RECEIVED 02/07/2024 FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

CHRISTOPHER WHITTINGTON DUDLEY,

Respondent.

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Supreme Court Case
No. SC23-1306

The Florida Bar File No.
2023-30,464 (09B) (CFC)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On September 18, 2023, The Florida Bar filed its Notice of Determination or Judgment of Guilt against Respondent in these proceedings. On September 18, 2023, Respondent was suspended pursuant to the felony suspension rule, R. Regulating Fla. Bar 3-7.2(f).

Pursuant to R. Regulating Fla. Bar 3-7.2(b), a determination or judgment of guilt is considered conclusive proof of guilt of the criminal offense(s) charged. Therefore, a recommendation as to the appropriate

sanction in this matter was the sole issue remaining before this Referee. On December 1, 2023, a sanction hearing was held for this purpose.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar—Ashley Taylor Morrison, Esq.

For Respondent—Richard Adam Greenberg, Esq.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, albeit suspended, and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

Narrative Summary Of Case.

On or about February 9, 2023, Respondent was arrested in Volusia County for the criminal offenses of Attempted Burglary of an Occupied Dwelling and Criminal Mischief. According to the arrest affidavit (The Florida Bar's Exhibit 1), the Respondent allegedly entered the victim's backyard by climbing over a fence which he damaged. According to the arresting officer, the Respondent attempted to gain entry to the victim's

residence by striking the door repeatedly with a chair. [1]The victim was alerted to Respondent's presence by her Ring doorbell camera. She then heard Respondent beating on the door as if he was attempting to gain entry to the residence. She locked herself in the upstairs bathroom and called 911. The victim's neighbor heard Respondent screaming profanities outside the residence and stated that it looked like Respondent was trying to break into the glass doors upstairs at the victim's house. Law enforcement responded and found the Respondent on the porch of the residence, where he was taken into custody.

On or about August 29, 2023, in State v. Dudley, Case Number 2023-300677-CFDB, in the Circuit Court of the Seventh Judicial Circuit, in and for Volusia County, Florida, the Respondent entered a plea of nolo contendere to the charges of Attempted Burglary of an Occupied Dwelling, a third-degree felony (Count 1), and Criminal Mischief, (Count 2) (above $200.00 but below $1,000.00), a first-degree misdemeanor.

Pursuant to the Judgment and Sentence and the Order of Probation filed on September 8, 2023, the trial court withheld adjudication of guilt as to all counts and sentenced Respondent to two years of probation as to

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[1] According to the charging affidavit (Bar Exhibit 1) the Respondent attempted to "surreptitiously" enter the victim's home by beating on her door with a chair and screaming profanities. (Line 1 and 2).

Count 1 and to time served as to Count 2. The sentences were ordered to run concurrently with any other sentence(s) being served. 2

The Respondent promptly reported to The Florida Bar that he has been charged in the case. He also promptly reported the disposition of his case to The Florida Bar.

At the Sanction Hearing, The Florida Bar submitted into evidence one composite notebook containing its Exhibits 1-5 (TFB). Respondent submitted into evidence his Exhibit 1 composite.

At the Sanction Hearing, the Respondent testified and presented testimony from the following witnesses: Father Eric Dudley (Respondent's father) and Joseph Whealdon, Esq. (Respondent's brother-in-law). The Florida Bar did not call any witnesses at the Sanction Hearing.

Father Dudley testified that he has been a priest for approximately 40 years and has a small parish in Tallahassee, Florida. Father Dudley testified that he has a close relationship with his son, and they speak on a regular basis. He stated that his son suffers from obsessive compulsive disorder (OCD) and depression, which is often exacerbated by stress. Father Dudley testified that he has seen his son drink alcohol from time to

2 The Respondent was not serving any other sentence from any other Florida court. Nor was he serving any other sentence from the county or circuit court in Volusia County. Accordingly, this may have been a scrivener's error on the J & S.

time, but that he was not aware of any issues with alcohol until his son's arrest. His son completed a six-week treatment program through Shands Hospital in the summer of 2022 to address his mental health issues. Father Dudley stated that during this treatment program, his son's wife stopped communicating with his son and was no longer interested in continuing the marriage. Father Dudley stated that his son was devastated by this news as his marriage was very important to him.

