



STATE ex rel. OKLAHOMA BAR ASSOCIATION v. SHYERS

2023 OK 20

Case Number: SCBD-7212

Decided: 03/07/2023

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2023 OK 20, __ P.3d __

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STATE OF OKLAHOMA, *ex rel.* OKLAHOMA BAR ASSOCIATION, Complainant,

v.

PHILLIP JOHN SHYERS, Respondent.

BAR DISCIPLINARY PROCEEDING

¶0 Pursuant to Rule 7 of the Rules Governing Disciplinary Proceedings, this summary disciplinary proceeding arises from Respondent's pleas of guilty to four misdemeanor charges for actual physical control of a vehicle while in possession of two controlled substances and drug paraphernalia. This Court issued an Order of Immediate Interim Suspension of Respondent's license to practice law. Respondent waived a hearing before the Professional Responsibility Tribunal. The Oklahoma Bar Association recommended that Respondent be suspended for one year. We hold that Respondent's conduct warrants a suspension conditioned upon his successful completion of his deferred sentence on January 27, 2024, including meeting the financial obligations and other requirements of his probation.

**THE RESPONDENT IS SUSPENDED CONDITIONED UPON HIS
SUCCESSFUL COMPLETION OF HIS DEFERRED SENTENCE ON
JANUARY 27, 2024, INCLUDING MEETING THE FINANCIAL OBLIGATIONS
AND OTHER REQUIREMENTS OF HIS PROBATION.**

Stephen L Sullins, Assistant General Counsel of the Oklahoma Bar Association, Oklahoma City, Oklahoma, for Complainant.

Sheila J. Naifeh, Tulsa, Oklahoma, for Respondent.

Winchester, J.

¶1 On December 17, 2020, Respondent Phillip John Shyers (Shyers) was arrested for driving a vehicle while under the influence of drugs, possession of a controlled substance identified as cocaine, possession of a controlled substance identified as marijuana (without a valid prescription or an order from a practitioner), and possession of drug paraphernalia. The Noble County District Attorney subsequently charged Shyers in case no. CM-2020-122 with four counts: Count 1, Driving a Motor Vehicle While Under the Influence of Drugs, a misdemeanor; Count 2, Possession of Controlled Substance, a misdemeanor; Count 3, Possession of Controlled Substance, a misdemeanor; and Count 4, Unlawful Possession of Drug Paraphernalia, a misdemeanor. Shyers pled guilty to all four misdemeanor charges after Count 1 was reduced to Actual Physical Control.

¶2 This Court entered an Order of Immediate Interim Suspension on March 21, 2022, ordering Shyers to show cause why the Court should set aside the interim suspension. Shyers did not respond within the time allotted to him. On May 25, 2022, Shyers requested to respond out of time, and the Court granted his request. The Court then denied his request to lift his interim suspension.

¶3 Shyers waived a hearing in front of the Professional Responsibility Tribunal and requested additional time to file a brief. The Court granted Shyers's request, and Shyers filed a brief in support of mitigation, requesting that this Court only publicly censure him. The OBA responded, pointing out the seriousness of Shyers's crimes and his history of failing to protect his law license from suspension. The OBA recommended that Shyers be suspended for one year, with conditions included to address his substance abuse issues.

I. FINDINGS

¶4 On September 25, 2018, Shyers received his license to practice law in Oklahoma. He practiced law, in good standing, until his suspension by this Court on June 7, 2021, for failure to pay bar dues. *See In re Suspension of Members of Okla. Bar Ass'n*, 2021 OK 36. He paid his dues on May 25, 2022, but did not receive a reinstatement from the OBA because of this current matter. Due to his suspension for failure to pay his bar dues and his interim suspension, Shyers has been suspended from the practice of law for the last 19 months.

