

No. 18-104

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

ROBERT P. TUERK,
Petitioner

v.

THE DISCIPLINARY BOARD OF THE SUPREME
COURT OF PENNSYLVANIA,
Respondent

On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

PETITION FOR REHEARING

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Petitioner

FACTUAL & PROCEDURAL BACKGROUND

A. Proceedings Below

On February 12, 2018, two (2) days before Petitioner's Reinstatement hearing that was scheduled for February 14, 2018, Respondent assessed reciprocal upon reciprocal disbarment against Petitioner upon FL's reciprocal disbarment of Petitioner emanating from Respondent's initial discipline of Petitioner in 2015.

Initially, Respondent suspended Petitioner's attorney's license on October 15, 2015 for one (1) year and one (1) day effective November 15, 2015 in his home jurisdiction of Pennsylvania (hereafter "PA"). On November 17, 2015, Petitioner promptly and obligingly filed an affidavit with Respondent confirming that he had informed all clients of said suspension, which, of course, included non-existent Florida (hereafter "FL") clients, because he was a member of the FL Bar at that time.

Thereafter, Petitioner consented to a one (1) year FL reciprocal suspension via a telephonic hearing on March 3, 2016 (Florida SC15-2253). The FL Bar's Certificate of Service in that matter clearly indicated that the proper email address for Petitioner is bobtuerk@comcast.net, but thereafter The FL Bar failed to use this primary email – all to the detriment of Petitioner. During the FL stipulated reciprocal discipline process, The FL Bar's representatives, the Referee, and the Referee's representatives communicated with Petitioner via his primary: 1) email, 2) telephone, and 3) postal mail home address as indicated on the front cover hereto. Even the FL Referee's Case Management Order and his Report indicated Petitioner's primary email address as: bobtuerk@comcast.net. The FL Bar's unannounced withdrawal from these lines of communication with Petitioner, coupled with Petitioner's despondency, resulted in a communication breakdown between Petitioner and The FL Bar.

Apparently, in July 2016 (several months after

Petitioner's stipulated reciprocal suspension in FL in March 2016), and unbeknownst to Petitioner, The FL Bar allegedly requested from Petitioner the same type of affidavit as the PA affidavit that was already submitted in November 2015. The FL Bar made no attempts to contact Petitioner via his proper and primary email, telephone (voice or text), postal home address, or fax, to inform Petitioner of The FL Bar's alleged request. The FL Bar instead filed for supplemental discipline that, of course, was unbeknownst to Petitioner.

It wasn't until January 31, 2016 that Petitioner became noticed (knowledgeable) of The FL Bar's redundant affidavit request after he inquired from them into the information he received from Respondent that there were additional FL proceedings ((SC16-983 (supplemental three (3) year suspension) and SC17-62 (supplemental request for disbarment))). On January 31, 2016, Petitioner immediately filed a reply to the FL disbarment rule and submitted the outstanding one (1) page FL checkbox form affidavit once

again (as he had already done with PA on November 17, 2015) to indicate that there were no clients to inform.

On February 7, 2017, The FL Bar replied to Petitioner's response to the rule, and indicated a certified mail receipt addressed to Petitioner's former abandoned law practice postal box dated July 11, 2016. The FL Bar did not produce any correspondence that was receipted within the preserved unopened envelope. This envelope remains unopened. Petitioner filed a further reply on February 21, 2017 with further relevant explanation to the FL Bar's response, but interestingly the FL court struck it on February 27, 2017 as "unauthorized."

The FL Bar then filed a notice of Petitioner's compliance on March 7, 2017, but astonishingly, the FL court issued another rule for disbarment. The additional rule was replied to by Petitioner's FL counsel on June 2, 2017. Thereafter, the FL Supreme Court ordered disbarment on July 20, 2017 without a hearing, and issued a final order on October 12, 2017.

Thereafter, Respondent, after the expiration of the one (1) year and one (1) day initial suspension of Petitioner by Respondent, and on the eve of Petitioner's Reinstatement hearing, disbarred him without a hearing. This was done, even though the initial affidavit that was timely filed with Respondent in November 2015 regarding informing current clients of Petitioner's discipline, which would include any possible clients in FL (which there were none), was the subject matter for the increased suspension and disbarment in the FL reciprocal discipline matters of Petitioner that were subsequent to the FL stipulated discipline in March 2016.

