

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED MARCH 19, 2010

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	No. 07-C-14337
)	
JOOHAN JAMES SONG,)	
)	OPINION ON REVIEW
A Member of the State Bar.)	
_____)	

The State Bar requests review of a hearing judge’s recommendation that Joohan James Song be suspended for 90 days for his misdemeanor conviction of reckless driving involving moral turpitude. The State Bar seeks disbarment while Song asserts his misconduct warrants no more than a 30-day suspension. Upon our de novo review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), and having considered the Rules of Procedure of the State Bar, Standards for Attorney Sanctions for Professional Misconduct¹ and relevant decisional law, we conclude that neither a 90-day suspension nor disbarment is appropriate. Rather, we recommend that Song be actually suspended for one year upon the conditions stated herein.

I. FACTS

Song was admitted to practice law in California on December 1, 2004, and is a public defender with the County of Los Angeles. He has no prior record of discipline. In March 2008, Song was convicted of reckless driving in violation of Vehicle Code section 23103, subdivision

¹ Unless otherwise noted, all further references to “standard(s)” are to this source.

(a),² which is conclusive evidence of his guilt of the crime for purposes of attorney discipline. (Bus. & Prof. Code, § 6101, subd. (a).)³ Upon transmittal of the record of conviction to us, we referred the matter to the hearing department to determine whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. Song stipulated that the facts and circumstances surrounding his conviction involved moral turpitude because he lied to the Los Angeles Police Department (LAPD) when he denied involvement in a hit-and-run accident and to his insurance company when he reported that his car had been stolen.

Song was driving his car around 1:00 a.m. on September 23, 2007, when he hit an unoccupied parked car. No one was injured, but both cars sustained damage. A witness saw Song in the driver's seat and asked for his relevant information. Song tried to drive away without responding, but the damage to his car prevented him from doing so. He then abandoned his car and fled.

The LAPD investigated the accident and identified Song as the owner of the abandoned vehicle. The day after the accident, the LAPD obtained the following written statement from Song: "I was not involved in a hit/run accident. I parked my car on Saturday evening on my street around 7 p.m. I noticed my car was missing on Sunday afternoon between 12 p.m. – 1 p.m."

Eleven days after the accident, on October 4, 2007, Song advised his insurance company that his car had been stolen prior to the accident. During a taped telephone conversation with his agent that lasted almost 20 minutes, Song gave numerous details about the theft of his car. At

² This statute states: "A person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving."

³ Unless otherwise noted, all further references to "section(s)" refer to the Business and Professions Code.

the end of the conversation, he was asked: “Have all of your answers been true and correct to the best of your knowledge,” to which he responded “yes.”

On October 30, 2007, after concluding its investigation, the Los Angeles City Attorney’s Office charged Song with misdemeanor hit-and-run. On December 19, 2007, Song again contacted his insurance company, this time admitting his involvement in the accident. On March 4, 2008, he pled no contest to reckless driving. As a result of Song’s stipulation, the parties did not call witnesses to establish culpability and proceeded directly to the disciplinary phase of the trial.

II. DISCUSSION

A. FACTS AND CIRCUMSTANCES INVOLVING MORAL TURPITUDE

Song admits he caused a hit-and-run accident and then lied to the police and to his insurance company in order to cover it up. He stipulated that his conduct involved moral turpitude. Based on this record, we agree. (*In re Lesansky* (2001) 25 Cal.4th 11, 16 [criminal conduct outside practice of law reveals moral turpitude if it involves dishonesty].)

B. AGGRAVATING FACTORS

To determine the appropriate discipline, we consider the aggravating and mitigating factors, which the parties must prove by clear and convincing evidence. (Std. 1.2(b) & (e).) Because Song drove his car in disregard for the safety of persons or property, fled the scene of the accident, lied about it to law enforcement the next day and again lied about it to his insurance company eleven days after the accident, we agree with the hearing judge that he committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Furthermore, his written and verbal communications with the police and his insurance agent contained multiple, intentional misstatements.

