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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 94-C-13696-LMA
)	95-N-15993 (Cons.)
ARCHER BRYANT HUDSON, JR.,)	
)	DECISION AND ORDER OF
Member No. 92402,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

This matter is before the court on two consolidated cases involving respondent Archer Bryant Hudson, Jr. (Respondent). The first matter came to this court by order of reference filed by the Review Department of the State Bar Court on October 29, 2002, for a hearing and decision recommending discipline relating to Respondent's four felony convictions involving lewd acts on minors and solicitation to murder. In the second matter, Respondent was charged with willfully violating former rule 955 of the California Rules of Court. For the reasons stated below, the court recommends that Respondent be disbarred.

Significant Procedural History

On April 21, 1995, Respondent was convicted on two felony counts of lewd acts upon a child under the age of fourteen, in violation of Penal Code section 288, subdivision (a), and one

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

felony count of a lewd act upon a child fourteen years of age (when the defendant was at least ten years older than the child), in violation of Penal Code section 288, subdivision (c).²

On June 22, 1995, the Review Department issued an order suspending Respondent from the practice of law pending final disposition of his felony criminal convictions. Included in this order was a requirement that Respondent comply with former rule 955 of the California Rules of Court (former rule 955).³

On October 3, 1995, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case no. 95-N-15993 (the former rule 955 matter). In this matter, the State Bar alleged that Respondent failed to comply with former rule 955, as ordered by the Review Department on June 22, 1995.

On November 19, 1999, following the retrial of two counts that were declared a mistrial in the first criminal trial, Respondent was convicted of a felony count of solicitation of murder, in violation of Penal Code section 653f, subdivision (b), and an additional felony count of committing a lewd act upon a child under fourteen years of age in violation of Penal Code section 288, subdivision (a).

On June 25, 2002, the Court of Appeal filed an opinion affirming Respondent's conviction on all counts, with the exception of one of the penal code section 288, subdivision (a), counts [lewd acts upon a child under the age of fourteen], which was reversed due to the fact that the evidence was unclear whether the victim was thirteen or had just turned fourteen at the time of the incident.

² The jury also found Respondent guilty of one count of misdemeanor child molestation pursuant to Penal Code section 647.6. The misdemeanor conviction was not referred to this court by the Review Department, so this court will only consider Respondent's felony convictions.

³ This rule is currently identified as California Rules of Court, rule 9.20.

On September 11, 2002, the Supreme Court of California denied Respondent's petition for review of the Court of Appeal's opinion entered on June 25, 2002.⁴ On September 18, 2002, the Court of Appeal issued a remittitur and the convictions became final.

On October 29, 2002, the Review Department referred Respondent's criminal conviction matter to the Hearing Department for a hearing and a decision recommending the level of discipline to be imposed (the conviction matter). The Review Department previously found that Respondent's felony convictions involved moral turpitude, and did not request that this court make such a determination.

On November 18, 2002, a Notice of Hearing on Conviction was filed in the Hearing Department. After serving over eight years in custody, Respondent was released in December 2002. Following his release, Respondent's abatement was extended multiple times, at his request, based on his representations that he was actively attempting to have his criminal convictions overturned.⁵

The conviction matter and the former rule 955 matter were reassigned to the undersigned judge on September 22, 2014. The conviction matter and the former rule 955 matter were taken out of abated status and consolidated on January 12, 2015.

On March 19, 2015, Respondent filed a response to the NDC and the Notice of Hearing on Conviction.

On May 18, 2015, Respondent filed a Petition for Writ of Habeas Corpus with the California Supreme Court relating to his conviction matter. Respondent objected to the present matter going forward due to his recently filed writ and his assertion that he also had a federal

⁴ There is no indication in the record that Respondent timely filed and was granted a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction. (See California Rules of Court, rule 9.10(a).)

⁵ Respondent was not authorized to practice law during the period of his abatement and throughout these proceedings.

writ available to him. This court overruled Respondent's objection and set the matter for trial, set to commence on June 2, 2015.

