

12-2402-10724-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Disciplinary Hearing
Relating to Michael Alan Kveene,
License No. 10639.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 9:30 a.m. on December 11, 1996, at 100 Washington Square, Suite 1700, Minneapolis, Minnesota. David E. Flowers, Assistant Attorney General, Suite 500, 525 Park Street, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee of the Board of Peace Officer Standards and Training. Robert L. Richert, Collins, Buckley, Sauntry & Haugh, West 1100 First National Bank Building, 332 Minnesota Street, St. Paul, Minnesota 55101-1379, appeared on behalf of the Licensee, Michael Alan Kveene. The record closed in this matter upon receipt of the parties' briefs on January 13, 1997.

Based on the testimony, filings, and records in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. At all time relevant herein, Michael Alan Kveene was licensed by the Minnesota Board of Peace Officer Standards and Training ("the Board"), as a peace officer.

2. On April 12, 1993, Kveene was convicted of Criminal Sexual Conduct in the fifth degree in violation of Minn. Stat. § 609.3451, subds. 1 and 2, in the District Court of Washington County, Minnesota. Exhibit 2. That offense is a gross misdemeanor. Kveene plead guilty to that offense pursuant to a plea agreement and admitted the conduct that supported the conviction. *Id.* On May 20, 1993, Kveene was sentenced to a year in jail and a fine of \$3,000, with imposition of sentence stayed for two years. Among the conditions imposed on Kveene was a requirement that he serve thirty days in detention and pay a \$300 fine. Exhibit 3.

3. On September 27, 1994, Kveene was convicted of lewd or lascivious behavior, in violation of Minn. Stat. § 617.23, and misconduct of a public officer, in violation of Minn. Stat. § 609.43, in the District Court of Ramsey County, Minnesota. Exhibits 5 and 6. The conduct which supported the convictions occurred while Kveene was on duty with the City of St. Paul Police Department. Exhibit 5. St. Paul Chief of Police William K. Finney informed the Board of the September 27, 1994 conviction and requested that Kveene's peace officer license be revoked. Exhibit 12.

4. As a result of the foregoing criminal convictions, on October 14, 1994, the City of St. Paul and Kveene mutually agreed to Kveene's resignation. Exhibit 7. As part of their settlement,

Kveene agreed to “submit his resignation of his license as a peace officer to the Minnesota Peace Officers Standards and Training Board.” *Id.* Kveene also agreed to execute any document required to “fully evidence” his resignations from the City of St. Paul and the Board. *Id.* On December 21, 1995, the Board sent Kveene a proposed agreement which included a provision that Kveene’s peace officer license be revoked. Exhibit 6. Kveene refused to sign the agreement.

5. The Complaint Investigation Committee of the Board initiated the hearing process under Minn. Stat. §§ 214.10 and 14 by issuing a Notice and Order for Hearing, dated to August 27, 1996. The issues set out in that Notice were to determine if disciplinary action should be taken against Kveene’s peace officer license or whether Kveene’s ability to be relicensed in the State of Minnesota should be revoked.

6. On November 1, 1996, summary disposition was granted to the Complaint Committee on the issue of whether the undisputed facts demonstrated that some discipline to Kveene’s license was warranted. Order Granting Partial Summary Disposition, OAH Docket No. 12-2402-10724-2 (Order dated November 1, 1996). The only issue remaining for hearing is what discipline should be taken by the POST Board against Kveene’s peace officer license.

7. Kveene undertook a course of therapy with Seals and Associates in 1993, following his being charged with Criminal Sexual Conduct. Kveene was assessed by Mr. William Seals while in that program and the assessment states in pertinent part:

Again, at this point I am very pleased with his progress. He has a healthy attitude towards treatment. He takes alot of focus in his group and he has shown appropriate guilt and remorse over his actions. I believe that should he continue to progress as he has, he will be successful. I do not believe he currently poses a threat to society, particularly to young girls, and should he continue to progress as he has, I believe he has the ability to never act out sexually again.

Exhibit 11, at 2.

