

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

IN RE: :  
 :  
Michael Lowry : No. 6 JD 15  
Former Judge :  
Philadelphia Traffic Court :  
Philadelphia County :

BEFORE: Honorable Doris Carson Williams, P.J., Honorable Jeffrey P. Minehart, J.<sup>1</sup>, Honorable Michael J. Barrasse, J., Honorable Jazelle M. Jones, J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J.,<sup>2</sup> Honorable James J. Eisenhower, J., Honorable Andrea E. Puppio, J.

OPINION BY JUDGE PUPPIO

FILED: June 29, 2020

**Opinion and Order**

**I. THE STIPULATED FACTS**

The parties have agreed to a stipulated record of the facts in this case which the Court accepts and is as follows:

1. Article V, §18 of the Constitution of the Commonwealth of Pennsylvania grants the Board the authority to determine whether there is probable cause to file formal charges, and, when it concludes that probable cause exists, to file charges against a justice, judge or justice of the peace for proscribed conduct and to present the case in support of such charges before the Court of Judicial Discipline.

2. From January 2008 until he was suspended without pay by the Supreme Court of Pennsylvania on February 1, 2013, Respondent served actively as a duly elected judge on the Philadelphia Traffic Court, First Judicial District, Philadelphia County, Pennsylvania.

3. As a duly elected Judge of the Philadelphia Traffic Court, Respondent is, and was at all times relevant hereto, subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Rules Governing Standards of Conduct of Magisterial District Judges adopted by the Supreme Court of Pennsylvania.

4. Respondent was initially suspended from his judicial duties without pay by Order of the Supreme Court of Pennsylvania issued February

<sup>1</sup> The Honorable Jeffrey P. Minehart did not participate in this Decision.

<sup>2</sup> The Honorable James C. Schwartzman did not participate in this Decision.

1, 2013, and thereafter suspended with pay by Order of the Court of Judicial Discipline dated October 25, 2013.

5. Respondent's term as a President Judge of the Philadelphia Traffic Court ended in January 2014.

6. Respondent was a subject of a federal grand jury investigation regarding the practice of giving favorable treatment in traffic court cases to certain defendants based upon *ex parte* requests, which practice became known as "consideration."

7. As a result of the federal investigation, on January 29, 2013, Respondent was indicted by the federal grand jury at *United States of America v. Sullivan, et al.*, Criminal No. 2:13-CR-000039, in the United States District Court for the Eastern District of Pennsylvania.

8. The indictment charged Respondent with one count of conspiracy to commit wire and mail fraud, 18 U.S.C. §1349; nine counts of wire fraud, 18 U.S.C. §1343; and one count of making a false declaration, 18 U.S.C. §1623.

9. Following a federal trial ending July 23, 2014, a jury found Respondent guilty of making a false declaration in violation of 18 U.S.C. §1623, which is a felony offense.

10. On January 14, 2015, United States District Judge Lawrence F. Stengel sentenced Respondent to 20 months of imprisonment followed by one year of supervised release with 100 hours of community service.

11. On February 3, 2015, Respondent filed a Notice of Appeal in the United States Court of Appeals for the Third Circuit at *United States of America v. Michael Lowry*, No. 14-1344.

12. By Opinion of Richard L. Nygaard, Circuit Judge, filed August 21, 2018, the United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court.

13. On June 17, 2019, Respondent filed a Petition for Writ of Certiorari in the United States Supreme Court at *Michael Lowry et al. v. United States*, No. 18-1581.

14. On December 9, 2019, the United States Supreme Court denied the Petition for Writ of Certiorari.

15. The parties stipulate to the authenticity and admissibility of all trial exhibits, attached to those Joint Stipulations of Fact in Lieu of Trial, as set forth below:

**Trial Exhibits:**

A. A true and correct copy of the grand jury indictment at *United States of America v. Sullivan, et al.*, Criminal No. 2:13-CR-000039, in the United States District Court for the Eastern District of Pennsylvania.

B. A true and correct copy of the docket for *United States of America v. Michael Lowry*, Criminal No. 2:13-CR-000039-002.

C. A true and correct copy of the verdict slip for *United States of America v. Michael Lowry*, Criminal No. 2:13-CR-000039-002.

D. A true and correct copy of the Judgment and Sentencing Order for *United States of America v. Michael Lowry*, Criminal No. 2:13-CR-000039-002.

E. A true and correct copy of the docket for *United States of America v. Michael Lowry*, No. 15-1344.

F. A true and correct copy of the Opinion of Richard L. Nygaard, Circuit Judge, filed August 21, 2018, at *United States of America v. Michael Lowry*, No. 15-1344, affirming the judgement of the District Court.

G. A true and correct copy of the docket for *Michael Lowry et al. v. United States of America*, No. 18-1581.

H. A true and correct copy of the order denying Respondent's Petition for Writ of Certiorari filed by *Michael Lowry et al. v. United States of America*, No. 18-1581.