¶5 This matter arises from Shyers's pleas of guilty to four drug-related misdemeanor charges. On December 17, 2020, Shyers was driving in Perry, Oklahoma, while under the influence of an intoxicating substance. Shyers claimed he injected himself with Suboxone, a medication used to treat opioid addiction, and pulled his car over when he became sick. A witness called the police to respond to where Shyers was located. When law enforcement arrived, an officer located Shyers in his parked vehicle, rolling a marijuana cigarette. The officer found marijuana, cocaine, and a pipe used for smoking illicit substances in Shyers's vehicle. The Noble County District Attorney charged Shyers with four misdemeanor charges, and Shyers pled guilty to all charges after Count 1 was reduced from Driving Under the Influence to Actual Physical Control. After Shyers tendered pleas of guilty, the district court deferred sentencing for two years, until January 27, 2024, and placed Shyers on probation, which included supervision by the district attorney for 18 months. The district court ordered Shyers to undergo an alcohol and drug assessment and follow the assessment's recommendations; attend a Victim's Impact Panel course; complete DUI school; undergo random urinalysis; and serve one weekend in the Noble County jail. He also must pay fines in the amount of \$250 for each charge, probation fees, and costs.

¶6 On March 15, 2022, the OBA sent Shyers an Order to Show Cause as to why he had not complied with the Mandatory Continuing Legal Education (MCLE) requirements for the year 2021. Shyers failed to show cause why his membership should not be suspended, and on June 6, 2022, this Court suspended Shyers. *See In re Suspension of Members of Okla. Bar Ass'n*, 2022 OK 53. Shyers has provided no evidence that he has complied with the requirements to reinstate his license for his failure to complete his MCLE.

Mitigation

¶7 After his arrest, Shyers claims that he underwent an alcohol and drug assessment and followed all its recommendations. He attended AA meetings twice a week, was involved in the Lawyers Helping Lawyers program, and completed a DUI school as well as a Victim's Impact Panel course. Shyers states that he also attended weekly outpatient counseling from June 2021 to December 2021 with Richard Crawford, LPC, LMFT. His counseling was not only for his continued sobriety, but also for the loss of his marriage and coparenting.

¶8 Shyers is currently employed at the firm Doney & Whalen, P.L.L.C. as a paralegal. R. Matt Whalen, who is now the Associate District Judge of Ottawa County, provided a reference letter for Shyers. Judge Whalen stated that he has observed the changes that Shyers has made in his personal and professional life in the past few years, and he believes Shyers has "much to offer the legal community as a practicing attorney."

¶9 Shyers states that he chose to take a break from the practice of law in 2021, due to his recent divorce. He claims he needed to focus on his mental health and give undivided time to his children. Shyers argues that this Court should take into consideration that in addition to his interim suspension, Shyers "self-suspended" for one year. However, Shyers does not

mention that his self-suspension corresponds with when this Court suspended him on June 7, 2021, for his failure to pay his bar dues. He did not pay the past-due bar dues until May 2022, almost a year after his suspension.

¶10 On September 22, 2022, Shyers requested additional time to submit a brief and evidence to mitigate the severity of discipline in this matter. Shyers's stated reason for the request was for him to obtain documents and evidence from his therapist and his Lawyers Helping Lawyers sponsor. The Court granted his request. Yet, besides the reference letter from his current employer, Shyers provided no document or other evidence to mitigate the severity of discipline, including any documents reflecting the courses he completed, attendance at AA meetings or the Lawyers Helping Lawyers program, or completion of any of the other requirements of his deferred sentence. He also waived a hearing with the Professional Responsibility Tribunal and provided no sworn testimony as to the circumstances that led to his arrest and the steps he has taken to rehabilitate himself.

¶11 The OBA counters Shyers's mitigation evidence by noting that Shyers does not address whether he continued counseling or treatment past 2021 or whether he is currently involved in any substance abuse programs. A review of his criminal docket shows that Shyers has not completed all the requirements of his deferred sentence. As of the December 2022 compliance docket, Shyers's payments on fees and costs were past due, owing \$320.00. He also must still attend two months of self-help meetings (AA-NA), a 12-week drug/alcohol education class, and undergo monthly drug tests. Shyers's failure to complete the basic requirements of his deferred sentence demonstrates his lack of continuing or current treatment.

II. STANDARD OF REVIEW

¶12 In disciplinary proceedings, this Court acts as a licensing court in the exercise of our exclusive jurisdiction. *State ex rel. Okla. Bar Ass'n v. Garrett*, 2005 OK 91, ¶ 3, 127 P.3d 600, 602. Our review of the evidence is *de novo*. *State ex rel. Okla. Bar Ass'n v. Anderson*, 2005 OK 9, ¶ 15, 109 P.3d 326, 330. This Court's responsibility is not to punish an attorney, but to assess the continued fitness to practice law and to safeguard the interests of the public, the courts, and the legal profession. *State ex rel. Okla. Bar Ass'n v. Wilburn*, 2006 OK 50, ¶ 3, 142 P.3d 420, 422.

