

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-258

IN THE MATTER OF
HOWARD A. GROSS
AN ATTORNEY AT LAW

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Decision

Argued: November 20, 2003

Decided: February 19, 2004

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

Joel B. Korin 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 based on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"). On January 27, 2003, respondent appeared before Burlington County Superior Court Judge Thomas S. Smith, Jr., and entered a guilty plea to an amended charge of conspiracy to possess cocaine, in violation of N.J.S.A. 2C:5-2, a crime of the third degree.

Exhibit B.¹

¹As a result of entering a plea to conspiracy to possess cocaine, rather than possession of cocaine, respondent avoided a mandatory \$1,000 fine and a six-month to two year loss of driving privileges under the Mandatory Drug Enforcement and Demand Reduction Penalties [N.J.S.A. 2C:35-15(a)] and the Mandatory Forfeiture or Postponement of Driving Privileges. [N.J.S.A. 2C:35-16].

Respondent was admitted to the New Jersey bar in 1992. He has no prior discipline. During the entry of the guilty plea, respondent's counsel, Thomas J. DeMarco, elicited the following factual basis for the plea:

Q. On September 11, 2003 [sic], did you get stopped in a motor vehicle?

A. Yes.

Q. And in the motor vehicle did you have [a] controlled dangerous substance with you?

A. Yes.

Q. Okay. And you had it on your person?

A. Yes.

Q. Where was it?

A. In my pocket.

Q. What kind of controlled dangerous substance was it?

A. It was cocaine.

Q. Okay. And had you previously purchased that from another?

A. Yes.

Q. And before you purchased it from the other fellow you told him to give it to you?

A. Yes.
[Exhibit B at 12-13]

At sentencing on April 17, 2003, Judge Smith placed respondent on probation for a period of three years and ordered him to undergo random urine testing.²

The OAE urged the imposition of a three-month suspension.

² Respondent's counsel forwarded documentation showing respondent's completion of drug rehabilitation and a recent "clean" urinalysis result.

Upon a de novo review of the record, we determined to grant the OAE's motion for final discipline.

The existence of a criminal record 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 for the third-degree crime of conspiracy to possess cocaine 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 remains at issue. R. 1:20-13(c)(2)(ii); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline 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, his prior trustworthy conduct, and general good conduct." Id. at 445-46. That respondent's offense does not relate directly to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

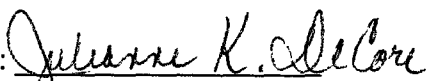
We have consistently held that matters involving the possession of small amounts of cocaine for personal use routinely result in three-month suspensions. See In re Kervick, 174 N.J. 377 (2002) (three-month suspension for attorney who was charged with possession of cocaine and, thereafter was admitted to a pretrial intervention program); 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, all of which was for the attorney's personal use); In re Benjamin, 135 N.J. 461 (1994) (three-month suspension for possession of cocaine and marijuana); In re Karwell, 131 N.J. 396 (1993) (three-month suspension for possession of small amounts of

cocaine, marijuana and drug paraphernalia); and In re Nixon, 122 N.J. 290 (1991) (three-month suspension for possession of marijuana and cocaine).

We found no aggravating circumstances to warrant harsher discipline than a three-month suspension. In mitigation, respondent produced an affidavit to explain the genesis and escalation of his drug use, and additional evidence that he remains drug-free. Nevertheless, we were unanimous that a three-month suspension is the appropriate degree of discipline for respondent's misconduct. Before reinstatement, respondent must demonstrate proof of fitness to practice law, as attested to by a mental health professional approved by the OAE. Four members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

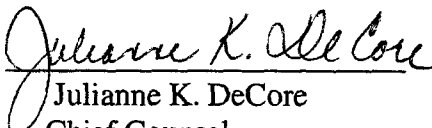
In the Matter of Howard A. Gross
Docket No. DRB 03-258

Argued: November 20, 2003

Decided: February 19, 2004

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>							X
<i>Boylan</i>							X
<i>Holmes</i>							X
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		5					4


Julianne K. DeCore
Chief Counsel