

SUPREME COURT OF KENTUCKY

Holmes v. Kentucky Bar Ass'n

111 S.W.3d 873 (Ky. 2003) · Decided August 21, 2003

SUMMARY

The Kentucky Supreme Court granted Gregory N. Holmes's motion for a 90-day disciplinary suspension and dissolved his prior temporary suspension. The court ordered Holmes not to practice law unless reinstated under SCR 3.510(4), required him to pay \$8,994 in disciplinary costs, and terminated the disciplinary proceeding upon completion of the order's conditions.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Joseph E. Lambert, Chief Justice; Lambert, C.J.; Cooper, J.; Keller, J.; Stumbo, J.; Wintersheimer, J.; Graves, J.; Johnstone, J.
JURISDICTION	Kentucky
DECIDED	August 21, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Holmes moved under SCR 3.480(3) for a 90-day disciplinary suspension and dissolution of his temporary suspension order, seeking termination of the disciplinary proceeding. The Kentucky Bar Association agreed to the proposed disposition.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion and order
PARTIES	Gregory N. Holmes v. Kentucky Bar Association

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate procedure

criminal procedure

QUESTIONS PRESENTED

1. Whether the court should approve Holmes's agreed motion for a 90-day disciplinary suspension and dissolve the prior temporary suspension order.

2. Whether the disciplinary proceeding should be terminated after Holmes completed the conditions imposed by the court.

HOLDINGS

1. Holmes is suspended from the practice of law in Kentucky for 90 days from the date of entry of the order.
2. The prior temporary suspension order is dissolved, but Holmes may not practice law unless and until reinstated pursuant to SCR 3.510(4).

KEY QUOTATIONS

“He shall not engage in the practice of law unless or until he is reinstated pursuant to SCR 3.510(4).” (875)

“Upon the completion of the conditions set out in this order, the disciplinary proceeding against Holmes shall be terminated.” (875)

FACTUAL BACKGROUND

Holmes was originally convicted after trial of bribery of a public servant, bigamy, and theft by deception over \$100 and received an aggregate prison sentence. The convictions were reversed, and the criminal matter ultimately concluded with his guilty plea to two Class B misdemeanors of second-degree official misconduct, a conditionally discharged 90-day sentence, and 100 hours of community service. He had been temporarily suspended from practicing law since July 12, 1993, and the parties agreed that a 90-day disciplinary suspension was an appropriate resolution, in part because portions of the criminal trial record could not be reconstructed.

PROCEDURAL HISTORY

Holmes's criminal convictions for bribery, bigamy, and theft by deception led to a temporary suspension and disciplinary proceedings. The convictions were reversed, and the criminal matter was resolved by Holmes's guilty plea to two Class B misdemeanors of second-degree official misconduct. After earlier motions to dissolve the temporary suspension were denied and the matter was remanded for an evidentiary hearing, Holmes renewed his request for an agreed 90-day suspension. The Supreme Court of Kentucky granted the motion, dissolved the temporary suspension, imposed costs, and terminated the disciplinary proceeding upon completion of the order's conditions.

DISPOSITION

other

OPINION

Holmes v. Kentucky Bar Ass'n 111 S.W.3d 873

LAMBERT, J.

OPINION AND ORDER

LAMBERT, Chief Justice. Gregory N. Holmes, whose last known address is Louisville, Kentucky,

