

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Justin Alan Torres

No. 19-BG-276 · No. 19-BG-276 · Decided December 12, 2019

SUMMARY

The District of Columbia Court of Appeals adopted the Board on Professional Responsibility’s recommendation to disbar Justin Alan Torres after his convictions for multiple felony counts of gross sexual imposition under Ohio law. The court held that the Ohio offense constituted a crime of moral turpitude per se and ordered disbarment nunc pro tunc to June 27, 2019.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Thompson, Associate Judge; Easterly, Associate Judge; Steadman, Senior Judge
JURISDICTION	District of Columbia
DECIDED	December 12, 2019
DOCKET	19-BG-276
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding reviewing the Board on Professional Responsibility’s recommendation that respondent be disbarred after felony convictions.
STANDARD OF REVIEW	The court reviews the Board’s recommendation deferentially; when no exceptions are filed, the deferential standard becomes even more deferential. The court nevertheless independently explained why the offense constituted moral turpitude per se.
PRECEDENTIAL VALUE	Published opinion; precedential District of Columbia Court of Appeals decision

TOPICS

- appellate procedure
- statutory interpretation
- remedies

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. Whether gross sexual imposition under Ohio Revised Code § 2907.05(A)(1) is a crime of moral turpitude per se under D.C. Code § 11-2503(a).
2. Whether disbarment is the appropriate sanction for an attorney convicted of a crime of moral turpitude per se.

HOLDINGS

1. The offense is a crime of moral turpitude per se because the statute criminalizes sexual contact with a child at least four years younger than the age of consent, an age gap that forecloses a reasonable mistake about the child's ability to consent, and the conduct offends generally accepted moral standards.
2. Disbarment is the appropriate sanction for respondent's conviction of a crime of moral turpitude per se.

KEY QUOTATIONS

“In analyzing whether an offense constitutes a crime of moral turpitude per se we look at the elements of the crime, not the specific facts of the individual case, and consider whether the least culpable offender engaged in a crime of moral turpitude.” (at 3-4)

“We agree with the Board that this age gap forecloses any claims that the offender could reasonably but mistakenly believe the child was old enough to give legal consent.” (at 4)

FACTUAL BACKGROUND

Justin Alan Torres pleaded guilty to multiple felony counts of gross sexual imposition under Ohio Revised Code § 2907.05(A)(1). The statute criminalizes sexual contact with a child under thirteen without requiring proof that the defendant knew the child's exact age. The Board concluded that the offense was a crime of moral turpitude per se and recommended disbarment.

PROCEDURAL HISTORY

After receiving notice of respondent's Ohio felony convictions, the court suspended him and referred the matter to the Board on Professional Responsibility under D.C. Code § 11-2503(a) to determine whether the offense involved moral turpitude. The Board recommended disbarment, concluding that Ohio Revised Code § 2907.05(A)(1) defines a crime of moral turpitude per se. No exceptions were filed to the Board's report, and the court adopted the recommendation, explaining its reasoning because the matter involved a statute not previously addressed by the court and a dissenting Board member.

DISPOSITION

other

CASES CITED

- In re Viehe, 762 A.2d 542, 543 (D.C. 2000)
- In re Lovendusky, D.C. App. No. 84-1672 (D.C. Apr. 4, 1986)

- In re Shorter, 570 A.2d 760, 765 (D.C. 1990)
- In re Rohde, 191 A.3d 1124, 111 (D.C. 2018)
- In re Sharp, 672 A.2d 899 (D.C. 1996)
- In re Colson, 412 A.2d 1160, 1165, 1168 (D.C. 1979) (en banc)
- In re Goldsborough, 654 A.2d 1285, 1287 (D.C. 1995)

OPINION

PER CURIAM.

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press. DISTRICT OF COLUMBIA COURT OF APPEALS No. 19-BG-276 IN RE JUSTIN ALAN TORRES, RESPONDENT. A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 1003136) On Report and Recommendation of the Board on Professional Responsibility (DDN 037-19) (Decided December 12 2019) Before THOMPSON and EASTERLY, Associate Judges, and STEADMAN*, Senior Judge.

PER CURIAM: The Board on Professional Responsibility, by majority decision, recommends that respondent Justin Alan Torres be disbarred from the practice of law after he pled guilty to multiple felony counts of gross sexual imposition. This recommendation is based on the Board's determination that the crime of gross sexual imposition, in violation of Ohio Revised Code § 2907.05(A)(1) (criminalizing sexual contact with a child under the age of thirteen without requiring proof that the defendant knew the exact age of the child), is a crime of moral turpitude per se within the meaning of D.C.

