SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-116

IN THE MATTER OF	:
	:
JEFFREY M. SHEPPARD,	:
	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 19, 1991

Decided: July 29, 1991

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

Jeffrey M. Sheppard appeared pro se.

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

This matter is before the Board on a Motion for Final Discipline based upon respondent's criminal conviction for violation of N.J.S.A. 2C:35-10a(4), possession of under fifty grams of marijuana, and N.J.S.A. 2C:35-10C, failure to deliver a controlled dangerous substance (cocaine) to a law enforcement officer.

Respondent was admitted to the New Jersey bar in 1987. On April 29, 1990, an employee of a gas station in Deptford, New Jersey, requested that a police officer investigate a suspicious vehicle that had passed the gas station several times. As a

result, an officer stopped respondent's automobile on Route 47 in Deptford. The officer observed respondent making furtive movements under the driver's seat. The officer approached the vehicle and asked respondent to produce his operating credentials. Respondent could only produce his license. The officer patted down respondent and thereafter entered respondent's vehicle to search for the registration and insurance. In the car, the police officer saw a partially burned marijuana cigarette in the ashtray. As a result, he conducted a complete search of respondent's vehicle. Under the front passenger floor mat, he found three bags of marijuana and one package of rolling papers. The officer also found one glassine bag of cocaine under the driver's floor mat and another bag tucked in on the side of the driver's seat. A third bag of cocaine, in respondent's jacket pocket, was not found until they reached the police station. Respondent was in possession of 10.5 grams of marijuana and .39 grams of cocaine.

On August 24, 1990, respondent entered a guilty plea to two disorderly persons offenses, i.e., possession of under fifty grams of marijuana, in violation of N.J.S.A. 2C:35-10a(4), and failure to deliver a controlled dangerous substance (cocaine) to a law

enforcement officer, in violation of N.J.S.A. 2C:35-10c.[1] Respondent was sentenced on September 20, 1990. He was fined $500, placed on probation for a period of two years and ordered to perform one hundred hours of community service.

CONCLUSION AND RECOMMENDATION

A criminal conviction, including a conviction based on a plea, is conclusive evidence of respondent's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987); In re Kaufman, 104 N.J. 509, 510 (1986); In re Tuso, 104 N.J. 59, 61 (1986); R. 1:20-6(b)(i). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). Respondent's commission of a criminal act is a clear violation of RPC 8.4(b), in that it reflects adversely on his fitness to practice law. Thus, the sole issue to be determined herein is the quantum of discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kaufman, supra, 104 N.J. at 510; In re Kushner, 101 N.J. 397, 400 (1986); In

[1] Two summonses had been issued to respondent, charging him with six drug offenses. Pursuant to a plea agreement, respondent pleaded guilty to only two disorderly persons offenses. The remaining offenses were dismissed. Notwithstanding that respondent was initially charged with six separate offenses, because he was only convicted of two offenses, the Board is constrained to consider only the charges of possession of under fifty grams of marijuana and failure to deliver a controlled dangerous substance to a law enforcement officer. It is well-settled that the Board's review is limited to the facts underlying respondent's conviction. The Board is therefore prohibited from considering unproven allegations in assessing an appropriate sanction herein. See In re Friedman, 106 N.J. 1 (1987); In re Gross, 67 N.J. 419, 424 (1975).

re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J. 50, 56 (1983).

The illegal activity underlying respondent's conviction is not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, good moral character is a basic condition for membership in the bar. In re Gavel, 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of good character and integrity essential for an attorney constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). That respondent's activity did not arise from a lawyer-client relationship, that his behavior was not related to the practice of law or that this offense was not committed in his professional capacity are immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976). Furthermore, the Supreme Court has advised members of the bar that even a single instance of drug usage will ordinarily call for suspension. In re McLaughlin, 105 N.J. 457, 462 (1987). Nonetheless, the seriousness of the discipline must comport with the seriousness of the ethical infractions in light of all the relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1985).