III. DISCUSSION

¶13 Shyers's pleas of guilty to the four misdemeanor drug charges serve as the basis for this summary disciplinary proceeding. Rule 7.1 of the Rules Governing Disciplinary Proceedings (RGDP) provides:

A lawyer who has been convicted or has tendered a plea of guilty or nolo contendere pursuant to a deferred sentence plea agreement in any jurisdiction of a crime which demonstrates such lawyer's unfitness to practice law, regardless of whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, shall be subject to discipline as herein provided, regardless of the pendency of an appeal.

Rule 7, Rules Governing Disciplinary Proceedings, 5 O.S.2011, ch. 1, app. 1-A.

¶14 Not every criminal conviction or guilty plea facially demonstrates a lawyer's unfitness to practice law. *State ex rel. Okla. Bar Ass'n v. Armstrong*, 1990 OK 9, ¶ 8, 791 P.2d 815, 818. Fitness to practice law entails more than the ability to handle cases but involves the continuing qualification of good moral character and respect for the law. *State ex rel. Okla. Bar Ass'n v. Willis*, 1993 OK 138, 863 P.2d 1211, 1214. A lawyer must answer for offenses that indicate a lack of moral turpitude and a lack of characteristics relevant to the practice of law. Rule 8.4, Cmt. 2, Oklahoma Rules of Professional Conduct (ORPC), 5 O.S.2011, ch.1, app. 3-A.¹ Answerable offenses typically involve violence, dishonesty, breach of trust, or serious interference with the administration of justice. *Id.*

¶15 We previously held that possession of illicit drugs is a crime of moral turpitude and subject to discipline. *State ex rel. Okla. Bar Ass'n v. Denton*, 1979 OK 116, 598 P.2d 663. The Court has further explained that drug use can prevent an attorney from adequately caring for the legal affairs of his clients, reflecting adversely on the practice of law by putting the public in danger. *State ex rel. Okla. Bar Ass'n v. Blackburn*, 1999 OK 17, ¶ 12, 976 P.2d 551, 554.

¶16 Shyers's drug-related offenses provide clear and convincing evidence of his engaging in conduct that reflects adversely on the legal profession in violation of his professional² duties according to ORPC Rule 8.4(b)² and RGDP Rule 1.3.³ The conduct serves as a basis for the imposition of discipline, which we must determine.

IV. DISCIPLINE

¶17 This Court has addressed an attorney's discipline for misconduct involving the possession of illicit drugs in a handful of cases. We have imposed discipline ranging from public censure to suspension for two years and one day. See, e.g., *State ex rel. Okla. Bar Ass'n v. Bounds*, 2018 OK 19, 415 P.3d 519 (attorney suspended for two years and one day for misconduct arising out of a felony conviction for possession of methamphetamine and a misdemeanor conviction for possession of drug paraphernalia); *State ex rel. Okla. Bar Ass'n v. Soderstrom*, 2013 OK 101, 321 P.3d 159 (attorney suspended for two years and one day for misconduct arising out of a felony conviction for possession of methamphetamine); *State ex rel. Okla. Bar Ass'n v. Smith*, 2011 OK 8, 246 P.3d 1090 (attorney publicly reprimanded along with one year deferred suspension with probationary conditions for attempting to obtain a controlled substance with a forged prescription); *State ex rel. Okla. Bar Ass'n v. Aston*, 2003 OK 101, 81 P.3d 676 (attorney suspended for six months for possession of marijuana); *State ex rel. Okla. Bar Ass'n v. Hogue*, 1995 OK 64, 898 P.2d 153 (attorney suspended for six months after pleading guilty for drug and alcohol-related offenses); *State ex rel. Okla. Bar Ass'n v. Willis*, 1993 OK 138, 862 P.2d 1211 (attorney suspended for 15 months, commencing on the date of interim suspension after conviction for obtaining a controlled substance by representation); *State ex rel. Okla. Bar Ass'n v. Arnett*, 1991 OK 44, 815 P.2d 179 (attorney suspended for ninety days for conviction of possession of controlled substance); *State ex rel. Okla. Bar Ass'n v. Thompson*, 1989 OK 123, 781 P.2d 824 (attorney suspended for nine months for conviction of possession of marijuana).

