

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of Smitten

2020 NY Slip Op 01176 (App. Div. 2020) · No. 2019-10040 · Decided February 19, 2020

SUMMARY

The Appellate Division, Second Department held that John A. Smitten's Florida conviction for first-degree grand theft was essentially similar to New York's felony of second-degree grand larceny. Applying Judiciary Law § 90(4), the court recognized his automatic disbarment effective on the date of his felony conviction and granted the motion to strike his name from the roll of attorneys.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Alan D. Scheinkman, P.J.; William F. Mastro, J.; Reinaldo E. Rivera, J.; Mark C. Dillon, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	February 19, 2020
DOCKET	2019-10040
DISPOSITION	other
PROCEDURAL POSTURE	The Grievance Committee moved to strike the respondent's name from the roll of attorneys and counselors-at-law under Judiciary Law § 90(4), based on his conviction of a felony in Florida.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Grievance Committee for the Tenth Judicial District v. John A. Smitten, admitted as John Arthur Smitten

TOPICS

statutory interpretation appellate procedure

PRACTICE AREAS

Attorney discipline Legal ethics Appellate procedure Statutory interpretation

QUESTIONS PRESENTED

1. Whether Smitten's Florida conviction for first-degree grand theft was essentially similar to a New York felony for purposes of automatic disbarment under Judiciary Law § 90(4).
2. Whether the Grievance Committee's motion to strike Smitten's name from the New York roll of attorneys should be granted.

HOLDINGS

1. A conviction for first-degree grand theft under Florida Statutes Annotated § 812.014(2)(a)(1) is essentially similar to New York grand larceny in the second degree under Penal Law § 155.40(1).
2. By virtue of the Florida felony conviction, Smitten was automatically disbarred and ceased to be an attorney under Judiciary Law § 90(4)(a), effective August 14, 2017.

KEY QUOTATIONS

“The Judiciary Law provides for automatic disbarment when an attorney is convicted of a felony. Under this section, an offense committed in any other State, district or territory of the United States where it is classified as a felony is determined to be a felony when it would constitute a felony in this state.” ([*1])

“For purposes of this determination, the felony in the other jurisdiction need not be a mirror image of the New York felony, precisely corresponding in every detail, but it must have essential similarity.” ([*1])

“By virtue of his felony conviction, the respondent was automatically disbarred and ceased to be an attorney pursuant to Judiciary Law § 90(4)(a).” ([*2])

FACTUAL BACKGROUND

On August 14, 2017, John A. Smitten pleaded guilty in Florida to first-degree grand theft under Florida Statutes Annotated § 812.014(2)(a)(1), involving property valued at \$100,000 or more. He received a sentence including 180 days of incarceration, five years of probation, and \$131,500 in restitution. The Supreme Court of Florida disbarred him on September 14, 2017. He had been admitted to the New York bar in the Second Department in 1997.

PROCEDURAL HISTORY

Smitten pleaded guilty in Florida to first-degree grand theft, a felony, on August 14, 2017, and was subsequently disbarred by the Supreme Court of Florida. The New York Grievance Committee moved in the Appellate Division, Second Department, to strike his name from the New York roll of attorneys on the ground that the Florida offense was essentially similar to a New York felony. Smitten was served with the motion but submitted no response and did not request additional time. The court granted the motion and made the automatic disbarment effective as of the date of the Florida felony conviction.

DISPOSITION

other

CASES CITED

- Matter of Margiotta, 60 NY2d 147, 150
- Matter of Lenich, 157 AD3d 201
- Matter of Woghin, 64 AD3d 5
- Matter of Port, 57 AD3d 139
- Matter of Ashley, 263 AD2d 70
- Matter of Fury, 145 AD2d 259
- Matter of Barisic, 110 AD3d 84
- Matter of Pelle, 106 AD2d 1

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