On June 2, 2015, Respondent failed to appear for the first day of trial. Accordingly, a default order was entered.

On June 29, 2015, Respondent filed a motion to set aside his default. On July 20, 2015, the present matter was re-set for trial for September 14-18, 2015. Respondent's motion to set aside his default was taken under advisement, pending his appearance at trial on September 14, 2015.

Upon Respondent's appearance on September 14, 2015, his default was set aside and this matter proceeded to trial. The State Bar was represented by Deputy Trial Counsel Agustin Hernandez. Respondent represented himself. This matter was taken under submission for decision on September 14, 2015.

On November 16, 2015, Respondent filed, without leave of the court, additional exhibits to supplement his Exhibit D. On November 19, 2015, Respondent filed, again without leave of the court, a document entitled Copy of Writ of Error Coram Vobis Exhibits A-LL Filed on 11-12-15 in the California Supreme Court. As these documents were not properly introduced and admitted into evidence at the time of trial, they are not part of the record and will not be given any weight or consideration.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 11, 1980, and has been a member of the State Bar of California at all times since that date.

Case No. 94-C-13696 – The Conviction Matter

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof.

Code section 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

Facts

Respondent was arrested on April 29, 1994, based on allegations that he had molested multiple boys. On April 21, 1995, Respondent was convicted on two felony counts of lewd acts upon a child under the age of fourteen, in violation of Penal Code section 288, subdivision (a), and one felony count of a lewd act upon a child fourteen years of age (when the defendant was at least ten years older than the child), in violation of Penal Code section 288, subdivision (c).

On November 19, 1999, following a retrial of two counts that were declared a mistrial in the original criminal trial, Respondent was convicted of one felony count of solicitation of murder, in violation of Penal Code section 653f, subdivision (b), and one felony count of a lewd act upon a child under fourteen years of age, in violation of Penal Code section 288, subdivision (a).

On June 25, 2002, the Court of Appeal entered an opinion reversing Respondent's conviction as to one of the 288, subdivision (a), counts and affirming the judgment in all other respects. On September 11, 2002, the Supreme Court of California denied Respondent's petition for review of the Court of Appeal's opinion entered on June 25, 2002. On September 18, 2002, the Court of Appeal issued a remittitur and the convictions became final.

In its June 25, 2002 decision, the Court of Appeal found that Respondent committed lewd acts on minor boys on three separate occasions.⁶ After the allegations of molestation came to light, Respondent wanted to prevent one of the boys from testifying against him. Respondent

⁶ This court will not reiterate some of the findings from the Court of Appeal's opinion due to their graphic nature.

therefore hired a hit man to kill the boy for \$5,000, paying out half the money upfront. The would-be hit man instead went to the police. The police staged a photograph making it appear the boy had been murdered and buried in a shallow desert grave. Upon seeing the picture, Respondent paid the would-be hit man the other half of the \$5,000.

Conclusions of Law

As found by the Review Department, the facts and circumstances surrounding Respondent's convictions involve moral turpitude.

Case No. 95-N-15993 – The Former Rule 955 Matter

Facts

Following Respondent's first conviction, the Review Department, on June 22, 1995, filed an order placing Respondent on interim suspension and ordered him to comply with former rule 955.

Former rule 955, subdivision (a), required that Respondent, in all pending matters, notify all clients, co-counsel, courts, and opposing counsel (or the adverse party) of Respondent's suspension from the practice of law. Respondent was also required to deliver or make available to clients their files and property, and to refund any unearned attorney's fees. Former rule 955, subdivision (c), required that Respondent file with the clerk of the State Bar Court a declaration of compliance with subdivision (a) of former rule 955 within 40 days after the effective date of the order. Respondent received this order.

The effective date of this order was July 24, 1995. Respondent was required to have filed a declaration of compliance with former rule 955 with the clerk of the State Bar Court by September 2, 1995.