Pursuant to U.S. Const. amend. V, VII, and XIV §1, FL's disbarment of Petitioner was unconstitutional in that it was a denial of due process and equal protection, and was excessive punishment as follows: mischaracterization of corroborated facts in a Kafkaesque manner; no notice (knowledge) of the FL outstanding affidavit, the supplemental proceedings, or any orders after Petitioner

had stipulated to reciprocal discipline on March 3, 2016; misconstrued mere conjecture; no hearing and none of the accompanying rights were afforded thereto; denial of an opportunity to present material and relevant probative and mitigating testimony and real evidence; treating Petitioner differently than other disciplined attorneys without justification; alleged contempt of unbeknownst orders was purged upon notice (knowledge); no harm was suffered by Respondent; mitigating factors delineated by the Honorable Referee were ignored; and conflicted with this Honorable Court's precedents.

On February 12, 2018 without a hearing, two (2) days before Petitioner's Reinstatement hearing scheduled for February 14, 2018, and upon Respondent's request, the PA Supreme Court assessed reciprocal disbarment against Petitioner upon FL's reciprocal disbarment emanating from PA's prior initial 2015 discipline of Petitioner that had already expired, although the reciprocal FL matter upon which the reciprocal upon reciprocal disbarment of

Petitioner was groundless and unconstitutional for the reasons stated above and before this Honorable Court in Tuerk v. The Florida Bar, 17-1240.

B. Proceedings Before This Court

Petitioner's Writ of Certiorari herein was denied on October 1, 2018 even though there was no lower court opinion and no response by Respondent to Petitioner's Writ of Certiorari herein, therefore, the facts and law are uncontroverted as there are no counter-arguments or reasons whatsoever before this Honorable Court to validate or uphold the lower court's reciprocal upon reciprocal order of disbarment of Petitioner after Respondent's initial one (1) year and one (1) day suspension of Petitioner, which had already expired, and two (2) days before Petitioner's Reinstatement hearing. Respondent reciprocally instituted reciprocal disbarment emanating from the initial suspension instituted by Respondent in November 2015.

REASONS FOR GRANTING THE PETITION

Our U.S. Constitution is derived from the Magna Carta and the common law of England (now known as the United Kingdom). Seven (7) years ago The Supreme Court of the United Kingdom held that the 'double jeopardy' rule prevents successive proceedings before a regulatory or disciplinary tribunal. R (on the application of Coke- Wallis) v Institute of Chartered Accountants of England & Wales [2011] UKSC 1. It is time for this Honorable Court to recognize the same under the Double Jeopardy Clause under the Fifth Amendment (and/or under the Ninth or Tenth Amendments) to the U.S. Constitution.

Petitioner was cleared of disbarment in the initial disciplinary tribunal matter with Respondent, therefore, disbarment being reciprocally instituted in a back door manner must fail as the one (1) year and one (1) day discipline that was already instituted against Petitioner, which had already expired, was an unconstitutional

enlargement of discipline that was already instituted and expired. See Arizona v. Ramsey, 467 U.S. 203 (1984).

In Petitioner's tribunal matters, he consented to reciprocal discipline in FL emanating from the initial discipline in PA, but thereafter, unbeknownst to Petitioner, the consensual FL reciprocal discipline was increased to three (3) years, and then to disbarment all against corroborated evidence to the contrary. Therefore, Respondent's additional reciprocal upon reciprocal enlargement of punishment against Petitioner, emanating from Respondent's initial discipline of Petitioner, violates the constitutional proscription against double jeopardy and/or res judicata.

Petitioner is hopeful that this Honorable Court's newest Associate Justice might bring fresh insights to this matter, so that it may be properly umpired, and a full briefing and argument on this unfortunate injustice against your brethren of the law may be properly heard, addressed, and reversed.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Respectfully submitted,
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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to intervening circumstances of a substantial effect, and also includes substantial grounds not previously presented.

/s/ Robert Tuerk
Robert P. Tuerk