



BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF
MASON WILLIAM HERRING
STATE BAR CARD NO. 24071746

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CAUSE NO. 69030

PETITIONER'S REPLY BRIEF IN SUPPORT OF COMPULSORY DISCIPLINE

Petitioner, the Commission for Lawyer Discipline (“CFLD”), by and through the Office of the Chief Disciplinary Counsel of the State Bar of Texas, files this Reply Brief in Support of the Commission for Lawyer Discipline’s Petition for Compulsory Discipline.

I. Arguments and Authorities

Texas Rule of Disciplinary Procedure 1.06(V) defines an “Intentional Crime” as any “Serious Crime” that requires proof of knowledge or intent as an essential element or any crime involving misapplication of money or other property held as a fiduciary. Tex. Rules Disciplinary P. R. 1.06(V). Notably absent in Respondent’s briefing is any argument that his criminal convictions are not crimes of moral turpitude. In fact, Respondent concedes they are “serious crimes;” ergo, they are crimes of moral turpitude. *Respondent’s brief at 2-3.*¹ Therefore, the only remaining question is whether Respondent’s criminal convictions are “intentional crimes,” which subject him to compulsory disbarment.

A. Respondent’s brief misapplies the applicable law.

¹ Rule 1.06(GG) also states that “serious crimes” include barratry; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes. However, Respondent’s crimes would not fall under any of the other designations under 1.06(GG). Tex. Rules Disciplinary P. R. 1.06(GG)

Respondent's brief argues that his convictions are not "per se" intentional crimes because elements of each crime allow convictions for merely reckless or criminally negligent conduct. Respondent goes on to point out that the Judgment of Conviction "fails to identify the section of the statute under which Respondent was convicted." *Respondent's Brief at 3*. Respondent argues that anyone convicted of these crimes, including Respondent, could be found to have engaged in these crimes recklessly or with criminal negligence as opposed to intentionally, and therefore Respondent is not subject to compulsory discipline.

Respondent's argument is flawed for several reasons. First, as argued in Petitioner's Brief, the criminal indictment in Case No. 177210601010, for Assault of a Pregnant Person against Respondent, reads as follows: on or about March 17, 2022, [Respondent] did then and there unlawfully, ***intentionally and knowingly*** cause bodily injury to Catherine Herring. *Petitioner's EX 1 (emphasis added)*. Similarly, the criminal indictment in Case No. 179893201010, for Attempted Injury to a Child under 15 with Bodily Injury, reads: on or about March 17, 2022, [Respondent] did then and there ***unlawfully and intentionally***, with the specific intent to commit the offense of Injury to a Child Serious Bodily Injury of J. G. H.... do an act, to-wit: intentionally and knowingly attempt to cause serious bodily injury to...a child young than 15 years of age. *Petitioner's EX 2(emphasis added)*. To ignore this blatant finding of intentionality would be to allow Respondent to disingenuously argue that he did not commit these crimes intentionally and that he has not been adjudicated to have committed the crimes intentionally. Additionally, Texas courts have long considered that the record of conviction includes the indictment, the judgment of the court and the sentence. *See e.g., Tex. Emp. Ins. Ass'n v. Curry*, 290 S.W.2d 767, 769 (Tex. App.—El Paso 1956, writ ref'd n.r.e.).

Respondent cites *Duncan* and *Lock* to argue this Board should not consider the Indictment or Criminal Complaint when considering Compulsory Discipline. *Respondent's brief at 2*. However, Respondent misapplies those cases in this context. *Duncan* and *Lock* contemplate what evidence the Board may consider when determining whether a crime is one of moral turpitude—thus requiring Compulsory Discipline—in the absence of a predetermination that the crime is one of moral turpitude *per se*. Both hold that the Board must base its determination on the elements of the offense, not the underlying facts of the case. That's not the issue here. Not only has Respondent already conceded his crimes are ones of moral turpitude, the case law cited in Petitioner's brief leaves no question they are. *See Hardeman v. State*, 868 S.W.2d 404, 405–07 (Tex. App.—Austin 1993, pet. granted), *See also Lloyd v. State*, 151 Tex.Crim. 43, 204 S.W.2d 633, 634 (1947); *Stewart v. State*, 100 Tex.Crim. 566, 272 S.W. 202, 203 (1925); *Curtis v. State*, 46 Tex.Crim. 480, 81 S.W. 29, 30 (1904); *see also Crawford v. State*, 412 S.W.2d 57, 59 (Tex.Crim.App.1967). This Board is only tasked with determining if the crimes are “Intentional” and the record of Respondent's conviction—the indictment, the judgment of the court, and the sentence—are conclusive proof of his intent.

Nothing in any of the cases cited in either Respondent's or Petitioner's briefing suggests that neither the Indictment nor the Information can be used to determine Respondent's intentionality when he committed his crimes. In fact, the best way to determine Respondent's mental state and intentionality would be the Indictment, which explicitly states his intent to commit the crime, and the Information, which gives the background and facts surrounding Respondent's criminal acts. As cited above and in Petitioner's original brief, Respondent knowingly and intentionally attempted to poison Catherine Herring in an attempt to cause injury to Catherine

Herring and Ms. Herring's unborn child. Any attempt by Respondent to now hide those facts from this Board should not be allowed.

II. Conclusion

Respondent's convictions are final and both Serious and Intentional Crimes, subject to Compulsory Discipline. Accordingly, and subject to all of Petitioner's arguments, Petitioner asks that Respondent be disbarred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2024, a true and correct copy of the above document was served on Respondent through his counsel of record, Harry G. Potter III, The Potter Law Firm, PLLC, 8441 Gulf Freeway, Suite 600, Houston, Texas 77017-5066 at hpotter@thepotterlawfirm.com.



Amanda M. Kates