The State Bar urges us to find additional factors in aggravation. It argues that Song's misconduct is aggravated because he attempted to obstruct justice by making false statements about the accident, he knew his conduct constituted criminal behavior and he intentionally engaged in the cover-up for personal gain. First, the State Bar failed to establish obstruction of or harm to the administration of justice by clear and convincing evidence. It is true that Song intended to impede the LAPD's investigation by claiming that a thief had stolen his car and caused the accident. But the State Bar offered no evidence of the actual hindrance, if any, that Song's misstatements caused to the administration of justice. The police were able to identify Song as the owner of the vehicle within a day after the accident and shortly thereafter the City Attorney charged him with the crime. The State Bar also failed to establish specifically how Song personally gained from his misconduct since he was convicted. Nor did it provide legal precedent to support the contention that Song's knowledge of the criminality of his actions establishes aggravation.

C. MITIGATING FACTORS

Although Song has no prior record of discipline, his misconduct began less than three years after admission to practice. (Std. 1.2(e)(i).) We therefore assign little weight to the absence of prior discipline. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 222 [three-year blemish-free record is relatively short duration and entitled to little weight in mitigation].)

We do not adopt the hearing judge's finding of lack of harm as a mitigating factor. Under standard 1.2(e)(iii), "lack of harm to the client or person who is the object of the misconduct" is considered mitigating. The evidence of damage to an innocent bystander's car sufficiently refutes such a finding. However, the State Bar did not establish whether the owner of the car was reimbursed by Song or his insurer. Thus, we also do not find clear and convincing evidence of cognizable harm in aggravation under standard 1.2(b)(iv).

We give mitigation credit for Song's cooperation with the State Bar in entering into a stipulation that the facts surrounding his crime involved moral turpitude. (Std. 1.2(e)(v).) This stipulation assisted the State Bar's prosecution by obviating a trial on the merits as to culpability and by allowing the parties and the court to focus on the appropriate discipline. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

We also afford significant mitigation for Song's showing of his good character. (Std. 1.2(e)(vi).) He presented nine attorneys and a city planner who have known him from two to 12 years and who were familiar with the facts surrounding his misconduct.⁴ Some of the attorneys had supervised Song on a daily basis for two or more years, many had worked with him over long time periods, and some had known him since law school. They cited examples of Song's honesty and integrity. One supervisor stated: "I never had any reason to distrust him, because he was always up front with me . . . he always gave me a truthful answer." His current supervisor testified that while Song was "an aggressive advocate," he was "a fair and honest advocate, and I've never had any complaints about him being dishonest in court from anybody, including a clerk." Another public defender described him as "a very honest person. I think he has a lot of integrity."

Many described Song's idealism and dedication to representing the accused. One witness stated: "[A]s a public defender, he always sees the best virtue in people" while another (a deputy district attorney) testified: "[T]he one thing I can say about Joohan above all else is he loves his job. I mean he is so unbelievably passionate about being a public defender. . . . [H]e truly

⁴The State Bar incorrectly argues that the testimony of the character witnesses should be discounted because some of the witnesses were not fully aware of Song's misconduct until they had read the stipulation. Character witnesses may properly rely on stipulations to apprise themselves of an attorney's misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

believes in what he is doing” because “he ultimately believes that everyone is redeemable.” Another colleague described him as “the most diligent lawyer I know at the Public Defender’s Office.”