## II. DISCUSSION

At the conclusion of an eight week jury trial, Judge Lowry was convicted of a count of "False declarations before [a] grand jury" (commonly referred to as "perjury").<sup>3</sup> Because such a violation is punishable by "not more than five years," it constitutes a Class E felony under federal law. Judge Lowry was sentenced to twenty months in prison on January 14, 2015. An appeal was filed in 2015 and this Court stayed the disciplinary case consistent with C.J.D.R.P. No. 422.

The United States Court of Appeals for the Third Circuit affirmed Judge Lowry's conviction on August 21, 2018. See *USA v. William Hird, et al.*, Docket No. 14-4752.<sup>4</sup> Seeking further review, Judge Lowry filed a request for rehearing *en banc* that was denied and sought review in the United States Supreme Court which was unsuccessful.

A judge's conviction for a felony crime is, by itself, a violation of Pennsylvania Constitution and establishes the facts underlying the conviction as *res judicata*. See, e.g., *In re Jaffe*, 839 A.2d 487, 490 (Pa.Ct.Jud.Disc. 2003) (conviction of felony, of itself, established violation of Art. V, §18(d)(1)); see also, *Shaffer v. Smith*, 673 A.2d 872, 874-75 (Pa. 1996) (criminal conviction collaterally estops a defendant from denying the acts underlying the conviction in a subsequent civil trial unless or until criminal conviction is reversed on appeal). Judge Lowry was convicted of perjuring himself during a grand jury investigation regarding his activities in Philadelphia Traffic Court in relation to the practice of "special consideration." This conviction establishes a violation of Article V, §18(d)(1). See *In re Tynes*, 149 A.3d 452, 457 (Pa.Ct.Jud.Disc. 2016), *affirmed* at 177 A.3d 211 (Pa. 2018).

Second, this Court must consider whether Judge Lowry's felony conviction has also brought disrepute upon the judiciary. This Court has addressed the standard by which it will determine whether a judge's conduct brings disrepute upon the judiciary. "[T]he Board must make a persuasive showing that (1) the judicial officer has engaged in conduct which is so extreme that (2) it has resulted in bringing the judicial office into disrepute." *In re Smith*, 687 A.2d 1229, 1238 (Pa.Ct.Jud.Disc. 1997). The determination of whether particular conduct has brought the judicial office into disrepute is made on a case by case basis as the particular conduct in each case is scrutinized and weighted. *In re Miller*, 171 A.3d 367, 373 (Pa.Ct.Jud.Disc. 2016) ("Miller"); *In re Cicchetti*, 697 A.2d 297, 312 (Pa.Ct.Jud.Disc. 1997).

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<sup>3</sup> Judge Lowry was acquitted of the other counts against him.

<sup>4</sup> In connection with the criminal prosecution of various individuals at the now-abolished Philadelphia Traffic Court the *Hird* case was designed the lead case in the consolidated trials, and the appeals that followed. Judge Lowry was one of those defendants.

In proving that certain conduct was "extreme" the Board must show a specific act or series of acts by a judge which result in a decline of public esteem for the judicial office. For the second element, "disrepute" necessarily incorporates some standard with regard to the reasonable expectations of the public of a judicial officer's conduct. **Smith** at 1238-1239; **In re Strook**, 727 A.2d 653, 657 (Pa.Ct.Jud.Disc. 1998).

It can hardly be denied that a judge who lies under oath in the context of a federal grand jury investigation casts a pall over the entire judiciary. **Tynes**, at 457. Indeed, in the related case of **In re Sullivan**, 135 A.3d 1165, 1176 (Pa.Ct.Jud. Disc. 2016), in the context of the system of "special consideration," this Court indicted that Philadelphia Traffic Court was the *sine qua non* of "disrepute." ("A more apparent case of conduct which brings the judicial office into disrepute is difficult to perceive.") Here, of course, the issue is not so much the system of "special consideration" itself, as it was in **Sullivan**, but, the lies, like Judge Lowry's, that sought to hide it. The fact that Judge Lowry engaged in criminal behavior independent of, but parallel to, the now exposed corrupt system in Philadelphia Traffic Court only deepens the inescapable conclusion that Judge Lowry's conduct brought the judicial office into disrepute. **Tynes**, at 457.

Former Judge Lowry's criminal conduct violated Article V, §18(d)(1) of the Pennsylvania Constitution because it resulted in a felony conviction and also because it brought the judicial office into disrepute. Here we find that Judge Lowry's actions in lying to a federal grand jury in sworn testimony with full knowledge of the consequences to cover up the wrongful acts he did as a judge in Traffic Court brings disrepute upon the judicial office. Former Judge Lowry's conduct in perjuring himself before a federal grand jury unquestionably brought the judicial office into disrepute.

### III. CONCLUSIONS OF LAW

We make the following conclusion of law:

1. Judge Lowry's federal felony conviction constitutes a violation of Article V, §18(d)(1) of the Constitution of Pennsylvania which states, in pertinent part, that "a justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for conviction of a felony."

2. Judge Lowry's federal felony conviction and the underlying conduct behind it constitutes a violation of Article V, §18(d)(1) of the Constitution of Pennsylvania which states, in pertinent part, that "a justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct . . . which brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law."

Exceptions may be filed by either party within ten days of this Opinion and Order.

\*Judge Jones and Judge Foradora concur in this Opinion.