J.A.S.'s former narcotics use, I note that there was no evidence that J.A.S. used his position as a police officer to obtain narcotics. He was a police officer who had an addiction problem and was dismissed from the police force because of that addiction. He subsequently sought professional help for his addiction, has not used narcotics since 1988, and has abstained from alcohol since January 1992.

The dissenting opinions find J.A.S.'s "violation of the public trust" to be the dispositive issue in their determination that he not be admitted to the Bar. In fact, the Board did not base its recommendation of nonadmission on a breach of public trust. Although the Board found that J.A.S. "presented some proof of rehabilitation from some of his prior misconduct, he has not proven that he has rehabilitated himself from his inability to tell the truth." The Board cites one inconsistency in J.A.S.'s testimony at the investigative and formal hearings as evidence of his lack of rehabilitation from an inability to tell the truth. In the investigative hearing, J.A.S. stated that he had arrested individuals for narcotics possession from "time to time." At the formal hearing, J.A.S. stated that he did not "recall ever arresting anybody for narcotics other than maybe this one incident. I was a patrol officer. We had narcotics officers. The only time I would come across narcotics is, you know, in a motor vehicle stop if I did."

I agree with the majority that this minor testimonial discrepancy does not evidence a lack of rehabilitation in J.A.S.'s ability to tell the truth. The investigative hearing testimony cited by the Board was in the context of an inquiry about how J.A.S. felt about enforcing the law against others when he was breaking it himself by using narcotics.

As this Court has stated previously, "the nature and seriousness of the offense are to be weighed against the evidence of rehabilitation." Florida Bd. of Bar Examiners re D.M.J., 586 So. 2d 1049, 1050 (Fla. 1991). In D.M.J., we found that the evidence of good character presented by the petitioner was sufficient to demonstrate that he met the standards of conduct and fitness required for admission to the Bar, even though the petitioner had participated in a conspiracy to

import drugs. Id. at 1050-51.

In this case, even the Board recognized that J.A.S. presented "proof of rehabilitation from some of his prior misconduct." While we are required to and do give the Board's findings great weight, I find that J.A.S. has presented the same type of overwhelming evidence of rehabilitation that this Court found dispositive in D.M.J. See majority op. at 2 & 3-4. Moreover, J.A.S.'s admission to the Bar is conditioned upon his continued participation in the FLA program for the next three years. When that conditional period is successfully completed, J.A.S. will have abstained from alcohol for six years and drugs for ten years.

OVERTON, KOGAN and ANSTEAD, JJ., concur.

DISSENTBY: GRIMES; WELLS

DISSENT: GRIMES, C.J., dissenting.

J.A.S. committed a serious breach of public trust as a police officer, and I cannot say that the Board abused its discretion in recommending against his admission.

WELLS, J., concurs. WELLS, J., dissenting.

I join in the dissent of Chief Justice Grimes because I believe that there is competent and substantial evidence supporting the findings of fact by the Board of Bar Examiners and that those findings in the aggregate are sufficient to justify nonadmission to The Florida Bar. This is the appropriate test for our review. Florida Board of Bar Examiners re R.B.R., 609 So. 2d 1302 (Fla. 1992).

As the majority states, J.A.S.'s misconduct which resulted in his suspension as a police officer may have stemmed from his addiction problem, and that incident and others specified by the Board are not "recent." However, violation of the public trust as a police officer by engaging in what J.A.S. admitted was criminal conduct leading to being formally dismissed from the police department is so serious for a person who seeks membership in The Bar that I cannot agree with rejecting the Board's recommendation. Moreover, his misconduct was not an isolated incident, and the Board was correct in giving aggregate weight to all of the specifications found to be proven. It is the Board that has had J.A.S. before it in person and has that valuable basis upon which to judge his credibility and his rehabilitation. Since the Board, based upon a thorough investigation and an in-the-flesh hearing, has not found that J.A.S. has overcome the substantial obstacle which he created for himself through past misconduct, I do not believe we have a sound basis to substitute our judgment for the Board's judgment that J.A.S. has failed to demonstrate at this time that he is worthy of the trust of the public as a lawyer in our state.

GRIMES, C.J., concurs.

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for Petitioner.

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for Respondent.