SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-196
District Docket No. XIV-2007-0285E

IN THE MATTER OF	:
PAUL W. BERGRIN	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 20, 2016

Decided: December 9, 2016

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear.[1]

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for final discipline, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-13, following respondent's conviction of Racketeering, 18 U.S.C. §1962(c); Conspiracy to Distribute a Controlled Substance

[1] Respondent, who is currently incarcerated, requested the opportunity to appear via video conference. Although he was informed that he could appear telephonically he did not timely avail himself of that opportunity.

(Cocaine), 21 U.S.C. §846; Violent Crime in Aid of Racketeering Activity, Murder/Kidnapping 18 U.S.C. §1959(a)(1)(5) & 2; Controlled Substance – Manufacture, Maintaining Drug Involved Premises, 21 U.S.C. §856(a)(2)(a)(1) & 18:2; Tampering with Witness, Victim, or an Informant, Conspiracy to Murder a Witness, 18 U.S.C. §1512(k); Tampering with Witness, Victim, Informant (if Death Results) Murder of a Witness, 18 U.S.C. §1512(a)(1)(A),(a)(3)(A) & 2; Conspiracy to Defraud the United States – Travel in Aid of Prostitution Business, 18 U.S.C. §371; Racketeering Transporting in Aid of Prostitution, 18 U.S.C. §1952(a)(3) & (2); Conspiracy to Defraud United States - Conspiracy to Travel in Aid of Drug Trafficking and Bribery, 18 U.S.C. §371; Racketeering Transporting in Aid of Prostitution Business, 18 U.S.C. §371; two counts of Conspiracy to Defraud the United States, Conspiracy to Travel in Aid of Drug Trafficking Business, 18 U.S.C. §371; Racketeering – Transporting in Aid of Travel in Aid of Drug Trafficking Business, 18 U.S.C. §1952(a)(2) & 2; and Structuring Transactions to Evade Reporting Requirements, 31 U.S.C. §5324(b) and 18:2.

The OAE recommended respondent's disbarment. We concur with the recommendation.

Respondent was admitted to the New Jersey bar in 1980, the Florida bar in 1981, and the New York bar in 1986. At the relevant time, he maintained a law office in Newark, New Jersey.

Respondent has no history of discipline in New Jersey.

In 2009, respondent was temporarily suspended, pursuant to R. 1:20-11, in connection with the crimes that are the subject of this matter. In re Bergrin, 199 N.J. 309 (2009). In 2010, he was disbarred in New York for his guilty plea to two counts of conspiracy in the fifth degree. Matter of Bergrin, 69 A.D.3d 1108 (2010).

The factual background of respondent's criminal conduct is set forth piecemeal in several opinions relating to the government's appeal of various evidentiary rulings, U.S. v. Bergrin, 682 F.3d 261 (2012), and respondent's appeals of his conviction and sentence.

Respondent, a former federal prosecutor and prominent defense attorney, was indicted in the United States District Court for the District of New Jersey on numerous charges, including violations of the Racketeering Influence and Corrupt Organizations Act (RICO). Later, in superseding indictments, he was also charged with witness tampering, participating in cocaine trafficking conspiracy, and tax evasion.

Following the filing of the original indictment, the District Court dismissed the RICO charges, reasoning that they were inappropriate in light of the "disparate nature of the substantive crimes that . . . serve[d] as the racketeering predicates." U.S. v. Bergrin, 682 F.3d at 264. The government appealed the ruling, which resulted in the Third Circuit reversing and remanding the dismissal of the RICO charges. Id. at 261.

After the remand, on June 2, 2011, the government filed a thirty-three count second superseding indictment, which included two witness tampering counts, charging respondent with facilitating the murder of an FBI informant, who was to have been a witness against one of respondent's criminal clients. The indictment also accused respondent of misusing his law practice to traffic drugs, facilitate prostitution, tamper with witnesses, and evade taxes. Id. at 265.

The District Court severed the two witness-tampering counts to have them tried separately. At the trial that followed, the court precluded the government from introducing evidence about two additional witness-murder plots to prove respondent's intent to have the FBI informant murdered. Ultimately, the jury was unable to reach a verdict. Id. at 264.

On appeal, the Third Circuit vacated the District Court's decision to exclude the testimony about the two plots and directed that the matter be reassigned to a new judge. Ibid.

The Third Circuit pointed out that there were three separate instances of witness tampering, all alleged in the RICO violation: (1) instigating Kemo McCray's murder, (2) plotting to kill witnesses in connection with the legal defense of a client, Vincent Esteves, and (3) plotting to kill a witness who planned to testify against respondent's client, Richard Pozo. Ibid.

On March 18, 2013, after an eight-week trial, respondent was convicted of twenty-three of the thirty-three counts of the superseding indictment. The Honorable Dennis M. Cavanaugh, U.S.D.J., sentenced respondent to be imprisoned for the remainder of his natural life: six life sentences to run concurrently on six counts, and various additional terms of imprisonment on the remaining seventeen counts, each to run concurrently. In 2014, respondent's conviction and sentence were affirmed. U.S. v. Bergrin, 599 Fed. Appx. 439 (2014). Subsequently, on May 26, 2015, respondent's Petition for a Writ of Certiorari was denied. Bergrin v. United States, 135 S. Ct. 2370 (2015).

