

Grievance Administrator,
Petitioner/Appellee,
v
James Bearinger, P-10588,
Respondent/Appellant.

ADB 36-88

Decided: January 30, 1989

BOARD OPINION

Respondent James Bearinger seeks modification of an Order of Revocation imposed by the Wexford County Hearing Panel following its finding that the respondent was convicted of the felony of possession of less than fifty grams of cocaine. The Board vacates the Order of Revocation and enters an order suspending the respondent's license to practice law for a period of four years.

The respondent offered a plea of guilty in the Manistee County Circuit Court to the crime of possession of less than fifty grams of cocaine in violation of MCLA 333.7403(2)(a)(iv). On January 19, 1988, he was sentenced by the court to spend 210 days in jail. In accordance with the provisions of MCR 9.120, the respondent's license to practice law was automatically suspended upon conviction and he was ordered to show cause why a final order of discipline should not be entered. The respondent presented testimony at a hearing before the Wexford County Hearing Panel on May 4, 1988. The only issue presented to the Board is whether or not the panel's order of revocation filed on June 14, 1988 should be affirmed.

It would be pointless to pretend that the legal profession is immune from the problem of drug usage. Certainly, the number of attorneys appearing before the Board with admitted drug addiction problems has increased in the last several years. These admissions of drug use are most often made, however, by attorney charged with other types of misconduct regarding from neglect of client matters (Matter of Leodis Elliott, Attorney Discipline Board Order dated 3/24/88 approving consent discipline a two years probation) to misappropriation of client funds (Matter of Gary Lupiloff, Hearing Panel Order dated 10/14/86 revoking respondent's license). The Board has been presented with few cases to date based solely upon a conviction for drug possession or delivery.

In 1979, attorney Ronald Kubik pleaded guilty to one count of delivery of heroin and one count of delivery of cocaine. Based upon the strong mitigating effect of a pre-sentence report which described the respondent's continuing efforts to rehabilitate himself, the hearing panel order a suspension of six months. That discipline was affirmed without comment by the Attorney Discipline Board. Application for leave to appeal was denied by the Supreme Court in 1980. Matter of Ronald R. Kubik, 36740-A. More recently, the Board affirmed a three-year suspension in the case of a

Muskegon attorney convicted of possession of cocaine. Matter of Wendell N. Davis, ADB 8-88; 39-88. A conviction for delivery of marijuana resulted in a hearing panel order suspending respondent's license to two and one-half years in Matter of Basil W. Brown, ADB 7-88, order dated June 23, 1988. That order of discipline was not appealed to the Board by either party.

The Standards for Imposing Lawyer Sanctions published by the American Bar Association in 1986 suggest that "disbarment is generally appropriate when a lawyer engages in serious criminal conduct a necessary element of which includes . . . the sale, distribution or importation of controlled substances . . ." [Standard 5.11(A)] Those standards further suggest that "suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." [Standard 5.12]

In this case, the respondent was convicted of the crime of possession of cocaine. That criminal conduct did not involve the "sale, distribution or importation" of controlled substances cited by the ABA Committee on Professional Sanctions as grounds for disbarment.

We are not entirely satisfied that the respondent has demonstrated a willingness to accept complete responsibility for his criminal conduct or has demonstrated an understanding of the serious nature of his offense. We believe, however, that a suspension of the respondent's license to practice law for a period of four years will give Mr. Bearinger an opportunity to engage in rehabilitation but will also afford adequate protection to the public, the courts and the legal profession.

Concur: Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin, Linda S. Hotchkiss, M.D., Theodore P. Zegouras

Dissent

Patrick J. Keating

I agree with my colleagues that a reduction in discipline is appropriate in this case. I would, however, reduce discipline to a suspension of two and one-half years. The respondent was convicted of simple possession of cocaine. I am troubled by the disparity between discipline imposed in this case and the shorter suspensions imposed in other cases involving convictions for the delivery of controlled substances (i.e. Matter of Ronald R. Kubik and Matter of Basil W. Brown, cited in the majority opinion). Furthermore, the record does not establish a connection between the respondent's addiction and any other criminal enterprise or violations of his obligations to his clients. In my opinion, the suspension of four years in this case is unduly harsh.