Father Dudley testified that prior to his son's arrest, his son was optimistic about his new employment as an attorney with Florida Department of Business and Professional Regulation (DBPR). However, he knew that his son was nervous about an upcoming presentation at work. Father Dudley later learned that his son had been arrested the night before the scheduled presentation. Father Dudley testified that his son called him from the jail following the arrest and that his son was despondent about what had happened. Since then, his son has been dedicated to his treatment and recovery. He started working with Florida Lawyers Assistance, Inc. (FLA) and has made good progress.

Respondent next called his brother-in-law, Mr. Joseph Whealdon, as a witness at the sanction hearing. Mr. Whealdon testified that he is an attorney and is General Counsel to DBPR. He stated that his appearance

at the hearing was personal in nature, due to the Respondent being his brother-in-law, and that he was not appearing in his professional capacity. Mr. Whealdon testified that the Respondent was in a different department within DBPR and so they had little interaction at work, however, the feedback regarding the Respondent's work had always been positive.

Mr. Whealdon testified that he was aware that the Respondent was suffering from marital issues during this timeframe and things were difficult for him. Respondent was also supposed to present at his first construction board meeting and was nervous about it. Mr. Whealdon testified that he had never known the Respondent to be a combative or angry person and that the arrest was completely out of character for the Respondent. Mr. Whealdon testified that the Respondent seems to be doing well now with treatment, and since the arrest he has not seen Respondent consume any alcohol.

Respondent also testified at the sanction hearing. Respondent stated that he was admitted to The Florida Bar in 2021. Prior to his admission to The Florida Bar, Respondent was admitted to the California bar. Respondent described his struggle with OCD, which he first noticed in law school. At times, he felt that some of the OCD behaviors were helpful to him and so he did not immediately want to seek treatment. He later began

seeing a therapist; however, when the OCD became worse after he moved from California to Florida. He sought out a six-week outpatient treatment program through Shands Hospital to address these mental health concerns. During the program, he was prescribed new medications, including clomipramine, which was supposed to help reduce his obsessions, along with an antidepressant. Respondent testified that he had experienced some marital problems in California, but during his treatment at Shands, his wife told him she wanted a divorce. Respondent testified that he considered his wife to be his best friend and he was completely devastated by this. Now, he has come to accept the fact that the divorce will be finalized and is interested in moving forward with his life. Respondent testified that prior to his arrest he typically drank alcohol socially and was not normally a heavy drinker. Respondent stated he also used marijuana in California where it is legalized. When the Respondent moved to Florida, he obtained a Florida medical marijuana card, but it expired, and he was trying to use up the product that he had.

Respondent's recollection of the events leading up to his arrest was limited. Respondent recalled that he had traveled to Daytona for a work function as he was supposed to give a presentation to the construction board the next day. Respondent recalled being nervous about the

presentation and testified that public speaking gave him anxiety. He remembered going out to a bar that night and sitting next to someone who was feeding him tequila shots. Respondent could not recall how much alcohol he had consumed but testified that it was more than 7 drinks. That night, the Respondent also purchased marijuana from a stranger at the bar. Respondent placed the marijuana in his pocket, where it was later discovered by law enforcement during his arrest. 3

Respondent's next memory was that of waking up in a police car. Respondent had no recollection of the actions that resulted in his arrest. Since his arrest, he has been devoted to his mental health treatment and is currently on a three-year contract with FLA Inc., that he began in May 2023. Respondent testified that he initially found employment as a prep chef for PDQ restaurant, but he is now employed as a paralegal for the law office of Bradford Cederberg, P.A.

III. RECOMMENDATIONS AS TO GUILT

Pursuant to R. Regulating Fla. Bar 3-7.2(b), I find the Judgment and Sentence entered in State v. Dudley and attached as an exhibit to the bar's Notice of Determination or Judgment of Guilt in these proceedings, to be conclusive proof of guilt of the criminal offense(s) charged.

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3 He was not charged for possession of marijuana.

Based on the foregoing, I recommend that the Respondent be found guilty of violating the following Rules Regulating The Florida Bar: 4-8.4(b) – A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

5.1 Failure to Maintain Personal Integrity

(b) Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

3.2(b) Aggravating Factors:

(8) vulnerability of the victim

3.3(b) Mitigating Factors:

(1) absence of a prior disciplinary record;

(2) absence of a dishonest or selfish motive;

(3) personal or emotional problems;

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(6) inexperience in the practice of law;

(7) character or reputation;

(8) physical or mental disability or impairment or substance-related disorder;

(10) interim rehabilitation

(11) imposition of other penalties or sanctions;

(12) remorse

The Florida Bar requested that the undersigned consider the vulnerability of the victim (pursuant to 3.2(b)(8)) as an aggravating factor in this matter.