The factual background of the RICO witness-tampering counts, the most serious of the charges, is as follows.

Respondent was "house counsel" to Hakeem Curry's drug-trafficking organization. In that capacity, respondent was retained to represent Curry's "underlings" to ensure that they did not cooperate with authorities. One such underling was William Baskerville, with whom respondent formed an agreement to murder Kemo McCray. Soon thereafter, respondent met with others in furtherance of that agreement. U.S. v. Bergrin, 599 Fed. Appx. 439, 440 (2014).

On November 25, 2003, Baskerville had been arrested for selling crack cocaine to a confidential witness (CW). Baskerville deduced the identity of the CW and so informed respondent. Ibid. Respondent then conveyed to Curry that McCray was the CW. Respondent told Curry and several of Curry's associates that Baskerville was facing life in prison for "that little bit of cocaine" and if McCray testified against him, Baskerville "was never coming home. . . . Don't let [McCray] testify against [Baskerville]." Id. at 441. Respondent told the group that he could "get [Baskerville] out if Kemo [McCray] d[id]n't testify" . . . . [Respondent] twice reiterated 'no [McCray], no case' and emphasized that the group should not 'let that kid testify against [Baskerville].'" U.S. v. Bergrin, supra, 682 F.3d at 266. A few months later, one of Curry's

associates shot McCray to death. U.S. v. Bergrin, supra, 599 Fed. Appx. at 441.

The court remarked that, even though the foregoing excerpts from the record were sufficient to sustain respondent's conviction related to McCray's murder, there was "much more." U.S. v. Bergrin, supra, 599 Fed. Appx. At 440.

In the government's appeal of the district court's evidentiary rulings and severance orders, the court also set forth the factual background and procedural history of the Pozo and Esteves plots.

Pozo was a "large scale drug trafficker who distributed multi-hundred kilogram shipments of cocaine he received in New Jersey via Texas." In February 2004, he was charged in the Western District of Texas for his role in the drug distribution scheme and retained respondent to represent him. Respondent determined that Pozo's co-defendant, Pedro Ramos, was cooperating with the government against Pozo and so informed Pozo. Respondent asked Pozo if he knew where Ramos lived and stated that, if "we could get to [Ramos] and take him out, Pozo's headache (his drug charges) would go away." Pozo replied, "[a]re you nuts? I am not involved in murdering people." Pozo later retained new counsel. U.S. v. Bergrin, supra, 682 F.3d at 267.

As to the Esteves plot, Esteves was a former client of respondent who operated a large scale drug trafficking business based in New Jersey. After Esteves was charged with drug trafficking in New Jersey, respondent had told him that "the only way to beat the case was if [Esteves] took care of the witness." Ibid. Respondent further told Esteves that he "hate[d] rats and . . . would kill a rat himself, that this was not the first time he ha[d] done this," and that, "if there are no witnesses, there is no case." An informant, whom respondent believed was a "hitman," subsequently recorded respondent instructing him to kill a witness on a list of witnesses respondent believed were cooperating with the government, and to make it appear to be the result of a "home invasion robbery." Ibid.

On appeal, the court found from its review of the extensive record that the trial judge had conducted the lengthy eight-week trial "with great skill, patience, and fairness. And he did so in spite of an obstreperous pro se defendant who did whatever he could" to (1) delay the trial, (2) gratuitously attempt to plant the seeds of error, and (3) unfairly prejudice the jury by repeatedly offering inadmissible evidence despite the Court's perpetual warnings not to do so. U.S. v. Bergrin, 599 Fed. Appx. at 441.

As to sentencing, the appellate court found that respondent's life sentence, for his central role in the murder of FBI informant McCray, was not disproportionate to the offense. Id. 442.

At respondent's September 23, 2013 sentencing, Judge Cavanaugh considered that, with respect to the death of the FBI informant, the consequences were irreversible and the conviction on the counts for which respondent was charged carried a minimum sentence of life imprisonment.

The judge found that enhancements to respondent's sentence were justified because respondent "occupied an aggravating role adjustment" with regard to the following acts: the exercise of decision making authority; the nature of participation in commission of the offense; the recruitment of accomplices; the claimed right to a larger share of the fruits of the crime; the degree of participation in planning or organizing the offense; the nature and scope of the illegal activity; and the degree of control and authority exercised over others.