¶18 The *Aston* case helps guide the Court's imposition of discipline here. 2003 OK 101, 81 P.3d 676. An attorney pled guilty to a felony charge of possession of methamphetamine and two misdemeanor charges of possession of marijuana and drug paraphernalia. The attorney had a history of methamphetamine and marijuana use. The attorney showed remorse and was rigorous in completing the requirements of his probation. He followed the conditions of his probation, except for one positive drug test. *Id.* at ¶ 7, 81 P.3d at 677-78. The attorney cooperated in every part of the disciplinary process, and the Professional Responsibility Tribunal and the Court found that he assumed responsibility for his actions. *Id.* at ¶ 15, 81 P.3d at 680. The attorney had previously received a private reprimand in 2001 when he pled no contest to two misdemeanor charges of possession of marijuana and being drunk in public. *Id.* at ¶ 14, 81 P.3d at 680. The Court suspended the attorney from the practice of law for six months, along with conditioned supervision for two years. *Id.* at ¶ 21, 81 P.3d at 681.

¶19 Likewise, in *State ex rel. Oklahoma Bar Association v. Denton*, 1979 OK 116, 598 P.2d 663, an attorney pled guilty to two charges, one involving the possession of amphetamines and one involving the possession of marijuana. The district court dismissed the charge of possession of amphetamines, and the Court determined discipline for only the charge of possession of marijuana. The Court held that possession of marijuana is a crime of moral turpitude and subject to discipline. The Court suspended the attorney for the length of his probation to fulfill the purposes of discipline: purification of the bar, protection of the public, and deterrence from committing similar acts in the future. The Court held the suspension was adequate warning that this Court does not condone such acts.

¶20 We have continually upheld that in cases involving substance abuse, the Court may mitigate the discipline warranted when an attorney recognizes the adverse effect of his substance abuse and cooperates in the treatment for it. See, e.g., *State ex rel. Okla. Bar Ass'n v. Giger*, 2001 OK 96, ¶ 16, 37 P.3d 856, 863; *State ex rel. Okla. Bar Ass'n v. Willis*, 1993 OK 138, ¶ 12, 863 P.2d 1211, 1214. In cases where such mitigation is not shown, the Court will suspend an attorney to ensure a substantial period of sobriety and that the Court can trust the attorney to handle client matters. *State ex rel. Oklahoma Bar Ass'n v. Soderstrom*, 2013 OK 101, ¶ 13, 321 P.3d 159, 161.

¶21 Here, there is no evidence of neglect of clients or cases because of Shyers's drug possession or use. Yet unlike *Aston*, there is very little evidence that Shyers took responsibility for the crimes he committed or that he took positive actions to treat his drug use. Further, there is no evidence that he is currently taking any action to rehabilitate himself--despite the Court giving Shyers ample time to produce that information. Also, unlike *Aston*, Shyers has not been rigorous in his completion of the requirements of his deferred sentence as he still has many requirements outstanding. In short, Shyers presents the Court with no substantive mitigation evidence.

¶22 This Court has further had to repeatedly suspend Shyers for his failure to comply with the MCLE rules and to pay his bar dues. He also had to twice request permission from this Court to respond to a show cause order out of time and for an extension of time to file a brief in support of mitigation in this disciplinary matter. We have said that attorneys who fail to discharge the minimal burdens to protect their own interests cannot be expected or trusted to act to protect the interests of

their clients, the public, and the legal profession. *State ex rel. Okla. Bar Ass'n v. Sweet*, 2021 OK 57, ¶ 8, 499 P.3d 748, 750. In the same way, Shyers cannot at this time be trusted to act to protect the interests of his clients, the public, and the legal profession.

¶23 For these reasons, as in *Denton*, Shyers should be suspended the length of his deferred sentence to ensure a considerable period of sobriety, adequate rehabilitation, and his ability to protect his license, so that the Court can trust Shyers to handle client matters.