Most of the witnesses also testified that, based on their experiences with him, Song’s actions were entirely uncharacteristic and aberrational. Moreover, many of them testified that notwithstanding his wrongdoing, they continue to have a high degree of trust in Song because he recognized the seriousness of his misconduct. As one witness explained: “He is remorseful. He feels shame. He feels devastated frankly. . . he has expressed that it would never happen again, and he is shocked at himself that it actually did happen.” We thus give additional mitigative weight for Song’s remorse and recognition of his wrongdoing. (Std. 1.2(e)(vii).)⁵

In addition, Song “was very civic minded,” according to a witness, and has performed considerable community service and pro bono work, which we consider as strong mitigation. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 665.) Song testified that he worked with underprivileged and at-risk youth through the Youth Build organization by helping them learn practical skills and to study for their high school equivalency tests. While he was an exchange student in Korea, he taught English, and he mentored other students while he was in law school. He also interned with the American Civil Liberties Union, participated in student government, championed immigrant workers’ rights, taught English, and advocated on behalf of the Thai community. The hearing judge found the testimony of Song and his character witnesses to be credible and so do we. Taken together, we find that Song has established very substantial mitigation.

⁵ Song’s testimony was limited to his community service. His other evidence of mitigation was established through witnesses. We therefore have given less weight to his evidence of remorse under standard 1.2(e)(vii) because we were denied the opportunity to evaluate on a first-hand basis either the depth and sincerity of his feelings or his recognition of wrongdoing.

However, Song's mitigation evidence is somewhat discounted by the fact that in rebuttal, the State Bar presented four lawyers from the Los Angeles City Attorney's Office who regularly opposed Song in numerous criminal cases. Each of the attorneys had only worked with Song for a relatively short time period (from six weeks to five months), but their exposure to him was intensive, often involving hundreds of cases a week. All four attorneys described Song's proclivity to "push the envelope" of honest and ethical behavior by misrepresenting the facts and/or status of a case, which he would later claim as a "mistake" when he was challenged. Although two witnesses were unwilling to conclude that Song was generally a person of bad character or was dishonest based on their trial experience with him, the other two believed he was a dishonest person. The hearing judge found their testimony to be credible.

The testimony of the State Bar's witnesses raises questions about the ethical boundaries of Song's advocacy and portrays behavior that is a precursor to the misconduct in this case. "While an attorney is expected to be a forceful advocate for a client's legitimate causes [citations], in this society of limited court resources challenged by growing volumes of litigation, the role played by attorneys in the honest administration of justice is more critical than ever." (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473.) Nonetheless, we conclude that Song's overall strong showing of mitigation, including the character testimony of his witnesses, who have known him far longer and in more varied and broader contexts than the State Bar's rebuttal witnesses, significantly outweighs the evidence in aggravation.

III. DISCIPLINE ANALYSIS

In considering the appropriate degree of discipline, we first review the applicable standards and conclude that standard 3.2 is most relevant. This standard states: "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission, shall result in disbarment. Only if the most

compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension . . . irrespective of mitigating circumstances.” Despite this language, we are “not bound to follow the standards in talismanic fashion.” (*Howard v. State Bar, supra*, 51 Cal.3d at pp. 221-222.) Rather, “we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Ibid.*) Indeed, the Supreme Court has criticized standard 3.2, stating: “We question whether strict reliance on standard 3.2 leads to just and consistent recommendations from the State Bar Court.” (*In re Young* (1989) 49 Cal.3d 257, 267.)

Moreover, in the context of convictions involving moral turpitude, the Supreme Court has stated: “the degree of discipline must correspond to some reasonable degree with the gravity of the misconduct. [Citation.]” (*In re Strick* (1987) 43 Cal.3d 644, 656.) We note that reckless driving in and of itself does not inherently involve moral turpitude. (*In re Titus* (1989) 47 Cal.3d 1105, 1106.) In fact, traffic offenses not involving moral turpitude have resulted in modest discipline, if any. (*In re Kelley* (1990) 52 Cal.3d 487 [public reproof for attorney twice convicted of driving under the influence (DUI) and violation of criminal probation, but no prior disciplinary record]; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208 [two months’ actual suspension for multiple DUI convictions that did not involve moral turpitude]; *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260 [DUI not involving moral turpitude did not warrant discipline].)

