

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-426
District Docket No. XIV-2008-150E

IN THE MATTER OF
DONALD STUART BURAK
AN ATTORNEY AT LAW

Dissent

Argued: March 17, 2011

Decided: June 7, 2011

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

Regrettably, I must dissent from my fellow members' decision. For the following reasons, I believe that the circumstances of this case require the imposition of a three-year suspension, rather than disbarment.

First, I disagree with the majority's use of the number of images in respondent's possession, as determined by federal sentencing guidelines, instead of the actual number of images and movies in his possession. In its decision, the majority acknowledges that respondent's computer contained seventy-eight images and nine movies. Thereafter, the majority refers to respondent's possession of the equivalent of 753 images of child pornography. In fact, in determining that disbarment is appropriate in this case, the majority took into consideration that respondent "had amassed the equivalent of more than 750 images."

Although the number of images and movies in respondent's possession was increased seven-fold for purposes of sentencing him in federal court, I do not believe that 753 is the figure to be used in this proceeding. Instead, in reaching my determination that a three-year suspension is appropriate, I took into consideration that respondent had in his possession seventy-eight images and nine movies depicting child pornography.

Second, unlike the majority, I give no consideration to respondent's indictment for criminal sexual contact and his acceptance into the PTI program. The only facts available to us were set forth in the pre-sentence investigation report, which

recited what was contained in the investigation report of the local police department.

I recognize that respondent surrendered to the police when a warrant was issued for his arrest. Nevertheless, with essentially no background information available to us, and since he was admitted into PTI, I must conclude that any "criminal sexual contact" was minimal.


I also recognize that the federal sentencing judge made reference to that criminal matter in reaching her decision. However, this factor appeared to be far outweighed by the therapeutic progress that respondent had been making and his acknowledgment of guilt.

Third, nothing in the record suggests that respondent is likely to re-offend. A few months prior to sentencing, respondent's psychologist opined that he presented "only a low risk of engaging in future illegal sexual behavior at [that] time." His lawyer referred to the opinions of experts who had said that it was "very, very unlikely that he would re-offend." Moreover, at sentencing, the judge stated that she was "very, very impressed with the therapeutic progress that he has clearly made."

As indicated previously, I disagree with the majority's determination that respondent's misconduct warrants disbarment.

His conduct is closer to that of the attorneys in Haldusiewicz and Kennedy, who received six-month suspensions, than it is to the attorney in Sosnowski, who was disbarred. Haldusiewicz's computer contained at least 996 images. Kennedy was found with several hundred images. Haldusiewicz was considered unlikely to re-offend, while Kennedy was not a risk to the community. For his part, although Sosnowski was found with fewer images than Haldusiewicz and Kennedy (sixty-seven), he also possessed eight videos. Moreover, he placed hidden cameras in his children's bathroom and bedroom.

I am aware that respondent did not merely possess child pornography, but that he also traded it. I also am aware that the pornography included material that portrayed "sadistic or masochistic conduct or other depictions of violence," such as bondage. In my view, absent these two factors, a six-month suspension would have been appropriate in this case. However, given that respondent traded this type of child pornography, a three-year suspension is warranted.



Louis Pashman
Chair