Code § 11-2503(a). Neither respondent 2 nor Disciplinary Counsel filed exceptions to the Board's report. Respondent filed his D.C. Bar R. XI § 14(g) affidavit on June 27, 2019. Under D.C. Bar R. XI, § 9(h)(2), "if no exceptions are filed to the Board's report, the [c]ourt will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing exceptions." See also In re Viehe, 762 A.2d 542, 543 (D.C.

2000) ("When... there are no exceptions to the Board's report and recommendation, our deferential standard of review becomes even more deferential."). However, because this matter concerns a statute not yet addressed by this court, and in light of the minority opinion dissenting from the Board's decision, we explain here why we adopt the Board's recommendation.

After the court received notice of respondent's conviction, respondent was suspended and, pursuant to D.C. Code § 11-2503(a), the matter was referred to the Board to determine whether the offense constituted moral turpitude. Disciplinary Counsel filed his statement that the crime did constitute moral turpitude per se. Respondent did not file a statement.

The Board then directed Disciplinary Counsel to file a supplemental statement addressing the Ohio statute's strict liability standard for criminal culpability and referenced a 1986 Board recommendation, later accepted by the court in *In re Lovendusky*, D.C. App. No. 84-1672 (D.C. Apr. 4, 1986).

In that case the Board recommended that a conviction under a statute 3 prohibiting attempted sexual contact with a child under the age of sixteen years, the age of consent, was not a crime of moral turpitude because there was a reasonable possibility that the contact could have been the result of a mistake regarding the age of the victim. Disciplinary Counsel filed a supplemental response stating that *In re Lovendusky* did not change his recommendation because, unlike the statute in that case, the Ohio statute criminalizes sexual contact with a child twelve years or younger, and because that period of a child's development forecloses the argument of reasonable mistake, such that respondent would or should have known he was having sexual contact with an individual who was unable to provide consent.

Respondent filed a response urging the Board not to find his offenses crimes of moral turpitude. As noted previously, the majority of the Board recommended disbarment based on a determination that the Ohio offense in question constitutes a crime of moral turpitude per se.

In analyzing whether an offense constitutes a crime of moral turpitude per se we look at the elements of the crime, not the specific facts of the individual case, and consider whether the least culpable offender engaged in a crime of moral turpitude. See, e.g., *In re Shorter*, 570 A.2d 760, 765 (D.C. 1990); accord *In re Rohde*, 191 A.3d 1124, 111 (D.C. 2018) (explaining that to amount to a crime of moral turpitude per se, "the statute, in all applications, [must] criminalize[] conduct that "offends the generally accepted moral code of mankind," "involve[] baseness, 4 vileness or depravity," or offend[] universal notions of "justice, honesty, or morality.").

Here, similar to the statute in *In re Sharp*, 672 A.2d 899 (D.C. 1996) (imposing strict liability where the adult perpetrator was in a custodial or supervisory relationship with the child victim), the Ohio statute criminalizes sexual contact with a child at least four years younger than the age of consent.

We agree with the Board that this age gap forecloses any claims that the offender could reasonably but mistakenly believe the child was old enough to give legal consent. We further determine that this criminal sexual contact meets our criterion of "offending the generally moral code" of our society.

In re Colson, 412 A.2d 1160, 1168 (D.C.1979) (en banc). We thus see no reason to reject the Board's categorization of the Ohio offense. Because respondent has been convicted of a crime of moral turpitude per se, the appropriate sanction is to disbar him from the practice of law. See *id.* at 1165.

Accordingly, it is ORDERED that Justin Alan Torres is hereby disbarred from the practice of law, nunc pro tunc to June 27, 2019. So ordered. 5 *In the absence of any exception filed by respondent in this court to the Board's recommendation, Judge Steadman would without more impose disbarment as effectively unchallenged by respondent at this point. C.f. D.C.

Bar. R. XI, § 9(h)(2) (“[I]f no exception is filed to the Board’s report, the [c]ourt will enter an order imposing the discipline recommended by the Board”); *In re Goldsborough*, 654 A.2d 1285, 1287 (D.C. 1995) (imposing recommended discipline while declining to resolve “some difficult questions raised in the Board’s [report]” where respondent took no part in the proceedings).