The victim in the Respondent's criminal case was 71 years old and was alone in her house at the time of the incident. Furthermore, the incident occurred in the late evening to early morning hours when the victim was ill-equipped to defend herself against a potential intruder. Based on the facts contained in the arrest affidavit (TFB's Exhibit 1), it is apparent that any reasonable person would have perceived the Respondent posed an imminent threat to her safety. Accordingly, this Court finds in aggravation that the victim was vulnerable.

Although this Referee does find the vulnerable victim aggravator applies, this Referee does not give it significant weight. While it is true that the victim in this case was 71 years old and home alone, The Florida Bar presented no evidence that the victim in this case was actually vulnerable due to her age. The fact she was 71 years old does not make her vulnerable *per se*. The Bar presented no evidence she suffered from a physical or mental infirmity or disease. Nor did the Bar present any evidence that her mobility was compromised in any way. Indeed, her actions on the night of the incident which brings the Respondent before this Referee and the Florida Supreme Court show the victim had the physical and mental wherewithal to take immediate protective action; lock herself in the bathroom and call 911.

Additional consideration was given to the fact that the Respondent did not know the victim or how old she was. He did not know that she was home alone. Accordingly, because there is no evidence the Respondent targeted his victim because she was, as someone younger than this Referee might say, elderly, this Referee gives this aggravator little weight. 4

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4 A wrongdoer must take the victim as they come. That is the VV aggravator still applies in the absence of evidence that the wrongdoer targeted his victim due to her age or vulnerability. See Deviney v. State, 322 So.3d 563,574 (Fla. 2021). But this Referee believes that the lack of knowledge, on the Respondent's part, that the victim was 71 years old and home alone is a relevant factor in how much weight to give to this particular aggravating circumstance. In both cases cited in Florida's Standards for

This Referee also finds there was significant mitigation, as listed above, that was proven by clear and convincing evidence. This Referee also finds that the mitigating circumstances outweigh the aggravating factors.

The evidence presented in mitigation was compelling. It is undisputed that the Respondent has never been disciplined by this Court. He had no selfish or dishonest motive. He was under the influence of alcohol and intoxicated to a point he did not know where he was or apparently what he was doing. The Respondent had no recollection of the events that led up to his arrest. In short, he was blitzed. [5] To his credit, the Respondent has consistently refrained from attempting to justify or excuse his actions.

At the time of the offense, the Respondent was at one of the lowest times of his young life. His wife had decided to seek a divorce and had no interest in trying to repair it. The Respondent's wife was his best friend and he was devastated. The Respondent had mental health issues (OCD and Depression) that he both recognized and for which he sought treatment.

Imposing Lawyer Sanctions for the VV aggravator, the attorney knew his victim and was fully aware the vulnerable position she was in.

5 The undersigned can find nothing in the Information or probable cause affidavit to suggest what crime the State believed the Respondent intended to commit inside the victim's home.

The Respondent provided free and full disclosure to the bar. He promptly reported that he had been criminally charged and promptly reported the disposition of his case. He fully disclosed the events to the best of his recollection in his written response to the Bar. At the Sanction Hearing, the Respondent testified. He did not make excuses and this Referee finds that his testimony was credible. It was clear to me that the Respondent was thoroughly embarrassed by his conduct. He seemed very determined to prove himself in order to regain the privilege of practicing law.

The Respondent is a relatively young lawyer. He is inexperienced in the practice of law in Florida, having been admitted to the Florida Bar in 2021. At the Sanction Hearing, the Respondent submitted into evidence character letters from attorneys Thomas Crapps and Rutledge Bradford attesting to respondent's good character (Respondent's Exhibit 1 composite) as well as witness testimony in support of Respondent's good character.

The Respondent has also engaged in interim rehabilitation activities. He voluntarily signed a three year contract with FLA Inc. and has complied with its requirements. He got sober and according to his testimony, that

was unrefuted at the Sanction Hearing, has not had a drink since the incident. He has paid, or is paying, restitution for the broken fence.

