

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DOMINIC JAMES MITCHELL, (The Respondent)

Upon the application of Carol Featherstone
on behalf of the Solicitors Regulation Authority

Mr D Glass (in the chair)
Mr P Housego
Mr D E Marlow

Date of Hearing: 28th June 2010

FINDINGS & DECISION

Appearances

Ms Featherstone, employed by the Solicitors Regulation Authority, 8 Dorner Place, Leamington Spa, Warwickshire CV32 5AE appeared on behalf of the SRA (the application to the Tribunal having been made by Victoria Jane Hunt a solicitor similarly employed).

The Respondent did not appear and was not represented.

Allegation

The allegation against the Respondent was as follows:-

That he has been convicted of two offences, the first offence of common assault for which he was convicted on 23rd June 2008, and second offence of inflicting grievous bodily harm for which he was convicted on 9th March 2009, and that by virtue of the convictions has acted in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

Factual Background

1. The Respondent, born in 1977, was admitted as a solicitor in 2001. He did not currently hold a practising certificate. His name remained on the Roll of Solicitors. The Respondent ceased employment as an assistant solicitor on 6th February 2008.
2. The Respondent pleaded not guilty to common assault, arising out of a “road rage” incident that culminated in the Respondent being found guilty by a jury of common assault on 23rd June 2008. In his sentencing remarks of 30th July 2008, His Honour Judge Hope said that the Respondent got out of his car waving a hammer, although the jury found that he was not intending to use the hammer, and went on to say

“...You then approached him and kicked him three times, in the knee, thigh and groin. Notwithstanding, wholly independent, reliable evidence from a third party you denied these methods. You were found not guilty on Count 1, as I have said, because the jury found you were not intending to use that hammer, and I sentence you on that basis, but the jury found you guilty of kicking in those three ways”.

The learned Judge further said,

“...although it culminated in a common assault, it has its whole genesis in bad and ill-tempered driving. And therefore, in my judgment the appropriate sentence that you should be disqualified from driving under Section 146 of the Powers of Criminal Courts Sentencing Act, 2000 and that disqualification be for a period of six months from today.

The Respondent was Ordered to pay the prosecution and defence costs.

3. The Judge also noted,

“...In mitigation I have regard to the fact that you have no previous convictions that as a result of this conviction you have lost your employment and you will have to go before the Solicitors Disciplinary Tribunal.”
4. The Respondent pleaded guilty to a charge of inflicting grievous bodily harm on 9th March 2009 and was sentenced on 3rd April 2009 to 30 months imprisonment.
5. In his sentencing remarks Mr Recorder Towler recorded that it appeared that the background to the events was that the Respondent was concerned for his girlfriend who was recovering from a serious operation and it appeared that there may have been some mistake as to the identity of whoever it was that was throwing things at the Respondent’s house or interfering with the scaffolding, which resulted in the Respondent assaulting a man. The learned Recorder went on to comment,

“...the fact remains that the Respondent completely over-reacted when [the victim] came into the road and he threw one or more punches causing very serious injury so far as he is concerned.”

6. The injuries sustained to the victim included a fracture to the left cheekbone, a fracture to the lower jaw, bleeding in the ear canal and damage in and around the eye, all of which resulted in surgery and the need to insert one or more plates. The statement of the victim indicated that the consequences for him and his family had been devastating not just in terms of injuries themselves but the effect it had had on his ability to pursue his hobbies: he could no longer play rugby and he would probably not be able to run as he used to. There was a question mark over whether he would be able to pursue his long term plans of being a diving instructor. The injuries also had an impact on the victim's work. His wife, who witnessed the assault, and his children had suffered trauma.

7. In sentencing the Respondent, the Recorder said,

“...In your favour, I take into account the fact you clearly now bitterly regret what happened on that night in July of last year. I also take into account the fact that the consequences for you professionally have been severe; you can no longer pursue your career as a solicitor; there are financial consequences for you, particularly in terms of the flat on which you have a mortgage; and I take into account all that I have read in the testimonials that I have been handed on your behalf, as well as everything that is in the pre-sentence report,”

and went on to impose a sentence of two and a half years imprisonment. That sentence was reduced by the Court of Appeal on 8th September 2009 to 18 months imprisonment.