Were this a case of possession of marijuana only, a private reprimand might suffice. See In re Echevarria, 119 N.J. 272 (1990). However, the fact that cocaine, as well as marijuana, were found in respondent's possession, requires the imposition of public discipline. In McLaughlin, the Court imposed a public reprimand where three attorneys were involved in a single incident involving

the private use of cocaine. The Court's leniency was predicated on the fact that it was the first time the Court had had the occasion to impose discipline for a private drug incident involving small amounts of a controlled dangerous substance.

Other disciplinary matters involving illegal drug use have resulted in suspensions for terms ranging from three months to one year. In In re Pleva, 106 N.J. 637 (1987), the attorney was suspended for six months[2] for possession of 9.5 grams of cocaine, 11 grams of hashish and 52 grams of marijuana. The Court considered that the attorney had been arrested for an incident involving drugs four months earlier and noted that his drug usage was neither "innocuous" nor "casual." Id. at 644.

Similarly, a six-month suspension was imposed where an attorney pleaded guilty to indictments charging him with possession of cocaine and of methaquaalude. The indictments were based on offenses that occurred within four months of each other. In re Kaufman, 104 N.J. 509 (1986). The Court noted Kaufman's long-term use of marijuana and cocaine. In fact, he had received an "unsupervised conditional discharge" following a 1969 arrest for possession of illegal drugs. The Court stressed the existence of two drug arrests in four months as the strongest indication that a suspension for a term was warranted. Id. at 513.

In a similar case, an attorney received a nine-month suspension following his guilty plea to a charge of possession of

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[2] Pleva received an additional three-month suspension for firearm violations.

cocaine. In re Peia, 111 N.J. 381 (1987). At the time of his arrest, the attorney was found to be in possession of marijuana, a small vial of cocaine and a variety of drug paraphernalia. The court noted that the attorney had a prior arrest for assault, and had been arrested again for illegal drug possession eight months after his arrest in the matter before the Court. As found by the Court,

> [h]is conviction, the circumstances surrounding his offense and his attitude disclose that his breach of ethics was not aberrational or inadvertent. Rather, these suggest hostility and insensitivity to the standards that govern the professional conduct of attorneys.
>
> [Id. at 324.]

In In re Kinnear, supra, 105 N.J. 391 (1987), the crime of distribution of cocaine by an attorney resulted in a suspension of one year, following the Court's consideration that the one episode was unrelated to the practice of law and unlikely to recur, as well as that the attorney was primarily a drug user, rather than a distributor.

Had respondent's misconduct occurred prior to McLaughlin, the Board might be inclined to recommend discipline short of suspension. See In re Shamey, 110 N.J. 702 (1988). This was not, however, the case and, in accordance with the dictates of McLaughlin, a suspension from the practice of law is required.

This case is very similar to In re Nixon, ___ N.J. ___ (1991). In that case, the attorney was arrested and charged with possession of small amounts of cocaine and marijuana. Great weight was given to the fact that only small amounts of the drugs were involved and

that there was no suggestion that the drugs were for other than personal consumption. A three-month suspension was imposed.

Similarly, in this matter, the Board has considered that respondent was convicted of possession of a small amount of marijuana and failure to deliver cocaine to a law enforcement officer. The Board has also considered respondent's unsupervised conditional discharge in 1980 for possession of under fifty grams of marijuana. The Board further recognizes that the small amount of drugs was for respondent's personal use and that, at present, he is voluntarily undergoing counseling. In light of Nixon and McLaughlin and based on the foregoing factors, the Board unanimously recommends that respondent be suspended for a period of three months retroactive to the date of his temporary suspension. Additionally, upon respondent's reinstatement to the practice of law, he is required to undergo drug testing for a period of one year, the results of which are to be forwarded to the Office of Attorney Ethics for review.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 7/29/1991

By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board