On October 3, 1995, an NDC was filed for Respondent's failure to file a declaration of compliance with former rule 955. Respondent received a copy of the NDC and was aware of the

fact that he was being charged with failing to comply with former rule 955. (See Exhibit 5.) On May 6, 1996, this matter was abated due to Respondent's incarceration.

In 1999, State Bar investigator Sheila Campbell visited Respondent while he was incarcerated in the San Bernardino County Jail in an effort to obtain his resignation. While meeting with Respondent, Campbell reminded him that he had failed to comply with former rule 955.⁷

This matter was unabated on January 12, 2015. Respondent did not file a declaration of compliance with former rule 955 until March 19, 2015, nearly twenty years after he was originally ordered to do so.

Conclusions of Law

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent's failure to obey the Review Department's order requiring his timely compliance with former rule 955, paragraph (c), constitutes a willful violation of section 6103.

Aggravation⁸

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor.

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⁷ Respondent's testimony that he did not know he had to file a former rule 955 declaration was not credible.

⁸ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's criminal misconduct involved significant harm to his victims, warranting consideration in aggravation.

High Level of Vulnerability of the Victim (Std. 1.5(n).)

Clearly, Respondent preyed on young, vulnerable victims. The victims of his lewd acts were fourteen years old or younger at the time of the incidents. The high level of vulnerability of Respondent's victims warrants significant consideration in aggravation.

Mitigation

No Prior Record of Discipline (Std. 1.6(a).)

Respondent was admitted to practice law in California in 1980, and has no prior record of discipline. His approximately eleven years of discipline-free conduct prior to the present misconduct warrant significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for disbarment, absent the most compelling mitigating circumstances. Standard 2.15(b) states that disbarment is the presumed sanction for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar requested that Respondent be disbarred. Respondent, on the other hand, continues to argue that his criminal convictions are not final.

Turning to the applicable case law, the court finds some guidance in *In re Lesansky* (2001) 25 Cal.4th 11. In *Lesansky*, an attorney was summarily disbarred as the result of a felony conviction for an attempted lewd act on a 14-year-old child who was at least ten years younger than the attorney. (Penal Code § 288, subd. (c).) The Supreme Court regarded this as a serious crime because “one who admits ‘that he intended to arouse, appeal to or gratify sexual desire with a child ... necessarily admits that he intended to harm the child.’ [Citation.]” (*Id.* at p. 17.) The Court was particularly concerned “when the unlawful sexual behavior is committed against

a [14-year-old] child who is substantially younger than the perpetrator” because such conduct “showed a flagrant disrespect for the law and for societal norms....” (*Ibid.*)

The present case is considerably more serious than *Lesansky*. Not only has Respondent been convicted of two additional acts of lewd conduct, but he was also convicted of soliciting the murder of one of his victims. Even without consideration of Respondent’s violation of former rule 955, no reasonable justification exists to recommend any level of discipline short of disbarment. While Respondent was given significant mitigation for his lack of a prior record of discipline, this mitigation does not rise to the level of “most compelling,” and was offset by the extensive aggravating factors involved in this matter.

Accordingly, the court concludes that Respondent’s disbarment is necessary to protect the public, the courts, and the legal community, to maintain high professional standards, and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent **Archer Bryant Hudson, Jr.**, State Bar Number 92402, be disbarred from the practice of law in California and Respondent’s name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to 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 proceeding.

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Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November 30, 2015



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator 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 San Francisco, on November 30, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

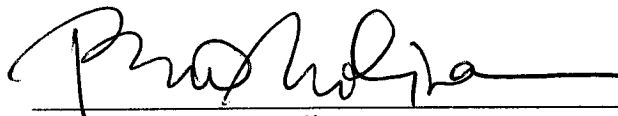
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ARCHER BRYANT HUDSON, JR.
12813 7TH ST SPC 43
YUCAIPA, CA 92399

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 30, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court