8. The Tribunal reviewed the following documents submitted by the Applicant:-

The certificates of conviction and the two transcripts of the sentencing remarks

9. The Tribunal reviewed the following documents submitted by the Respondent:-

1. His completed Tribunal questionnaire
2. His letter addressed to the Tribunal received on 30th April 2010.

Findings of Fact and Law

10. The Respondent had admitted the facts and the allegation in the completed Tribunal questionnaire and in his aforementioned letter. The Tribunal found therefore that the Respondent had been convicted of an offence of common assault and an offence of inflicting grievous bodily harm and that a custodial sentence had been imposed upon him in respect of the second conviction. The Tribunal was of the view that as the result of his criminal conduct the Respondent had acted in breach of Rule 1.6 of the Solicitors Code of Conduct 2007.

Mitigation

11. The Tribunal took into account the fact there had been some provocation of the Respondent on both occasions as was noted in the sentencing remarks. The Tribunal

also noted that it had been recorded that the Respondent was of previous good character and had been supported at his criminal trial by written testimonials. In the letter which the Respondent addressed to the Tribunal he expressed concern for his own mental health. The Tribunal considered it self evident that the Respondent had problems with anger management and expresses the hope that the Respondent will take steps to get professional help to assist him with these problems.

12. The Tribunal has taken into account the fact that neither of the incidents had taken place during the course of the Respondent's practice as a solicitor. The Tribunal gave the Respondent credit for his admission and his recognition that he had behaved badly.

Costs

13. On the subject of costs the Applicant requested fixed costs in the sum of £1,611.50 and handed up a schedule setting out the calculation of such costs at the hearing confirming that a copy had been made available to the Respondent. The Tribunal noted that in his aforementioned letter the Respondent made reference to his parlous financial position.

Previous disciplinary proceedings before the Tribunal

14. None.

Sanction and Reasons

15. The Tribunal recognises that a solicitor who breaks the law and, as in this case in particular, causes serious physical harm to another person and serves a prison sentence in order to repay his debt to society, causes serious damage to his own reputation and to the good reputation of the solicitors' profession. Such behaviour will not be tolerated.
16. The Tribunal further recognises that the Respondent has already been punished for his conduct and it is not the primary responsibility of this Tribunal to impose a penalty upon a solicitor Respondent appearing before it. The Tribunal's most important duty is to protect the public and its second duty is to protect the good reputation of the solicitors' profession.
17. Taking into account the Tribunal's concern about the mental health of the Respondent the Tribunal concluded that it could meet both of there important duties in a manner that would be both proportionate and appropriate in all of the particular circumstances of this case, by the imposition of an indefinite period of suspension.
18. Whilst this Tribunal does not seek in any way to fetter a future Tribunal's decision, the Tribunal considered it right to make it plain that any application by the Respondent to have the period of suspension determined would be unlikely to meet with success unless he produces evidence that he has addressed his anger management and mental health problems and that at the time of the application he was in every way a fit person to be permitted to be a solicitor.

19. With regard to the question of costs the Tribunal had noted the Respondent's parlous financial situation. It considered that the costs sought by the Applicant were entirely reasonable and it was right that the Respondent should be responsible for the costs incurred by his own professional regulator in bringing the matter before the Tribunal. The Tribunal therefore fixed the costs in the sum sought namely £1,611.50 but went on to order that the enforcement of the costs order should not be permitted without the consent of the Tribunal.
20. At the conclusion of the hearing the Tribunal made the following Order.

“The Tribunal Orders that the Respondent Dominic James Mitchell of 3 Hengistbury Road, Bournemouth, Dorset, BH6 4DF, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 28th day of June 2010 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,611.50, such costs not to be enforced without the leave of the Tribunal.”

Dated this 28th day of July 2010
On behalf of the Tribunal

D Glass
Chairman