The Respondent has also suffered criminal sanctions or penalties. After entering a plea as charged, the Respondent was placed on two years of criminal probation and, according to unrefuted testimony at the Sanction Hearing, is complying with all the terms and conditions of his probation, including refraining from consuming alcohol. He has been suspended from the practice of law since September 18, 2023. Certainly this referee observed the Respondent to be apologetic and sincerely remorseful during the Sanction Hearing.

V. CASE LAW

I considered the following case law prior to recommending discipline:

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(a) The Florida Bar v. Stover, SC23-1204, 2023 WL 8110943 (Fla. 2023). Mr. Stover was suspended for 60 days, by consent judgment approved by this Court, after being caught, in an undercover drug sting, asking for and receiving a controlled substance (60 Adderall tablets) in exchange for providing legal services to a potential criminal client. He was permitted by the

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6 Circumstances of each case cited by this Referee were gleaned from the RORs in each case.

SAO to enter into a diversion program and successfully completed it. Like the respondent, Mr. Stover had significant mitigation. Mr. Stover was close in age (35) to the Respondent and, like the Respondent here, he had never been disciplined before. Unlike the Respondent here, however, Mr. Stover's misconduct had a direct nexus to the practice of law. [7] Both Mr. Stover's offense and the Respondent's offenses were third degree felonies.

(b) The Florida Bar v. Darby, SC23-0417, 2023 WL 5151597 (Fla. 2023). Mr. Darby was suspended for 10 days followed by 3 years of probation with a special condition that he comply with his FLA Inc., rehabilitation contract. The discipline stemmed from a 2020 plea to Reckless Driving with Alcohol and refusal to submit to a BAT, Second Offense. [8] Less than two years later, the

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[7] At the Sanction Hearing, the Bar pointed out that Mr. Dudley was criminally prosecuted while Mr. Stover was permitted to enter into a Diversion Program. This Referee does not believe that the decision to prosecute should be a distinguishing factor in choosing an appropriate attorney sanction. This is so because the decision to prosecute rather than to divert may turn on something like lack of victim consent to diversion, rather than an objective analysis of the comparative seriousness of the conduct. Moreover the purpose of criminal sentencing is different from the purposes of attorney discipline. Further, this Referee does not find the fact that many of the cases relied upon were consent judgments to be distinguishing. Pursuant to our rules, an attorney has the right to bring the issue of an appropriate sanction to this Court. The Respondent has never contested his culpability but wished only to request a non-rehabilitative suspension.

[8] Pled down after a DUI arrest.

Respondent was arrested again, this time for leaving the scene of a crash with property damage. Mr. Darby entered a plea and was placed on probation. He violated his probation five (5) days later when he was arrested for DUI and then again refused a BAT. He entered pleas to both the VOP and the substantive offenses for which he was arrested. [9]

(c) The Florida Bar v. Prescott, SC 22-811, 2022 WL 4242717 (Fla. 2022). Ms. Prescott was arrested three times for DUI over a period of about three years. She was convicted once of DUI with property damage and she was allowed, once, to plea to a lesser included offense after a DUI arrest in Georgia. Ms. Prescott also failed to timely report the incident in which she was allowed to plead to a lesser offense. Moreover, her third arrest for DUI, in Osceola County, came less than two months after being placed on probation for DUI in Orange County. (October 21, 2021 and

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[9] This Referee is well aware that Reckless Driving, Leaving the Scene of an Accident, Criminal Refusal, and DUI are misdemeanors. But unlike the case here which was a first offense, Mr. Darby committed multiple offenses, on different occasions, over a period of time that, in at least two instances driving drunk, directly put people at risk of harm or death. Moreover, the fact he was charged in August 2020 with criminal refusal means that he had previously refused a BAT(first refusal is not criminal).

December 3, 2021). [10] As a result of her third DUI arrest in Osceola County, she was found in violation of her probation in Orange County. [11] Ms. Prescott was reprimanded and placed on 3 years of probation.

