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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case Nos. 12-C-13650; 17-C-03050;
)	17-C-03053; 17-C-03055; 17-C-03069
MICHAEL ARMIN GARDNER,)	(Consolidated)
)	
A Member of the State Bar, No. 196079.)	RECOMMENDATION OF SUMMARY
)	DISBARMENT
)	

On November 15, 2017, and February 27, 2018, the State Bar’s Office of Chief Trial Counsel (State Bar) filed motions requesting that Michael Armin Gardner be summarily disbarred based on his convictions for five violations of the Virginia Code. The State Bar asserts that Gardner’s felony offenses involved moral turpitude per se and concurrently filed evidence with each motion that the convictions are final. Gardner did not file a response. We grant the motion and recommend that Gardner be summarily disbarred.

I. PROCEDURAL HISTORY

On September 24, 2015, Gardner pled guilty to five counts of violating the Virginia Code: four counts of section 18.2-67.3 (aggravated sexual battery) upon victims that were under 13 years of age, and one count of section 18.2-67.2 (object sexual penetration), upon a victim under 13 years of age. Effective January 8, 2018, we ordered that Gardner be placed on interim suspension as a result of his convictions, and he has remained suspended and not entitled to practice law in California since that time. On November 15, 2017, the State Bar transmitted evidence that three of Gardner’s convictions of section 18.2-67.3 had become final and requested

Gardner's summary disbarment. On February 27, 2018, the State Bar transmitted evidence that Gardner's remaining two convictions had become final and requested Gardner's summary disbarment. On March 29, 2018, we consolidated all five conviction matters.

After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction in this case establishes both criteria for summary disbarment.

A. Gardner Suffered Felony Convictions

Gardner's convictions are each felonies. Business and Professions Code section 6102, subdivision (d), provides that a conviction under the laws of another state or territory of the United States shall be deemed a felony if: (1) the judgment or conviction was entered as a felony irrespective of any subsequent order suspending sentence or granting probation and irrespective of whether the crime may be considered a misdemeanor as a result of post-conviction proceedings; and (2) the elements of the offense for which the member was convicted would constitute a felony under the laws of the State of California at the time the offense was committed. The record of conviction shows that Gardner pled to and was convicted of felony violations of the Virginia Code. Additionally, the analogous crimes in California, Penal Code section 288, subdivision (a) (lewd or lascivious act upon or with the body of a child who is 14 years of age or younger with the intent to arouse or gratify sexual desires) and subdivision (b) (lewd or lascivious act upon or with the body of a child who is 14 years of age or younger with the intent to arouse or gratify sexual desires committed by force) are felonies. (See Pen. Code, § 17, subd. (a) [crime punishable by imprisonment in state prison is a felony]; Pen. Code, § 288,

subds. (a) [punishable in state prison for three, six, or eight years], (b) [punishable in state prison for five, eight, or ten years].)

B. Gardner's Conviction Involved Per Se Moral Turpitude

A criminal offense necessarily involves moral turpitude if the conviction would evidence bad moral character in every case. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) Gardner pled guilty to four counts of aggravated sexual battery and one count of object sexual penetration upon victims under 13 years of age. In *Lesansky*, the Supreme Court held that the intent required by Penal Code section 288, subdivision (a), "arousing, appealing to, or gratifying the lust, passions, or sexual desires of [the perpetrator] or the child," necessarily involves an intention to harm a child, constitutes a serious breach of the duty adults owe children, and demonstrates flagrant disrespect for the law and social norms.¹ (*Id.* at p. 17; see also *People v. Massey* (1987) 192 Cal.App.3d 819, 823 [willful and lewd touching of a child in violation of Penal Code section 288, subdivision (a) is an act of moral depravity; child molesting in California is a crime of moral turpitude for impeachment and other purposes].) Gardner's crimes should be classified as involving moral turpitude per se.

II. RECOMMENDATION

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Michael Armin Gardner, State Bar number 196079 be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and

¹ In *Lesansky*, the Court analyzed a violation of Penal Code section 288, subdivision (c)(1), which requires the same intent stated in Penal Code section 288, subdivision (a).

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 20, 2018, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED APRIL 20, 2018

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL A. GARDNER
1305 ELLISON ST
FALLS CHURCH, VA 22046

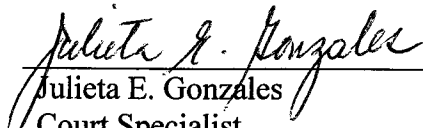
Courtesy copy:

MICHAEL ARMIN GARDNER #1459671
GREEN ROCK CORRECTIONAL CENTER
475 GREEN ROCK LANE
CHATHAM, VA 24531

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 20, 2018.



Julieta E. Gonzales
Court Specialist
State Bar Court