AKRON BAR ASSOCIATION *v*. THOMAS.

[Cite as *Akron Bar Assn. v. Thomas* (1999), 84 Ohio St.3d 395.]

Attorneys at law — Misconduct — Two-year suspension with second year of suspension stayed with condition, when — Conviction of conspiracy to distribute and possession with intent to distribute cocaine.

(No. 98-1796 — Submitted October 28, 1998 — Decided January 20, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-88.

On April 11, 1997, the United States District Court for the Northern District of Ohio convicted respondent, Gary Lee Thomas of Akron, Ohio, Attorney Registration No. 0039133, upon his guilty plea, of conspiracy to distribute and possession with intent to distribute cocaine, in violation of Section 846, Title 21, U.S.Code, a federal felony offense. The federal court fined respondent $7,500, and sentenced him to thirty months in prison followed by four years of supervised release with specified conditions.

On July 1, 1997, we suspended respondent from the practice of law in Ohio for an interim period under Gov.Bar R. V(5)(A) based upon his federal felony conviction. *In re Thomas* (1997), 79 Ohio St.3d 1439, 680 N.E.2d 1014. We ordered that the matter be referred to relator, Akron Bar Association, for investigation and commencement of disciplinary proceedings. *Id.* On October 13, 1997, relator filed a complaint charging respondent with misconduct based upon the federal felony conviction. Respondent filed an answer admitting his drug conviction. The case was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board"). Respondent testified and was represented by counsel at the hearing.

The panel found that in the mid-1980s, respondent began using cocaine casually, purchasing the drug from a supplier who had attended the same high school as his brother. In the 1990s, respondent's cocaine use escalated because of his bankruptcy, divorce, and a postdivorce custody dispute. In 1995 and 1996, respondent became so addicted to cocaine that he loaned money to his supplier so that the supplier could purchase cocaine to sell to respondent and other people. All of the cocaine that respondent bought himself was for his personal use. After being charged in connection with his conduct in 1995 and 1996, respondent accepted responsibility by pleading guilty, and he fully cooperated with law enforcement officials.

The panel further found that following his conviction and sentence, respondent spent seven months in prison, including a six-month period in a federal program that resembles a military boot camp. Respondent served the next four months of his sentence in a halfway house, and is serving the remainder of the sentence under electronically monitored home confinement.

In mitigation, the panel found that respondent has been participating in drug treatment programs since 1996, that he has passed random drug tests since that time, and that he is currently enrolled in three drug treatment programs. When his period of home confinement ends, respondent will continue participating in a drug treatment program and be subject to regular drug testing under the terms of his four-year supervised release, as ordered by the federal district court. Respondent also testified that he had not practiced law since the 1980s, that he had worked in the insurance industry until his conviction, and that retention of his license to practice law would be beneficial in his search for future employment in the insurance business. There is no evidence that respondent's cocaine addiction ever interfered with his practice of law or damaged his clients.

The panel concluded that respondent violated DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude), 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law). The panel recommended that respondent be suspended from the practice of law for two years with the second year of the suspension stayed, provided that respondent continue to successfully control his drug addiction, and that relator monitor respondent's drug test results and verify his participation in drug treatment programs.

The board adopted the findings, conclusions, and recommendation of the panel, except that there be no monitoring requirement.

Stephen D. Hardesty and *James S. Thomasson*, for relator.

Hennenberg & Brown and *John A. Fatica*, for respondent.

Per Curiam. We adopt the findings, conclusions, and recommendation of the board. Although respondent was convicted of a felony relating to his cocaine addiction, any penalty must be tempered by respondent's demonstrated commitment to drug counseling and rehabilitation. See *Disciplinary Counsel v. Gallagher* (1998), 82 Ohio St.3d 51, 53, 693 N.E.2d 1078, 1079, citing *Disciplinary Counsel v. Norris* (1996), 76 Ohio St.3d 93, 666 N.E.2d 1087. In light of respondent's demonstrated commitment to sobriety, his cooperation with law enforcement officials, his four-year supervised release with conditions, and the lack of any established negative impact on his legal or business clients, a two-year suspension with one year stayed is an appropriate sanction for respondent's misconduct. See, *e.g., Disciplinary Counsel v. McElrath* (1994), 71 Ohio St.3d

131, 642 N.E.2d 370 (similar penalty imposed in case involving convictions that included trafficking in drugs and drug abuse for possession or use of cocaine); see, also, *Norris*.

Based on the foregoing, respondent is hereby suspended from the practice of law for two years with the second year of the suspension stayed, provided that respondent continue to successfully control his drug addiction. Costs taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

COOK and LUNDBERG STRATTON, JJ., dissent.

LUNDBERG STRATTON, J., dissenting. Because I believe that the majority's sanction is insufficient to properly address respondent's problem, I respectfully dissent.

Respondent was convicted of trafficking in cocaine, a felony conviction. Although I acknowledge the respondent's commitment to treatment, it may be motivated, at least in part, by his parole status and the possibility of being returned to prison. In addition, the two-year suspension with the second year stayed is too short to ensure that respondent can remain drug free. An indefinite suspension would better enable this court to monitor respondent's progress before allowing him to apply for reinstatement.

Therefore, due to the seriousness of the respondent's conviction and the continued need to ensure that respondent is indeed drug free, I would impose an indefinite suspension with credit for time served.

COOK, J., concurs in the foregoing dissenting opinion.