

SUPREME COURT OF ARIZONA

In the Matter of the Application) Arizona Supreme Court
for Reinstatement of a Disbarred) No. SB-17-0083-R
Member of the State Bar of)
Arizona) Office of the Presiding
) Disciplinary Judge
MARK A. TORRE,) No. PDJ20169097-R
Attorney No. 19337)
Applicant.)
_____) **FILED 03/23/2018**

O R D E R

Upon review and consideration of MARK A. TORRE'S Application for Reinstatement, the Report and Recommendation filed by the Hearing Panel and the record transmitted to the Court, the Court, sitting en banc, concludes that Torre has failed to establish by clear and convincing evidence that he is qualified for reinstatement to the active practice of law.

Torre had been out drinking with a co-worker, although he says he did not feel impaired and denies he was excessively speeding, when he hit and killed a pedestrian in the early morning hours of Saturday, August 18, 2001. He claimed he never saw the woman until the instant before he hit her, and knew immediately that he had hit her, but he drove away, parked the car a mile from the accident, and walked for four hours and over ten miles to his co-worker's residence. He made no effort to contact authorities although he had his cell phone. He advises that as he started that long walk he resolved to turn himself in, and began calling attorneys at approximately 8:00 that morning, ultimately finding an attorney who arranged for him to surrender to authorities the following Monday morning.

Torre was charged with second-degree murder and leaving the scene of a fatal accident, and a jury subsequently convicted him of the lesser-included charges of negligent homicide and leaving the

scene of an accident he did not cause. He was sentenced to the presumptive 6-year term of imprisonment on the first charge. The trial judge also imposed a consecutive 3½-year sentence on the second charge, finding Torre disregarded the welfare of the victim and evaded police.

Following entry of an order of interim suspension, on August 1, 2003, Torre entered into a consent to disbarment, acknowledging his two felony convictions and limiting his consent to his conviction for "leaving the scene of a fatal injury accident not caused by defendant."

At a resentencing hearing in 2006, the trial judge reduced the sentence on the second charge to a mitigated 1½ years. With release credits and discretionary early release, Torre served a total of 6 years and 2 months in prison, was released in January 2009, and received an absolute discharge in April 2010.

The Hearing Panel found that Torre "testified truthfully before the Panel and in his criminal trial that he had consumed five alcoholic drinks during the seven-hour-plus period leading up to the accident," and that "his testimony [was] truthful regarding the speed he was traveling" at the time of the accident. It also found, "[t]he failure of Mr. Torre to contact the police immediately after the accident was not motivated by a desire to avoid a blood-alcohol test." The Panel determined that Torre had identified the weaknesses that led to his misconduct as 1) immaturity and 2) straying from his core beliefs.

Under Ariz. R. Sup. Ct. 64(a), a disbarred member "must show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance." Rule 64(b) provides that there is a presumption "rebuttable by clear and convincing evidence presented at the hearing, that a lawyer who has

been convicted of a misdemeanor involving a serious crime or of any felony shall be disqualified for reinstatement."

In evaluating an application for reinstatement, the Court considers four factors: 1) "the applicant's character and standing prior to the disbarment," 2) "the nature and character of the charge for which he was disbarred," 3) "his conduct subsequent to the disbarment," and 4) "the time that has elapsed between the disbarment and the application for reinstatement." *In re Arrotta*, 208 Ariz. 509, 512 ¶ 13 (2004). "To show rehabilitation, an applicant must first establish by clear and convincing evidence that he has identified just what weaknesses caused the misconduct and then demonstrate that he has overcome those weaknesses." *Id.* at 513 ¶ 17. The more serious the misconduct that led to the disbarment, the more difficult the task to make the requisite showing. *Id.* at 513 ¶ 12. "Merely showing that [an individual] is now living and doing those things he . . . should have done throughout life, although necessary to prove rehabilitation, is not sufficient to meet the applicant's burden. In addition, he must bring forth clear and convincing evidence showing the positive actions he has taken to overcome the weaknesses that led to his disbarment." *Id.* at 515 ¶ 29 (internal quotation marks omitted).

We are unpersuaded that Torre "has satisfied the burden of proving complete rehabilitation from the character deficits that led to the commission of the crime." *In re King*, 212 Ariz. 559, 563 ¶ 10 (2006). As this Court noted in *King*, cases involving reinstatement, such as this case and *Arrotta*, and cases involving an application for admission by a person with a felony conviction, such as *King*, both require a showing that the applicant has identified and overcome the weakness leading to the misconduct. *Id.* at 565 ¶ 19 n.12. In *King*, the applicant was also required to meet a lower preponderance of the evidence standard than the rules now require. See *id.* at 563 ¶ 9.

Here we conclude that Torre – like King – has failed to satisfy

the burden of proving complete rehabilitation from the character deficits that led to the commission of the crime. We conclude that Torre's self-identified weaknesses - immaturity and lack of adherence to his core beliefs - do not adequately address his conviction for leaving the scene of a fatal accident, the offense for which he was disbarred. His identified weaknesses may explain the circumstances leading to the accident - his consuming five or more alcoholic beverages and then speeding on the streets by a large university campus at 2:15 a.m. - but they are inadequate to explain his knowing or intentional decision, as a 28-year-old lawyer, to leave the scene of the fatal accident. Torre's deliberate and calculated actions in the aftermath of the accident belie his claim that he acted merely out of panic borne of immaturity. Even if the panel is correct that Torre was not intoxicated and attempting to avoid a blood-alcohol test, Torre consciously decided to wait until the next morning to seek the advice of a lawyer instead of staying at the accident scene to assist his victim and take responsibility for his conduct. On this record, we cannot say that Torre established by clear and convincing evidence that he has identified just what weaknesses caused his misconduct in leaving the scene of the accident when the character deficits leading to that decision seemingly exceed mere immaturity or straying from some generalized assertion of core beliefs.

The Panel's statement, "[o]ur duty is not to limit our evaluation to those dark circumstances but rather to balance them favorably or unfavorably with what has followed," properly summarizes its task in determining a disbarred attorney's fitness for reinstatement. However, in this case, we conclude that Torre has failed to clearly and convincingly demonstrate that he has identified the true nature of his weaknesses and overcome them.

We do not preclude Torre's application for reinstatement, or condition his reinstatement on completion of specific rehabilitative

actions, and we waive the one-year prohibition under Rule 65(a)(4). Moreover, although we do not require professional treatment and testimony to gain readmission, this Court has recognized that "a counselor can assist an individual in understanding the reasons for his ethical violations and can help the person acquire tools needed to prevent future misconduct. An applicant who fails to present evidence that he has obtained such assistance must carry his burden by presenting some other basis to justify a finding of rehabilitation." *In re Arrotta*, 208 Ariz. at 514 ¶ 22. Here, in addition to his testimony, Torre presented at the hearing only evidence from his wife, and his current employer and supporter – all interested parties invested in his success. Evidence of counseling, mental health treatment, or expert testimony from objective sources, although not required, is helpful when accurately identifying character weaknesses and assessing rehabilitation from personal deficiencies that led to very serious misconduct.

Pursuant to Rule 65, the Application is dismissed.

DATED this 23rd day of March, 2018.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

J Scott Rhodes
Kerry A Hodges
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