(d) The Florida Bar v. Landy, SC20-1578, 2020 WL 6606029. Mr. Landy, who had been an Assistant State Attorney, was arrested for Aggravated Stalking and Extortion. Subsequently, he was charged with the same two felonies. Pursuant to a plea agreement, he entered a plea to two counts of misdemeanor stalking. He was placed on probation and successfully completed his probation. An injunction was also issued against him. As a lawyer sanction, he was reprimanded and was placed on three

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[10] Again, this Court recognizes that DUIs are misdemeanors. Yet, the Prescott case is one in which Ms. Prescott was arrested for 3 separate alcohol related events on three separate occasions. In other words, she demonstrated a pattern of alcohol over-consumption that directly led to criminal misconduct. In the instant case, the incident was an isolated one. Moreover, Ms. Prescott was already on criminal probation for DUI in Orange County when she was arrested a third time for DUI in Osceola County. She was also considerably more mature (age 51) than the Respondent here and had substantial experience in the practice of law. Ms. Prescott, like Respondent, admitted she had a problem with alcohol and took affirmative steps to prevent another incident, specifically by seeking treatment and voluntarily entering into a contract with FLA Inc. The Referee found the same, or nearly the same, mitigating circumstances as found here. Ms. Prescott received no suspension at all and placed on 3 years of probation.

[11] Her third DUI arrest, in Osceola County, was, at some point, amended on the Court docket to a charge of resisting without violence and no formal charges were filed. It did, however, as noted above, result in a court finding that Ms. Prescott violated her probation in the Orange County Case.

years of probation. Mr. Landy, like the respondent here, was young and inexperienced in the practice of law in Florida. He also had some mental health problems that contributed to the incidents for which he was disciplined.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

It has been a challenge to decide what to recommend to this Court, especially in light of the fact the Respondent had, before this incident, a clean criminal and disciplinary record. This seemed to be a one-off. The testimony offered in mitigation supports a conclusion that Respondent's conduct was completely out of character.

I certainly do not wish to downplay how frightening it must have been for the victim to find a strange man banging on her door with a chair, in the middle of the night. I also do not wish to support the notion that voluntary intoxication is an excuse for misconduct.

The Bar recommended to this Referee a three year suspension, which I believe, under the circumstances, is too harsh.12 The Respondent

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12 For instance, one of the cases to which The Bar cited in support of its recommendation for a three year suspension was The Florida Bar v. Sorce, SC 23-1100. Mr. Sorce entered a plea to Reckless Driving with Serious Bodily Injury, Possession of Cocaine, and two counts of DUI. He also had a prior disciplinary action taken against him some three years before. Mr. Sorce was significantly older (54) than the Respondent here and had been practicing law for nearly 30 years at the time of the incident. This Court approved a two (2) year suspension retroactive to his interim

requested I recommend a non-rehabilitative suspension, which, standing alone, I believe is too lenient.

What I believe is absolutely necessary is a significant period of probation to demonstrate the Respondent's stated resolve to regain his reputation and to practice law with honor and professionalism. In this Referee's view, it is the best tool available to rehabilitate him under the circumstances. And he will not be alone. The testimony at the sanctions hearing convinced me that he has a strong support system that will help him succeed.

After consideration of all the evidence presented to me, the case law presented to me by both sides, and the case law cited above, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. 90 day suspension effective the date the Florida Supreme Court approves the recommendation (no retroactive credit) to be followed by 3 years of probation with the condition he comply with the requirements of his contract with the FLA Inc., including total abstinence, attendance at

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suspension. In another case, The Florida Bar v. Aranguren, SC 21-468, Mr. Aranguren entered a plea in two separate criminal cases to a total of three counts of Grand Theft and two counts of Trespass. Mr. Aranguren received an 18 month suspension.

See also The Florida Bar v. Heimendinger (SC 2023-1224). Mr. Heimendinger was suspended for two years after he entered a plea to Aggravated Assault, CCF, and Improper Exhibition of a Firearm.

least two times weekly at a 12 step or other abstinence program, random drug and alcohol tests, and payment of monitoring fees as set forth in the FLA contract. The Respondent must agree to extend his contract with FLA to cover the entire duration of the probationary period.

B. Payment of The Florida Bar's costs in these proceedings.

C. During his suspension, the Respondent will eliminate all indicia of Respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards office signs or any other indicia of Respondent's status as an attorney, whatsoever.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 32

Date admitted to the Bar: October 5, 2021

Prior Discipline: None; however, Respondent has been suspended from the practice of law in the above matter since September 18, 2023, pursuant to the felony suspension rule, R. Regulating Fla. Bar 3-7.2(f), and the Court's Order dated September 18, 2023.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Fee	$1,250.00
Bar Counsel Costs	$420.31
Court Reporters' Fees	$505.00
Investigative Costs	$94.39
TOTAL	$2,269.70

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 17th day of January, 2024.

/s/ Meredith Charbula

MEREDITH CHARBULA, Referee

Original To:

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