

Grievance Administrator,
State of Michigan
Attorney Grievance Commission

Petitioner/Appellant,

v

Wesley J Roberts, P 19510

Respondent/Appellee.

Case No. 93-144-JC

Decided: March 29, 1994

MAJORITY BOARD OPINION

A Judgment of Conviction was filed in this case by the Grievance Administrator on July 26, 1993 showing that the respondent, Wesley J Roberts, was found guilty by a jury on April 14, 1993 of the crimes of uttering and publishing a false will, conspiracy to commit the crime of uttering and publishing a forged will, conspiracy to commit the crime of perjury and perjury. The respondent was subsequently sentenced to one year in the Wayne County Jail, with all but thirty days of that jail time suspended if he successfully completes five years probation and 104 days of community service.

In accordance with MCR 9.120, the respondent's felony convictions resulted in the automatic interim suspension of his license to practice law effective April 14, 1993 and the respondent was ordered to show cause to a hearing panel why a final order of discipline should not be entered.

On November 19, 1993, Tri-County Hearing Panel #105 entered an order suspending the respondent's license to practice law for a period of four years. The Grievance Administrator filed a Petition for Review on the grounds that the nature of the criminal conduct in this case warrants the revocation of the respondent's license. We agree.

In addition to a certified copy of the respondent's conviction, the documentary evidence offered to the panel consists only of a transcript of the sentencing hearing before Judge Denise Page Hood on June 16, 1993 and a copy of the Board's order of January 26, 1993 in Matter of Wesley J Roberts, 91-107-GA. In that case, the Board affirmed a hearing panel finding that the respondent had improperly withdrawn legal fees from an estate

without court authority and increased discipline from a reprimand to a suspension of thirty days. (Leave to appeal by the Grievance

Administrator was denied by the Supreme Court in an order dated June 25, 1993).

The hearing panel ruled that because the criminal conviction was conclusively established, the Administrator's counsel need not summarize the facts which resulted in that conviction. Consequently, the record before us discloses only that the respondent was convicted of the four counts of felonious criminal conduct recited above, that his prior discipline was offered by the Grievance Administrator as an aggravating factor and that the respondent requested that the hearing panel consider the mitigating effect of his thirty-eight years of otherwise unblemished practice and his voluntary activities with the bar and various charitable institutions.

Our consideration of this record is guided to a significant extent by the Supreme Court's opinion in Matter of Grimes, 414 Mich 483; 326 NW2d 380 (1982). In that case, the Court found that the 120-day suspension ordered by the Attorney Discipline Board was inappropriate in light of the respondent's two felony convictions and his advice to a client to lie to investigators in connection with that tax fraud case. The Court ordered that respondent Grimes should be disbarred, emphasizing that while the felonious nature of Grimes' conviction would have been sufficient for suspension of his license, the record in that case established that Grimes was guilty of "illegal conduct involving moral turpitude" and "conduct involving dishonesty, fraud, deceit or misrepresentation". Under the circumstances of that case, the Court observed, "neither Grimes legal background nor his community accomplishments obliterate our responsibility to impose the discipline his violations warrant". Grimes 326 NW2d 380 at 385.

While the Court acknowledged in Grimes that attorney misconduct cases are not necessarily comparable but beyond a limited and superficial extent and must generally stand on their own facts, the record in this case presents few, if any "facts" which would warrant consideration of discipline less than revocation.¹

The respondent was convicted by a jury of the crimes of uttering and publishing a false will, perjury and conspiracy to commit those crimes. This respondent has been found guilty of illegal conduct involving moral turpitude. His conduct involved dishonesty, fraud, deceit or misrepresentation and occurred while he was providing services as an attorney. In the absence of any evidence suggesting that the respondent's conduct may be viewed as

¹ It should be noted that it was the respondent who interposed an objection to the Grievance Administrator's attempt to provide a factual background to the conviction in an opening statement. (Tr. pp 6-7)

anything other than the clearest breach of his ethical obligations, disbarment is warranted.

Board Members C Beth DunCombe, Elaine Fieldman, Barbara B Gattorn, Linda S Hotchkiss, M.D. and Miles A Hurwitz concur.

DISSENTING OPINION

Board Member John F Burns

I would increase discipline in this case to a suspension of five years. I agree that there is nothing in the record which tends to ameliorate the evidence that the respondent has violated his fundamental obligations to the public, the courts and the legal profession. However, I cannot concur in the decision to revoke the respondent's license because it does not appear to me that there is currently a rule which sets forth clear standards for the consideration of a petition for reinstatement following revocation.

DISSENTING OPINION

Board Members Marie Farrell-Donaldson and Albert L Holtz

We would affirm the discipline imposed by the hearing panel. We do not find a basis in the record to warrant the substitution of our judgment for that of the hearing panel.