

SUPREME COURT OF OKLAHOMA

State of Oklahoma ex rel. Oklahoma Bar Association v. Mary E. McMillen

2016 OK 122 · No. SCBD-6469 · Decided December 12, 2016

SUMMARY

The Oklahoma Supreme Court immediately suspended Mary E. McMillen from practicing law after receiving certified records of her no-contest and guilty pleas to several misdemeanor driving-related offenses. The court ordered McMillen to show cause regarding both the interim suspension and potential final discipline under the Oklahoma Rules Governing Disciplinary Proceedings.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	All Justices
JURISDICTION	Oklahoma
DECIDED	December 12, 2016
DOCKET	SCBD-6469
DISPOSITION	other
PROCEDURAL POSTURE	The Oklahoma Bar Association forwarded certified criminal informations, pleas, and deferred-sentence orders to the Supreme Court of Oklahoma under the Rules Governing Disciplinary Proceedings, seeking immediate interim suspension of the respondent attorney.
PRECEDENTIAL VALUE	Unpublished; the document states that it is for publication in the Oklahoma Bar Journal only and not released for publication.

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

attorney discipline

professional responsibility

criminal-related disciplinary proceedings

QUESTIONS PRESENTED

1. Whether receipt of certified copies of the respondent's criminal pleas and deferred-sentence orders required the Supreme Court of Oklahoma to immediately suspend her from the practice of law under Rule 7.3 of the Rules Governing Disciplinary Proceedings.
2. What deadlines and procedures should govern the respondent's opportunity to contest the interim suspension and the imposition of final discipline.

HOLDINGS

1. Upon receipt of the certified criminal pleas and deferred-sentence orders identified in Rule 7.3, the Supreme Court must immediately suspend the lawyer from the practice of law until further order of the Court.
2. A certified copy of a guilty plea, deferred-judgment order, or information and judgment and sentence constitutes the charge and conclusive evidence of the commission of the crime for purposes of attorney discipline under the Rules Governing Disciplinary Proceedings.

KEY QUOTATIONS

“Upon receipt of the certified copies of Judgment and Sentence on a plea of guilty, order deferring judgment and sentence, indictment or information and the judgment and sentence, the Supreme Court shall by order immediately suspend the lawyer from the practice of law until further order of the Court.” (§13)

“shall constitute the charge and be conclusive evidence of the commission of the crime upon which the judgment and sentence is based and shall suffice as the basis for discipline in accordance with these rules.” (§14)

FACTUAL BACKGROUND

Mary E. McMillen entered no-contest pleas in Cherokee County to aggravated DUI, transporting an open container, and operating a vehicle while her driver's license was suspended. She also pleaded guilty in Wagoner County to a reduced misdemeanor DUI charge. The Oklahoma Bar Association forwarded certified copies of the criminal informations, pleas, and deferred-sentence orders to the Supreme Court of Oklahoma.

PROCEDURAL HISTORY

McMillen entered no-contest pleas in Cherokee County to three misdemeanors and a guilty plea in Wagoner County to a reduced misdemeanor DUI charge. After receiving certified copies of the pleas and deferred-sentence orders, the Supreme Court entered an immediate interim suspension and set deadlines for McMillen to show cause against setting aside the suspension and against final discipline.

DISPOSITION

other

OPINION

PER CURIAM.

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ASSOCIATION v. MCMILLEN2016 OK 122Case Number: SCBD-6469Decided:
12/12/2016THE SUPREME COURT OF THE STATE OF OKLAHOMA Cite as: 2016 OK 122,
__ P.3d __ FOR PUBLICATION IN OBJ ONLY.

NOT RELEASED FOR PUBLICATION. State of Oklahoma ex rel. Oklahoma Bar Association, Complainant, v. Mary E. McMillen, Respondent. ORDER OF IMMEDIATE INTERIM SUSPENSION ¶1 The Oklahoma Bar Association (OBA), in compliance with Rule 7.1 and 7.2 of the Rules Governing Disciplinary Proceedings (RGDP), has forwarded to this Court certified copies of the Criminal Informations, and Pleas, in which Mary E. McMillen entered pleas in Cherokee County as follows: 1) a plea of no contest to one count of Driving Under the Influence Aggravated, a misdemeanor in violation of 47 O.S.

Supp. 2012, § 11-902(D); 2) a plea of no contest to one count of Transporting an Open Container of an Intoxicating Beverage, a misdemeanor in violation of 21 O.S.2011, § 1220(A); and 3) a plea of no contest to one count of Operating a Vehicle while Drivers' License is Suspended, a misdemeanor in violation of 47 O.S. Supp. 2015, § 6-303(B.1). All of these offenses occurred on September 25, 2015.

The OBA also forwarded a certified copy of the deferred sentences of two years on each count in Cherokee County, all counts concurrent to each other and to a separate count in Wagoner County. ¶2 The OBA has also forwarded certified copies of the Criminal Information and Plea in the Wagoner County case, in which Mary E. McMillen entered a plea of guilty to a reduced charge of misdemeanor Driving Under the Influence in violation of 47 O.S.

Supp. 2012, § 11-902. The OBA also forwarded a certified copy of deferred sentence of eighteen-months to the count in Wagoner County, concurrent to the Cherokee County sentence.1 ¶3 Rule 7.3 of the RGDP provides: "Upon receipt of the certified copies of Judgment and Sentence on a plea of guilty, order deferring judgment and sentence, indictment or information and the judgment and sentence, the Supreme Court shall by order immediately suspend the lawyer from the practice of law until further order of the Court."

Having received certified copies of these papers and orders, this Court orders that Ian Mary E. McMillen is immediately suspended from the practice of law. Mary E. McMillen is directed to show cause, if any, no later than December 23, 2016, why this order of interim suspension should be set aside. See RGDP Rule 7.3.

The OBA has until January 3, 2017, to respond. ¶4 Rule 7.2 of the RGDP provides that a certified copy of a plea of guilty, an order deferring judgment and sentence, or information and judgment

and sentence of conviction "shall constitute the charge and be conclusive evidence of the commission of the crime upon which the judgment and sentence is based and shall suffice as the basis for discipline in accordance with these rules."

Pursuant to Rule 7.4 of the RGDP, Mary E. McMillen has until January 19, 2017, to show cause in writing why a final order of discipline should not be imposed, to request a hearing, or to file a brief and any evidence tending to mitigate the severity of discipline.

The OBA has until February 6, 2017, to respond. ¶5 DONE BY ORDER OF THE SUPREME COURT on December 12, 2016. /S/CHIEF JUSTICE ALL JUSTICES CONCUR. FOOTNOTES 1 The descriptions of the sentences as consecutive and concurrent is inconsistent. McMillen's sentence in Wagoner County is deferred until May 8, 2018, and her sentence in Cherokee County is deferred until November 17, 2018, so they appear to be concurrent.

Citationizer© Summary of Documents Citing This Document Cite Name Level None Found. Citationizer: Table of Authority Cite Name Level Title 21. Crimes and Punishments CiteNameLevel 21 O.S. 1220, Transporting Open Containers of Intoxicating Beverages or Low Point Beer - Exception - PenaltyCited Title 47. Motor Vehicles CiteNameLevel 47 O.S. 11-902, Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination ThereofDiscussed 47 O.S.

6-303, Driving While License Under Suspension or Revocation - Penalties - MotorcyclesCited