

SUPREME COURT OF GEORGIA

In the Matter of Trent Carl Gaines

S16Y1335 · No. S16Y1335 · Decided September 12, 2016

SUMMARY

The Supreme Court of Georgia rejected Trent Carl Gaines’s petition for voluntary discipline seeking a three-year suspension after he admitted to federal bid-rigging conspiracy and conspiracy to commit mail fraud involving foreclosure auctions. The Court concluded that the lengthy criminal conduct, pattern of offenses, and personal financial motive made the proposed suspension inappropriate, despite mitigating factors including cooperation, remorse, and no prior disciplinary record.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	All the Justices
JURISDICTION	Georgia
DECIDED	September 12, 2016
DOCKET	S16Y1335
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding based on a petition for voluntary discipline filed before issuance of a formal complaint.
STANDARD OF REVIEW	The Court independently evaluated the proposed sanction in light of the admitted misconduct, aggravating and mitigating factors, and cited disciplinary precedent.
PRECEDENTIAL VALUE	Published disciplinary opinion; the Court's sanction and restitution analysis are precedential within Georgia attorney-discipline proceedings.

TOPICS

foreclosure real estate criminal procedure

PRACTICE AREAS

legal ethics and professional discipline criminal law antitrust real estate

QUESTIONS PRESENTED

1. Whether Gaines's petition for voluntary discipline seeking a three-year suspension should be accepted.
2. Whether the admitted bid-rigging and related fraudulent conduct warranted a sanction more severe than the proposed three-year suspension.
3. Whether payment of court-ordered restitution constituted a mitigating factor in the disciplinary proceeding.

HOLDINGS

1. The petition for voluntary discipline seeking a three-year suspension was rejected because the proposed sanction was not appropriate for Gaines's lengthy and extensive criminal conduct.
2. Payment of restitution ordered by the sentencing court was not a mitigating factor in the disciplinary proceeding.

KEY QUOTATIONS

“Having carefully considered the petition, response, the precedent cited by both parties, and the lengthy criminal conduct to which Gaines has admitted, we cannot agree that a three-year suspension is the appropriate sanction in this matter.” (at 3-4)

FACTUAL BACKGROUND

Gaines, a Georgia attorney and real estate investor, pleaded guilty in federal court to bid-rigging conspiracy and conspiracy to commit mail fraud. From approximately 2006 through 2011, he and co-conspirators rigged bids at public foreclosure auctions, conducted secret second auctions, transferred titles, made payoffs, and caused artificially suppressed purchase prices to be reported. He received a downward departure for substantial assistance and was sentenced to incarceration, supervised release, restitution, a fine, and a special assessment.

PROCEDURAL HISTORY

Trent Carl Gaines filed a petition for voluntary discipline seeking a three-year suspension after pleading guilty in federal court to two counts of bid-rigging conspiracy and two counts of conspiracy to commit mail fraud. The State Bar opposed the petition, arguing that the proposed suspension was inadequate. The Supreme Court of Georgia rejected the petition.

DISPOSITION

other

CASES CITED

- In the Matter of Thompson, 266 Ga. 157 n. 1 (464 SE2d 818) (1996)
- In the Matter of Temple, 2016 Ga. LEXIS 382 (2016)
- In the Matter of Thompson, 297 Ga. 790 (778 SE2d 226) (2015)
- In the Matter of Davis, 292 Ga. 897 (742 SE2d 734) (2013)

- In the Matter of Schrader, 271 Ga. 601 (523 SE2d 327) (1999)

OPINION

PER CURIAM.

In the Supreme Court of Georgia Decided: September 12, 2016 S16Y1335. IN THE MATTER OF TRENT CARL GAINES. PER CURIAM. This disciplinary matter is before the Court on the petition for voluntary discipline filed by Trent Carl Gaines (State Bar No. 282172), prior to the issuance of a formal complaint, see Bar Rule 4-227 (b) (2).

In his petition, Gaines, who became a member of the Georgia Bar in 2000, admits that he pled guilty on October 27, 2015, in the United States District Court for the Northern District of Georgia, to four counts set forth in a criminal information: two felony counts each of bid-rigging conspiracy in violation of 15 U.S.C. § 1, and conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349.

On February 22, 2016, Gaines was sentenced to six months incarceration, followed by three years of supervised release, including home confinement for three months. Gaines was also ordered to pay restitution of \$46,800 to seven financial institutions, a fine of \$35,000, and a special assessment of \$400.

The lenient sentence reflected the grant of the government's motion for a downward departure based on Gaines having provided substantial assistance to the government and having been fully cooperative with its investigation. Gaines seeks the imposition of a three-year suspension.

The charges arose out of Gaines's efforts to suppress and eliminate competition by rigging bids for the purchase of real estate at public foreclosure auctions; Gaines was acting on his own behalf as a real estate investor and not on behalf of any client.

The conduct, which occurred between 2008 and 2010 in Fulton County and between 2006 and 2011 in DeKalb County, involved over a dozen properties and more than six co-conspirators. Gaines and his co-conspirators negotiated payoffs with each other in exchange for agreements not to compete at public auctions; conducted secret, second auctions, open only to members of the conspiracy; transferred title to rigged foreclosure properties into the names of the co-conspirators who submitted the highest bids at the secret auctions; distributed payoffs to co-conspirators that otherwise would have gone to financial institutions, homeowners, and others with a legal interest in the foreclosed properties; made materially false representations to trustees and others involved in the public auctions; and caused artificially suppressed purchase prices to be reported and paid to financial institutions and others.

2 Gaines admits that by this conduct, he has violated Rule 8.4 (a) (2), of the Georgia Rules of Professional Conduct found in Bar Rule 4-102 (d). The maximum sanction for a violation of Rule

8.4 (a) (2) is disbarment. He acknowledges that the pattern and number of offenses, as well as the motive of personal financial gain are aggravating factors.

As for mitigating factors, we agree that his lack of a prior disciplinary record, his cooperation with the State Bar, and his remorse are mitigating factors. However, we are not persuaded that his payment of restitution ordered by the sentencing court is a mitigating factor in this disciplinary proceedings. See *In the Matter of Thompson*, 266 Ga. 157 n. 1 (464 SE2d 818) (1996) (payment of forced restitution is neither mitigating nor aggravating factor).

The State Bar, however, recommends that we reject the petition, contending that a three-year suspension is an inadequate sanction for the lengthy criminal conduct in which Gaines engaged. Having carefully considered the petition, response, the precedent cited by both parties, and the lengthy criminal conduct to which Gaines has admitted, we cannot agree that a three-year suspension is the appropriate sanction in this matter.

Compare *In the Matter of Temple*, Ga. (SE2d), 2016 Ga. LEXIS 382 (2016) (rejecting petition for voluntary discipline seeking one-year 3 suspension following misdemeanor conviction arising out of lawyer's advising and assisting clients in violation of usury laws over period of five years), and *In the Matter of Thompson*, 297 Ga. 790 (778 SE2d 226) (2015) (disbarring lawyer following affirmance of federal convictions for conspiracy, and bank, wire, and mail fraud), with *In the Matter of Davis*, 292 Ga. 897 (742 SE2d 734) (2013) (30-month suspension following first offender plea to possession of methamphetamine), and *In the Matter of Schrader*, 271 Ga. 601 (523 SE2d 327) (1999) (one-year suspension following guilty plea to misdemeanor offense of practicing law without a license based on filing a single petition to probate a will without seeking pro hac vice status).

Accordingly, the Court hereby rejects the petition for voluntary discipline. Petition for voluntary discipline rejected. All the Justices concur. 4