

SUPREME COURT OF CALIFORNIA

In re Stuart K. Lesansky, on Discipline

25 Cal. 4th 11, 104 Cal. Rptr. 2d 409, 17 P.3d 764 (Cal. 2001) · No. S079499 · Decided March 28, 2001

SUMMARY

The Supreme Court of California held that an attorney may be summarily disbarred under Business and Professions Code section 6102, subdivision (c), for a felony involving moral turpitude even when the offense was private and unrelated to the practice of law or a client. The court concluded that attempting to commit a lewd act on a child necessarily involved moral turpitude and demonstrated unfitness to practice law. The court ordered Stuart K. Lesansky disbarred and his name stricken from the roll of attorneys.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Kennard, J.; George, C.J.; Mosk, J.; Baxter, J.; Werdegarr, J.; Chin, J.; Brown, J.
JURISDICTION	California
DECIDED	March 28, 2001
DOCKET	S079499
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of the State Bar Court Review Department's recommendation that petitioner be summarily disbarred following his felony conviction.
STANDARD OF REVIEW	Questions concerning whether a felony necessarily involves moral turpitude are questions of law determined by the Supreme Court of California.
PRECEDENTIAL VALUE	Published and precedential California Supreme Court opinion
PARTIES	Stuart K. Lesansky v. The State Bar of California

TOPICS

- statutory interpretation
- appellate procedure
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Business and Professions Code section 6102, subdivision (c), authorizes summary disbarment for a felony involving moral turpitude when the criminal conduct is private, unrelated to a client, and outside the practice of law.
2. Whether an attempted lewd act on a child necessarily involves moral turpitude for purposes of attorney discipline.
3. Whether the absence of actual child harm or the fact that the conviction was for an attempt precludes a finding of moral turpitude and summary disbarment.

HOLDINGS

1. A felony involving moral turpitude may support summary disbarment even when the conduct was committed in a private setting, was unrelated to the practice of law, and did not involve a client, so long as the conduct has a logical relationship to the attorney's fitness to practice.
2. Attempting to commit a lewd or lascivious act on a child who is substantially younger than the perpetrator necessarily involves moral turpitude for purposes of attorney discipline.
3. Neither the fact that the conviction was for an attempt nor the absence of proof that a child was actually harmed prevents the conduct from necessarily involving moral turpitude or warrants against summary disbarment.

KEY QUOTATIONS

“Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.” (at 412)

“An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (at 413)

FACTUAL BACKGROUND

Stuart K. Lesansky, a California attorney admitted in 1985, pleaded nolo contendere to attempting to commit a lewd act on a child who was 14 or 15 years old and at least 10 years younger than he was. The offense was a felony and was unrelated to a client or the practice of law. The State Bar Court concluded that the conviction necessarily involved moral turpitude and recommended summary disbarment.

PROCEDURAL HISTORY

Lesansky pleaded nolo contendere in Los Angeles Superior Court to attempted lewd conduct on a child. The conviction record was transmitted to the State Bar Court, which imposed an interim suspension. The Review Department, without an evidentiary hearing, determined that the offense involved moral turpitude and recommended summary disbarment. The California Supreme Court granted review and accepted the recommendation.

DISPOSITION

other

CASES CITED

- Baker v. State Bar, 49 Cal. 3d 804, 815 n.3, 263 Cal. Rptr. 798, 781 P.2d 1344 (1989)
- Morrison v. State Board of Education, 1 Cal. 3d 214, 227, 82 Cal. Rptr. 175, 461 P.2d 375 (1969)
- In re Johnson, 1 Cal. 4th 689, 698-699, 705, 4 Cal. Rptr. 2d 170, 822 P.2d 1317 (1992)
- In re Gossage, 23 Cal. 4th 1080, 1095, 1098, 99 Cal. Rptr. 2d 130, 5 P.3d 186 (2000)
- Stratmore v. State Bar, 14 Cal. 3d 887, 890, 123 Cal. Rptr. 101, 538 P.2d 229 (1975)
- In re Rohan, 21 Cal. 3d 195, 198, 201, 205-206, 145 Cal. Rptr. 855, 578 P.2d 102 (1978)
- In re Brown, 12 Cal. 4th 205, 217, 48 Cal. Rptr. 2d 29, 906 P.2d 1184 (1995)
- In re Fahey, 8 Cal. 3d 842, 849, 106 Cal. Rptr. 313, 505 P.2d 1369 (1973)
- In re Higbie, 6 Cal. 3d 562, 569-570, 573, 99 Cal. Rptr. 865, 493 P.2d 97 (1972)
- In re Calaway, 20 Cal. 3d 165, 169-170, 141 Cal. Rptr. 805, 570 P.2d 1223 (1977)
- In re Hallinan, 43 Cal. 2d 243, 249, 272 P.2d 768 (1954)
- In re Boyd, 48 Cal. 2d 69, 307 P.2d 625 (1957)
- J.C. Penney Casualty Insurance Co. v. M.K., 52 Cal. 3d 1009, 1025, 278 Cal. Rptr. 64, 804 P.2d 689 (1991)
- People v. Kipp, 18 Cal. 4th 349, 376, 75 Cal. Rptr. 2d 716, 956 P.2d 1169 (1998)
- In re Safran, 18 Cal. 3d 134, 135, 133 Cal. Rptr. 9, 554 P.2d 329 (1976)
- People v. Massey, 192 Cal. App. 3d 819, 823, 237 Cal. Rptr. 734 (1987)
- In re Conflenti, 29 Cal. 3d 120, 124, 172 Cal. Rptr. 203, 624 P.2d 253 (1981)
- In re Paguirigan, 25 Cal. 4th 1, 104 Cal. Rptr. 2d 402, 17 P.3d 758 (2001)