The judge considered that respondent controlled which people the conspiracy would supply with drugs and which other co-conspirators the customers would deal with; solicited new supplies of cocaine for the conspiracy; assumed the management of the prostitution business when one of his partners was

incarcerated; controlled the decision-making regarding all aspects of defense strategy, including killing witnesses, and drafting and filing false documents; formulated a plan with Esteves to kill a witness; directed a co-conspirator to smuggle a cell phone into a jail so that Esteves and the hitman could discuss killing witnesses; told the hitman which witnesses to kill; instructed the hitman on how to kill witnesses to prevent law enforcement from discovering their plot; was involved in a drug conspiracy including more than 150 kilograms of cocaine, and was the organizer and leader of the enterprise that involved five or more participants; received pecuniary value in connection with the plot to murder witnesses; performed services for Esteves, the majority of which involved illegal activity — witness tampering, preparing and filing false documents with the court, receiving more than $1 million worth of property from Esteves purchased with drug money, and transferring properties from Esteves to a shell corporation owned by respondent; abused his position of trust with regard to drug trafficking and getting rid of witnesses; defrauded the New Jersey Parole Board by submitting phony letters attesting to an inmate's employment at his law firm; used his position as a criminal defense attorney to visit co-conspirators in prison, unsupervised, "within the bounds of the law;" and used his special skills and

position of trust as a criminal defense lawyer to facilitate and conceal his criminal offenses.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction of twenty-three counts of a thirty-three count indictment constitutes a violation of RPC 8.4(b). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation . . . prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

Respondent's misconduct was pervasive and abhorrent. Clearly, the most heinous of the crimes for which he was convicted was tampering with witnesses, in one instance, leading to the death of an FBI informant. Based on his conviction for that crime alone, disbarment is the only appropriate measure of discipline, notwithstanding that his life sentences will prevent

him from practicing law. The following cases support such a recommendation.

In In re Johnson, 157 N.J. 531 (1999), the attorney was disbarred for his conviction of first-degree murder and attempted first-degree murder in Tennessee. After the termination of a three-year relationship, the attorney entered the house where the woman with whom he previously lived was staying, hit her in the forehead with a gun, turned her around, then shot her in the back of her head. She died the following day. He also shot at another woman who was in the house at the time, not knowing that he had missed her. In the Matter of Hubert Johnson, DRB 97-280 (June 29, 1998) (slip op. at 3).

The attorney was sentenced to life imprisonment on the first-degree murder conviction and a fifteen-year consecutive sentence on his conviction for attempted first-degree murder. Ibid.

In In the Matter of Donald J. Weber, DRB 93-066 (March 21, 1994), after we recommended the attorney's disbarment for his guilty plea in Cook County, Illinois to murder in the first degree, armed robbery, and concealment of homicidal death, the Court entered an order of disbarment by consent. In re Weber, 138 N.J. 31 (1994).

In that case, after their relationship terminated, the attorney arrived at the victim's dormitory, shot her six times,

then eliminated all evidence that he had visited her room, wrapping her body in a sleeping bag, and removing it from the dormitory in a laundry basket. In the Matter of Donald J. Weber, supra, at 2. The attorney, thereafter, returned to his home in Illinois, disposed of various items of evidence by burning them, tossed his gun in a local river, and buried the victim in a landfill. Id. at 3. The attorney later pawned some of the victim's jewelry, retrieved her body, reburied her in an isolated area of a national forest in Arizona, and tried to extort money from the victim's parents in return for providing information on her whereabouts. Ibid.

The attorney was sentenced to seventy-years on the first-degree murder charge, five consecutive years for concealment of the homicide, and a thirty-year concurrent term on the armed robbery charge. Ibid.

We rejected the attorney's claim of major depression as a mitigating factor, in light of the heinous nature of the crime. We determined that discipline less severe than disbarment for the attorney's atrocious acts would undermine the seriousness of the crime and the confidence reposed by the public on members of the legal profession and on the judicial system. Id. at 5.

See, also, In re Rasheed, 134 N.J. 532 (1994) (attorney disbarred after pleading guilty to one count of aggravated

manslaughter after pushing a teenager out of a ninth floor window, causing her death; four counts of aggravated assault; and one count of terroristic threats); and In re McAlesher, 93 N.J. 486 (1983) (attorney disbarred following a conviction for second degree murder; the attorney, an alcoholic, believed that his wife was threatening his life and shot her).

Attorneys have also been disbarred for racketeering enterprises and witness tampering. See, e.g., In re Meiterman, 202 N.J. 31 (2010) (attorney disbarred for his guilty plea to using the United States mail to promote and facilitate a racketeering enterprise; the attorney admitted that he bribed public officials to expedite sewer connection approvals for land developments and coached a witness to lie to law enforcement authorities and a federal grand jury); and In re Curcio, 142 N.J. 476 (1995) (attorney disbarred for one count of racketeering, one count of conspiracy, and one count of mail fraud; the attorney, another member of his law firm, and a surgeon conducted an enterprise to submit falsified reports to more than twenty insurance companies over a thirteen-year period; the scheme involved falsifying patient records to increase the number of visits for each patient/client; the sentencing judge found that the attorney was a brilliant lawyer

but let greed overtake him; he was sentenced to a "lengthy prison term").

The above cases establish that disbarment is warranted here. We so recommend to the Court.

Member Rivera was recused.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Paul W. Bergrin
Docket No. DRB 16-196

Argued: October 20, 2016

Decided: December 9, 2016

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	x		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera		x	
Singer	X		
Zmirich	X		
Total:	8	1	

Ellen A. Brodsky
Chief Counsel