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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 98-350

IN THE MATTER OF :
:
KENNETH C. McBROOM, :
:
AN ATTORNEY AT LAW :

Decision

Argued: October 15, 1998

Decided: April 5, 1999

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's criminal conviction for possession of child pornography, in violation of 18 U.S.C.A. 2252(a)(4).

Respondent was admitted to the New Jersey bar in 1980. On April 29, 1996 he was temporarily suspended from the practice of law. In re McBroom, 143 N.J. 560 (1996). That suspension remains in effect to date.

On April 22, 1996, pursuant to a written plea agreement, respondent pleaded guilty

to the third count of a three-count indictment, which charged him with possession of computer files and images containing visual depictions, downloaded from the Internet, of minors engaged in sexually explicit conduct. On October 7, 1996, he was sentenced in federal court to a term of fifteen months' imprisonment, to be followed by three years' probation. At sentencing, the judge denied respondent's request for a downward departure based on diminished capacity. Respondent appealed that ruling to the Court of Appeals for the Third Circuit. On August 28, 1997, the Court of Appeals vacated the original sentence and remanded the case for resentencing. United States v. McBroom, 124 F.3rd 533 (3rd Cir. 1997). Thereafter, on January 13, 1998, the district court granted respondent's request for a downward departure. United States v. McBroom, 991 F. Supp. 445 (1998). The court resentenced respondent to a term of six months' imprisonment, to be followed by two months of home confinement.

The facts that gave rise to this disciplinary action are described in the district court's January 13, 1998 opinion as follows:

> McBroom has presented evidence of his diminished capacity and his rehabilitation efforts through his own affidavit and letters from treating professionals. McBroom's uncontroverted affidavit recounts a traumatic life history, starting with years of childhood sexual abuse by his father, and eventually degenerating into alcohol and cocaine addiction and an obsession with pornography. McBroom kept the sexual abuse secret until he finally confessed it to a therapist in approximately 1984. Although McBroom managed to obtain a law degree and work as a lawyer, he continually abused alcohol and cocaine. McBroom also frequented 'peep shows,' called '900' sex lines, and viewed pornographic pictures. Due to his addictions, his marriage ended in divorce after seven years. He went through at least four stays in drug

and alcohol rehabilitation. The final stay ended in late 1993; McBroom has not had a drink or taken drugs since then.

> Although McBroom managed to stop drinking and taking drugs, he soon discovered the vast array of pornography, including child pornography, available on the Internet. He states that his 'attraction to pornography on the computer was borne of sheer amazement at the volume of available material. . . . The amazement turned to fascination, and ultimately to obsession.' McBroom kept his obsession secret from his girlfriend, but continued to view the pornography even after he knew that the Federal Bureau of Investigation was investigating him: 'It would have been so easy (and wise) for me to simply delete all of this material from my computer's hard drive once I learned that the FBI had been to my building, but I couldn't do it. I had to keep looking at it, knowing what was coming.' (Footnotes omitted).

The OAE urged the Board to impose a two-year suspension, retroactive to the date of respondent's temporary suspension.

* * *

Upon a de novo review of the record, the Board determined 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)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction of possession of child pornography is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R.1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

Our disciplinary system has never dealt with an attorney convicted of possession of

child pornography. There have been, however, many cases of attorneys involved in sexual misconduct. The Board agrees with the OAE that respondent's misconduct is not as serious as that of attorneys who have been convicted of sexual assault and have been disbarred. See, e.g., In re X, 120 N.J. 459 (1990) (where the attorney sexually assaulted his three daughters over a period of eight years); In re Wright, 152 N.J. 35 (1997) (where the attorney was convicted of aggravated sexual assault) and In re Palmer, 147 N.J. 312 (1997) (where the attorney pleaded guilty to seven counts of third degree aggravated criminal sexual contact and one count of fourth degree criminal sexual contact. The attorney admitted that he had touched the "private parts" of eight boys employed at a recreation complex owned by the attorney).

Other cases of sexual misconduct have resulted in suspension. See In re Herman, 108 N.J. 66 (1987) (where an attorney was suspended for three years after a guilty plea to one count of second degree sexual assault. The attorney purposely touched the buttocks of a ten-year old boy); In re Ruddy, 130 N.J. 85 (1992) (where the attorney was suspended for two years after he pleaded guilty to four counts of endangering the welfare of a child, a third degree crime. The attorney had fondled several young boys); and In re Gernert, 147 N.J. 289 (1997) (where an attorney was suspended for one year after pleading guilty to the petty disorderly persons offense of harassment by offensive touching. The victim was a teenage client of the attorney).

Reprimands have also been imposed in the past for sexual misconduct. See In re Gilligan, 147 N.J. 268 (1997) (where the attorney was convicted of the disorderly persons offense of lewdness, when he exposed and fondled his genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen) and In re Pierce, 139 N.J. 433 (1995) (where the attorney was convicted of lewdness after he exposed his genitals to a twelve-year old girl).

As the OAE pointed out, unlike the attorneys in the above cases, respondent did not have any personal contact with the victims of his crime. He was, however, convicted of a crime that carries a maximum five-year prison sentence and a $250,000 fine. Accordingly, the Board unanimously determined that a two-year suspension is appropriate discipline for respondent's criminal conduct. The suspension is to be retroactive to April 29, 1996, the date of respondent's temporary suspension. Prior to his reinstatement, respondent is to provide psychiatric proof of his current fitness to practice law.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 4/5/99

By: _____
LEE M. HYMERLING
CHAIR
DISCIPLINARY REVIEW BOARD