SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-208
District Docket No. XIV-04-576E

IN THE MATTER OF	:
	:
JOHN H. McKEON, JR.	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 21, 2005

Decided: August 30, 2005

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

Katharine D. Hartman appeared on behalf of respondent.

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(c), following respondent's guilty plea to the third

degree offense of possession of cocaine, a violation of N.J.S.A. 2C:35-10a(1).[1]

Respondent was admitted to the New Jersey bar in 1981 and to the Pennsylvania bar in 1979. He has no history of discipline.

On July 15, 2004, Medford Township Police responded to a call that an individual (respondent) was sleeping in a car parked in the lot of a CVS Pharmacy. According to the Medford Township Police supplementary investigation report, respondent was taken into custody after the police officer discovered that

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[1] N.J.S.A. 2C:35-10a(1) states that "[i]t is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to: (1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $35,000.00 may be imposed."
Cocaine is one of the substances listed on Schedule I, II, III or IV.

respondent "was in possession of a large quantity of crack cocaine."[2]

Once respondent was processed, he was searched before being taken to an interview room. Respondent's front pocket contained "five green plastic bags of a white chalky substance believed to be crack cocaine . . . ."

On May 16, 2005, respondent pleaded guilty to one count of possession of a controlled dangerous substance -- cocaine -- for personal use, for which he was sentenced to one-year probation. In addition, he was ordered to continue to be enrolled in a drug-treatment program, and to pay a $50 Violent Crime Penalty, a $75 Safe Neighborhood Penalty, a $30 Law Enforcement Trust Fund Penalty, a $1,000 DEDR Penalty, and a $50 forensic lab fee. Respondent was denied admission into a Pre-Trial Intervention Program.

On May 23, 2005, respondent notified the OAE of his guilty plea, as required by R. 1:20-13(a)(1).

The OAE urged us to impose a three-month suspension.

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[2] The OAE's brief (Statement of Procedural History and Facts) mentions that a search of respondent's vehicle revealed thirty-two plastic bags containing a substance believed to be crack cocaine. Respondent, however, pleaded guilty to a single count of possession of cocaine for his personal use. The transcript of the guilty plea reveals that the State moved to dismiss -- and the court dismissed -- "Summons 702749 charging CDS in a motor vehicle and warrant 04-002470321." Therefore, any charges that might have related to cocaine found in respondent's car were not before us.

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)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to possession of cocaine constituted a violation of 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); In re Lunetta, 118 N.J. 443, 445 (1989).

Possession of cocaine for personal use ordinarily requires a three-month suspension. In re Avrigian, 175 N.J. 452 (2003) (three-month suspension for possession of cocaine, a third-degree crime); In re Kervick, 174 N.J. 377 (2002) (three-month suspension for possession of cocaine, use of a controlled dangerous substance, and possession of drug paraphernalia); In re Ahrens, 167 N.J. 601 (2001) (three-month suspension for possession of cocaine, marijuana, and narcotics paraphernalia); In re Foushee, 156 N.J. 553 (1999) (three-month suspension for possession of cocaine; the attorney had received a three-year suspension for misconduct in four matters, including gross neglect, failure to communicate with clients, failure to prepare written retainer agreements, and failure to cooperate with

ethics authorities); and In re Schaffer, 140 N.J. 148 (1995) (three-month suspension for possession of cocaine for personal use). But see In re Zem, 142 N.J. 638 (1995) (reprimand for attorney who used small amounts of cocaine).

Presumably, the "personal use" factor is inferred from the amount of cocaine found. See, e.g., In re Paul, 173 N.J. 23 (2002) (three-month suspension for possession of bag of cocaine containing 1.83 grams); In re Radler, 164 N.J. 550 (2000) (three-month suspension for possession of 1.9 grams of cocaine, three Valium pills, and narcotics paraphernalia); In re Lisa, 152 N.J. 455 (1998) (three-month suspension for possession of 0.73 grams of cocaine, being under the influence of cocaine, and possession of drug paraphernalia); In re Epps, 148 N.J. 83 (1997) (three-month suspension for possession of less than 20 grams of cocaine); In re Benjamin, 135 N.J. 461 (1994) (three-month suspension for possession of 0.26 grams of cocaine and under 50 grams of marijuana); In re Silberfein, 138 N.J. 51 (1994) (three-month suspension for possession of 868 milligrams of cocaine); In re Constantine, 131 N.J. 452 (1993) (three-month suspension for possession of .35 grams of cocaine); and In re Karwell, 131 N.J. 396 (1993) (three-month suspension for possession of .13 grams of cocaine, .08 grams of marijuana, and drug paraphernalia).

Here, the record does not disclose the amount of cocaine in the five bags found in respondent's pocket. All the record reveals is that respondent pleaded guilty to one count of possession of cocaine for personal use. The charge relating to cocaine found in respondent's automobile was dismissed. Under these circumstances, nothing in the record compels a deviation from the three-month suspensions imposed on attorneys found guilty of possession of cocaine for personal use, as opposed to possession of a controlled dangerous substance with intent to distribute, which requires severe discipline, including disbarment. See, e.g., In re Coffey, 174 N.J. 289 (2002) (Court accepted disbarment by consent of attorney who pleaded guilty to conspiracy to possess marijuana, with intent to distribute); In re Smith, 170 N.J. 616 (2002) (disbarment by consent for attorney who admitted that he could not successfully defend against charge of distribution of cocaine; other charges included practicing law while ineligible, gross neglect, pattern of neglect, unreasonable fee, and failure to cooperate with ethics authorities); In re Banks, 155 N.J. 597 (1998) (two-year suspension for attorney guilty of manufacture and/or possession of marijuana, with intent to distribute); and In re Musto, 152 N.J. 165 (1997) (tree-year suspension for attorney who pleaded guilty to conspiracy to distribute cocaine, possession of methyl

ecgonine, conspiracy to posses heroin and cocaine, and possession of heroin and cocaine; the Court determined that, although disbarment is the usual discipline for a drug-distribution conviction, the attorney's drug dependency was responsible for his offenses, from which he did not seek to profit).

We, therefore, determine that a three-month suspension is the appropriate measure of discipline for respondent's guilty plea to possession of cocaine for personal use. We further determine that, upon reinstatement, respondent should submit to random drug testing for a period of one year, to be monitored by the OAE.

Members Louis Pashman, Reginald Stanton, and Robert Holmes did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative costs incurred in the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John H. McKeon, Jr.
Docket No. DRB 05-208

Argued: July 21, 2005

Decided: August 30, 2005

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes						X
Lolla		X				
Neuwirth		X				
Pashman						X
Stanton						X
Wissinger		X				
Total:		6				3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel