Grievance Administrator,
Petitioner/Appellant,
v
Wendell N. Davis, Jr., P-27470,
Respondent/Appellee.

ADB 8-88; 39-88

Decided: January 30, 1989

BOARD OPINION

The respondent was convicted of the felony of possession of less than fifty grams of cocaine. In a matter consolidated for hearing, the panel found that the respondent failed to keep adequate records regarding his receipt and disbursement of funds belonging to a mentally ill client. The hearing panel imposed a suspension of three years and one day for the conviction and a concurrent suspension of six months based upon the failure to maintain records. The Grievance Administrator has filed a petition for review seeking an increase in that discipline. Upon consideration of the whole record, the concurrent suspensions of three years and one day and six months are affirmed.

On November 13, 1987, the respondent appeared in the 14th Circuit Court in Muskegon as the result of his conviction of the felony of possession of less than fifty grams of cocaine, in violation of MCLA 333.7403(2)(a)(iv). He was subsequently sentenced to imprisonment for a period of not less than two years, eight months and not greater than four years. In accordance with MCR 9.120, the respondent's license to practice law in Michigan was automatically suspended on the date of his conviction, and he was ordered to appear before a hearing panel in Grand Rapids to show cause why a final order of discipline should not be entered. At that hearing, the respondent testified that his conviction was the result of cocaine use which had started in 1986. He acknowledged to the panel that he knew that he was engaging in an illegal act but he mistakenly thought that he could simply use cocaine to relieve the stress associated with his professional and personal obligations.

Respondent was convicted of a felony. Such convictions have in the past resulted in suspensions generally ranging from three years to disbarment. Although the three year and one day suspension imposed by the panel in this case falls within that range, we are urged by the Grievance Administrator to revoke respondent's license in accordance with the Michigan Supreme Court's declaration that disbarment is generally appropriate when an attorney has been convicted of a crime of moral turpitude. In the Matter of Grimes, 414 Mich 483 (1982). In fact, we are invited by the Grievance Administrator to draw a close analogy between the facts in this case and those in Grimes.

In one of the few opinions issued by the Court since 1978 in discipline matters, the Supreme Court determined that a suspension was inappropriate discipline when an attorney was convicted of willful tax evasion aggravated by subornation of perjury. The Court noted that Grimes had engaged in "illegal conduct involving moral turpitude." The Court further explained that "moral turpitude as a ground for the discipline of an attorney involves fraud, deceit and intentional dishonesty for the purposes of personal gain." Grimes, 414 Mich at 492, citing 7 CJS, Attorney and Client, Section 67, page 958.

While we must emphatically state that we do not mean to minimize the serious nature of a conviction for the possession of a controlled substance, we cannot accept the Grievance Administrator's suggestion that the respondent's illegal conduct must necessarily result in disbarment.

In one of the first cases considered by the Attorney Discipline Board involving a drug related offense, the Board affirmed a suspension of six months for an attorney convicted of one count each of delivery of heroin and cocaine. (Matter of Ronald R. Kubik, 36740-A.) In that case, substantial evidence was presented on the respondent's behalf regarding his addiction and his apparent rehabilitation.

Similarly, courts in other jurisdictions have viewed drug convictions as offenses which may belong to a distinct category of illegal conduct. In Florida Bar v Rosin, 495 S2d 180 (1986), the Florida Supreme Court rejected a request for the disbarment of an attorney convicted on federal felony charges of possessing cocaine with intent to distribute. The Court noted that the cocaine was for the attorney's own use. Pointing to the attorney's apparent recovery, the Court suggested that disbarment should be imposed "only in those rare cases where rehabilitation is highly improbable." The respondent in that case was suspended for three years. in Matter of Kinnear, 522 AT2d 414 (1987), the New Jersey Supreme Court suspended an attorney for one year for a conviction of distribution of cocaine where the conviction was unrelated to the respondent's practice of law and the respondent himself was the primary user of the drugs.

Clearly, the most troubling aspect in the instant matter is this respondent's prior discipline for a drug related conviction. In April, 1984, respondent Davis was convicted in Muskegon of the misdemeanor of possession of marijuana and was sentenced to forty-five days in the county jail with finds and costs of $1200. A hearing panel in Muskegon issued an order of reprimand effective June 13, 1985. During those proceedings, the respondent expressed his remorse to the panel and told them:

> "I guess I have matured quite a bit. I don't put myself in any situation that might make me susceptible to anything that's illegal or

> unethical, and I am more dedicated to my practice and my family."

Based upon his testimony in this case, it appears that the respondent's self-discipline kept him away from drugs only slightly more than one year after his reprimand for the possession of marijuana. Nevertheless, the hearing panel below was aware of the prior conviction and had an ample opportunity to make its own assessment of the respondent's sincerity. Based upon a record which included the respondent's direct testimony, the panel determined that a three year and one day suspension was appropriate in this case. Under the circumstances, we are not prepared to say that the suspension imposed was clearly insufficient. We must therefore refrain from substituting our own judgment in the matter of discipline for that of the panel where the discipline is within the range consistent with the primary goals of these proceedings--the protection of the courts, the public and the legal profession.

The Grievance Administrator has raised a further objection to the panel's decision to impose a six-month suspension in a consolidated matter but impose that suspension concurrent with the longer suspension resulting from the drug conviction. We again decline to disturb the disciplinary result fashioned by the panel. It is apparent that the hearing panel intended to declare to the respondent, the public and the legal profession that a six-month suspension is an appropriate sanction when an attorney fails to render appropriate accountings for client funds. We must disagree with the Administrator's argument that a concurrent suspension serves no "purpose" when the combined suspension is otherwise appropriate under the circumstances.

Remona A. Green, Hanley M. Gurwin, Robert S. Harrison, Patrick J. Keating and Theodore P. Zegouras.

Dissent

Martin M. Doctoroff

I respectfully dissent. I would modify the discipline imposed by the hearing panel by vacating the concurrent suspensions and revoking the respondent's license to practice law.

Following his conviction for the possession of marijuana in 1984, the respondent expressed his remorse and proclaimed his resolve to conduct himself in a manner consistent with his obligations as an attorney and officer of the court. His request for lenience and compassion was answered by an order of reprimand. If Mr. Davis had come before us with an unblemished record, it might be appropriate to affirm the three year and one day suspension imposed by the panel. This respondent, however, has demonstrated that he is simply unable to conduct himself in accordance with the very laws of this state which he has taken an oath to uphold. Any discipline less than revocation in this case is not consistent with the admonition from the Supreme Court that

a license to practice law in this state is reserved for those individuals who may be proclaimed as fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counsellor and as an officer of the court.