However, Song’s conviction is not limited to a traffic offense. He is culpable of moral turpitude based on his fleeing the scene of an accident, followed by his acts of deceit in covering up his involvement. Accordingly, we consider as guidance those conviction referral cases where the criminal conduct either inherently involved deceit or was surrounded by deceitful acts. In

these cases, the Supreme Court has deviated from standard 3.2 when the facts of the case compelled a different disciplinary outcome. (See, e.g., *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111-112 [one-year actual suspension for conviction of misdemeanor insider trading where attorney conspired with another to lie to SEC about his stock purchase, but “compelling” mitigation for spontaneous candor and cooperation with SEC and State Bar, remorse, good character, absence of prior discipline and subsequent good conduct]; *In re Chernik* (1989) 49 Cal.3d 467 [one-year actual suspension for conviction of conspiracy to defraud U. S. where attorney submitted back-dated documents to IRS for unlawful tax deductions in law practice, but no prior record for 20 years]; *In re Effenbeck* (1988) 44 Cal.3d 306 [one-year actual suspension for conviction of making false statement to U.S. Customs Service where attorney’s testimony to State Bar was not candid and he failed to file 9.20 affidavit].)

The State Bar seeks disbarment under standard 3.2, relying on *In re Rivas* (1989) 49 Cal.3d 794, a conviction referral case involving five felonies (later reduced to misdemeanors) for fraudulent voter registration and nomination papers submitted by Rivas in his quest to be elected as a judge. The Supreme Court was greatly dismayed by Rivas’ dishonesty, which he used to advance his career, and found that his conduct severely harmed the public and the administration of justice by exposing voters to an unqualified candidate. Although Rivas had no discipline in the 10 years prior to the misconduct, he had no other mitigation and no understanding of the wrongfulness of his behavior. We do not find *Rivas* to be applicable because the fraud was far more serious, it severely harmed the administration of justice, and there was less mitigation. We also do not consider the cases cited by Song to be instructive because they either do not involve conviction referrals or they pre-date the adoption of the standards in 1986.

In our view, the hearing judge’s recommended 90-day actual suspension is not supported by either the standards or prevailing case law, and we conclude that it is inadequate given Song’s

serious misconduct involving dishonesty. His panic in fleeing the scene of the accident should have abated with the passage of time. But instead of reporting the incident after he had time to reflect, he greatly exacerbated the situation when he lied to the LAPD and to his insurance agent to cover up his involvement. He did not correct the lie for two and one half months and then only after he had been charged by the City Attorney.

However, given the facts of this case and the fundamental purpose of this proceeding, as set forth in standard 1.3, which is to protect the public, the courts and the legal profession, we believe reliance on standard 3.2 would be unjust and would raise “grave doubts as to the propriety of the recommended discipline.” [Citation.]” (*In re Silvertown* (2005) 36 Cal.4th 81, 91.) The very strong mitigating evidence shows that Song has admitted to his misconduct, understands how serious it is and is remorseful. Furthermore, he is dedicated to representing the accused, has devoted substantial time to community service, and has impressed ten witnesses, who have worked with him closely for a number of years, with the strength of his character and that his misconduct is aberrational. Giving consideration to these facts and the decisional law, we recommend that Song be actually suspended for one year upon the conditions set forth below.

IV. RECOMMENDATION

We recommend that Joohan James Song be suspended from the practice of law in California for two years, that execution of that suspension be stayed and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first year of probation.
2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such

change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
6. Within one year of the effective date of the discipline, he must provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School given periodically by the State Bar and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
7. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this proceeding. At the expiration of the period, if he has complied with all of the terms and conditions of probation, his two-year period of stayed suspension will be satisfied and terminated.

We also recommend that Song be required to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period.

We further recommend that Song be ordered to comply with the requirements of California Rules of Court, rule 9.20 and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code, section 6086.10, such costs being enforceable both as provided in section 6140.7 of that code and as a money judgment.

EPSTEIN, J.

We concur:

REMKE, P. J.

PURCELL, J.