has moved for disciplinary suspension and dissolution of a temporary suspension order pursuant to SCR 3.480(3). He requests this Court to enter an order suspending him as an attorney in the Commonwealth for a period of 90 days from the date of the order and dissolving the temporary suspension order previously entered by this Court, all pursuant to the terms and conditions of his motion. Thereby, he seeks to terminate this disciplinary proceeding. Holmes was charged with bribery of a public servant, bigamy and theft by deception over \$100. After an extended trial, the jury rendered verdicts of guilty as charged in April 1993. At final sentencing, he was sentenced to five years for bribery, five years for bigamy and three years for the theft charge. He appealed and his conviction was reversed. On June 18, 1993, the KBA filed a petition for temporary suspension based on the June 3, 1993 conviction. Thereafter, on August 5, 1993, the Inquiry Tribunal issued a charge against Holmes relying on that conviction. Holmes was temporarily suspended from the practice of law based on his conviction in a criminal proceeding in Jefferson Circuit Court. Ultimately, the judgment of conviction was reversed by the Kentucky Court of Appeals and remanded to the circuit court. There, the matter was resolved by Holmes entering a guilty plea to two Class B misdemeanors of official misconduct in the second-degree. He received a conditionally discharged 90-day sentence and 100 hours of community service which have been completed. Following reversal of the conviction and remand, this Court denied both a motion and renewed motion by Holmes to dissolve the temporary suspension. In December 1999, Holmes filed a verified motion that his disciplinary case be concluded on terms virtually identical to those proposed in the pending motion. The KBA filed a response that it did not object to that motion. In February 2000, this Court denied the motion and remanded the case to the KBA “with directions that a trial commissioner be appointed for the purpose of conducting a full evidentiary hearing consistent with all rules, statutes and cases applicable at the time of the offenses.” We denied the motion by Holmes to reconsider, expand or clarify that order. A subsequent motion seeking the same relief was also denied as an unauthorized pleading. The KBA, through Chief Bar Counsel Benjamin Cowgill, responds to this motion for suspension and dissolution of the temporary order by agreeing with the request by Holmes to grant the motion for a 90-day suspension. KBA counsel states the motion was the product of communications with the KBA pursuant to SCR 3.480(2) and that the KBA has agreed to the terms set out in the motion. KBA counsel asserts that the terms constitute an appropriate disposition of the pending disciplinary case. KBA counsel states that some delay in the disciplinary case was occasioned by difficulties in obtaining and transcribing relevant portions of the testimony in the criminal case. According to KBA counsel, a more significant problem occurred in locating and retrieving the voluminous trial exhibits that had been introduced during the 1993 criminal trial. KBA counsel claims that those trial exhibits were, and continue to be, essential to the *875 prosecution of the disciplinary case because the discipline grew out of the criminal conduct. Ultimately, the KBA determined that portions of the record from the criminal matter could not be reconstructed or retrieved. Holmes states that he has not practiced law in Kentucky since July 12, 1993, the date of the order of temporary suspension, and that he

will not practice law in Kentucky during the term of the suspension requested in his motion unless and until he is reinstated by this Court. He acknowledges that his conduct supports the imposition of a 90-day suspension from the practice of law. He states that he does not have any clients and, therefore, there is no one to whom he can provide notice of any suspension pursuant to SCR 3.390. He acknowledges that his reinstatement to the active practice of law would be governed by SCR 3.510(4) and in particular, the reinstatement provision regarding persons who have been suspended for more than five years. Considering the admission by Holmes that his behavior was unethical and in view of the fact that his temporary suspension from the practice of law has been for nine years and that any reinstatement would be governed by SCR 3.510(4): IT IS HEREBY ORDERED that Gregory N. Holmes is suspended from the practice of law in Kentucky for 90 days from the date of the entry of this Order. The order of temporary suspension is dissolved. He shall not engage in the practice of law unless or until he is reinstated pursuant to SCR 3.510(4). Holmes shall pay all the costs associated with the disciplinary investigation in the amount of \$8,994.00, for which execution may issue. Upon the completion of the conditions set out in this order, the disciplinary proceeding against Holmes shall be terminated. LAMBERT, C.J., COOPER, KELLER and STUMBO, JJ., concur. WINTERSHEIMER, J., dissents by separate opinion and is joined by GRAVES and JOHNSTONE, JJ. ENTERED: August 21, 2003. /s/ Joseph E. Lambert CHIEF JUSTICE