IV. CONCLUSION

¶24 Shyers's actions provide clear and convincing evidence of engaging in conduct that reflects adversely on the legal profession in violation of his professional duties pursuant to ORPC Rule 8.4 and RGDP Rule 1.3. The conduct serves as a basis for the imposition of discipline. Shyers's deferred sentence and failure to protect his law license are of considerable concern. Shyers provided no evidence of the steps he is now taking to avoid such behavior in the future, and it would therefore be beneficial for Shyers to complete his deferred sentence to advance his rehabilitation. Shyers is therefore suspended from the practice of law conditioned upon the successful completion of his deferred sentence on January 27, 2024. Shyers is required to abide by the conditions of his probation. Shyers shall pay the balance of the costs, fines, fees, and assessments ordered in CM-2020-122 by January 27, 2024. He must also complete the conditions of his probation and all other requirements of his deferred sentence set by the district court. Shyers must immediately notify the OBA in the event his probation is accelerated. Upon completion of his deferred sentence, Shyers must provide written documentation to the OBA of his successful completion of his deferred sentence before reinstatement will be allowed. If the OBA finds that Shyers has successfully completed his deferred sentence, Shyers will be reinstated to practice law without an order from this Court contingent upon Shyers also seeking reinstatement for his noncompliance with the rules of MCLE and full payment of all outstanding bar dues.

**THE RESPONDENT IS SUSPENDED CONDITIONED UPON HIS
SUCCESSFUL COMPLETION OF HIS DEFERRED SENTENCE ON
JANUARY 27, 2024, INCLUDING MEETING THE FINANCIAL OBLIGATIONS
AND OTHER REQUIREMENTS OF HIS PROBATION.**

ALL JUSTICES CONCUR.

FOOTNOTES

Winchester, J.

¹ Comment 2, ORPC 8.4 provides:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

² **ORPC 8.4(b)** provides in pertinent part:

It is professional misconduct for a lawyer to:

.....

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects

³ **RGDP 1.3** provides:

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

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Oklahoma Court of Criminal Appeals Cases

Cite	Name	Level
2003 OK CR 28, 81 P.3d 681,	KINCHION v. STATE	Cited

Oklahoma Supreme Court Cases

Cite	Name	Level
1989 OK 123, 781 P.2d 824,	State ex rel. Oklahoma Bar Ass'n v. Thompson	Discussed
1990 OK 9, 791 P.2d 815,	State ex rel. Oklahoma Bar Ass'n v. Armstrong	Discussed
1991 OK 44, 815 P.2d 170, 62 OBJ 1496,	State ex rel. Oklahoma Bar Ass'n v. Arnett	Cited
1993 OK 138, 863 P.2d 1211, 64 OBJ 3290,	State ex rel. Oklahoma Bar Ass'n v. Willis	Discussed at Length
2001 OK 96, 37 P.3d 856, 72 OBJ 3401,	STATE ex. rel. OKLAHOMA BAR ASSOCIATION v. GIGER	Discussed
1995 OK 64, 898 P.2d 153,	State ex rel. Oklahoma Bar Assn. v. Hogue	Discussed
2003 OK 101, 81 P.3d 676,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. ASTON	Discussed at Length
2005 OK 9, 109 P.3d 326,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. ANDERSON	Discussed
2005 OK 91, 127 P.3d 600,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. GARRETT	Discussed
2006 OK 50, 142 P.3d 420,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. WILBURN	Discussed
2011 OK 8, 246 P.3d 1090,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. SMITH	Discussed
2013 OK 101, 321 P.3d 159,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. SODERSTROM	Discussed at Length
1979 OK 116, 598 P.2d 663,	STATE EX REL. OKLAHOMA, ETC. v. DENTON	Discussed at Length
2018 OK 19, 415 P.3d 519,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. BOUNDS	Discussed
2021 OK 36,	IN THE MATTER OF THE SUSPENSION OF MEMBERS OF THE OKLAHOMA BAR ASSOCIATION	Cited
2021 OK 57, 499 P.3d 748,	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. SWEET	Discussed
2022 OK 53,	IN THE MATTER OF THE SUSPENSION OF MEMBERS OF THE OKLAHOMA BAR ASSOCIATION	Cited
1999 OK 17, 976 P.2d 551, 70 OBJ 782,	State ex. rel. Oklahoma Bar Association v. Blackburn	Discussed