8. Kveene’s therapist was contacted in the course of the presentence investigation of the Ramsey County conviction. The investigator noted the following:

This investigator was in contact with Bill Seals. He stated the defendant [Kveene] has been noncompliant with aftercare. He directed the defendant to attend aftercare groups one time a week and to periodically check in with him which the defendant has not done. He described the defendant as “a little sneaky” but not a bad guy. He actually did well in the treatment process. He would like to see the defendant come in once a week for aftercare groups with a review after three months. He would also like the defendant to call and check in at least once a month.

Exhibit 5, at 5.

9. Lieutenant Michael Morehead had supervised Kveene with the St. Paul Police Department. Lieutenant Morehead had not personally witnessed any problems with Kveene’s performance of his duties as a police officer. Lieutenant Morehead would not be willing to hire

Kveene as a new officer due to the conduct Kveene had engaged in while employed as a police officer with the St. Paul Police Department.

10. David Stampe is a business associate of Kveene's. They met through their participation in a multi-level marketing program after Kveene left the St. Paul Police Department. Stampe's step-daughter provided baby-sitting once at Kveene's house. Kveene had informed Stampe that he had been a police officer for four and a half years. Kveene did not tell Stampe why he was no longer a police officer, but suggested that Chief Finney was unhappy with Kveene for arresting a disproportionate number of minority suspects. Stampe was unaware that Kveene had a criminal record until Stampe was asked to be a character witness in this matter. Kveene had mentioned that there were legal problems in his past, but had implied that the only problem was with one adult.

11. Jenna Hightshoe is a social acquaintance of Kveene, having met through dating a cousin of Kveene's spouse. Hightshoe expressed her belief in her personal safety in Kveene's presence. She was aware of an accusation brought by a woman that Kveene committed some form of misconduct by making "comments" toward that woman. Hightshoe had heard something about an allegation against Kveene from a baby-sitter, but Hightshoe did not believe that Kveene had done anything wrong. She was not aware that Kveene had plead guilty to an offense.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Board and the Administrative Law Judge have jurisdiction of this matter pursuant to Minn. Stat. §§ 214.10 and 14.50.
2. Proper notice of this matter has been given and all necessary procedural requirements have been met by the Board.
3. Kveene's convictions for violations of Minn. Stat. §§ 609.345, 617.23, and 609.43 support taking discipline against his peace officer's license. Kveene's conviction of a gross misdemeanor is a violation of the standard of conduct set by Minn. R. 6700.1600 H.
4. Under Minn. Stat. § 214.10, subd. 11, the Board is authorized to take disciplinary action against a licensee who has violated the standards of conduct applicable to licensees.
5. The evidence in this matter supports revocation of Kveene's peace officer license; it does not support reducing the disciplinary action to something less severe than revocation.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED THAT the Board of Peace Officer Standards and Training revoke the peace officer license of Michael Alan Kveene.

Dated: January ____, 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, No Transcript Prepared

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Recommendation has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with John Laux, Executive Director of the Board of Peace Officer Standards and Training, 200 Spruce Tree Center, 1600 University Avenue, St. Paul, Minnesota 55104-3825. Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The authority of the Board to take disciplinary action in this matter was fully discussed in the Order Granting Partial Summary Disposition and will not be repeated here. The only issue remaining in this matter is the appropriate discipline to be imposed on Kveene's license. In accordance with In the Matter of the Teaching License of Falgren, 545 N.W.2d 901 (1996), the Committee requested that the Administrative Law Judge take evidence regarding the appropriate sanction and make a recommendation as to a sanction.

A number of character witnesses were called on the Licensee's behalf. With the exception of Kveene's spouse, none of these witnesses were fully informed of the conduct that supports the disciplinary action. The version of events related by these witnesses demonstrates that Kveene has, in essence, denied the conduct of which he has been convicted and distorted the true facts to the people he is now associated with in his employment and social life. These denials are particularly relevant in light of Kveene having cared for children without fully disclosing to their parents all of the facts. While he asserts he is "100% comfortable with his life," the record shows that Kveene is candid and remorseful only when adverse consequences are imminent. If Kveene retains his licensure, there is no imminent adverse consequence to assure compliance with all of the obligations of a peace officer.

Kveene relies upon his record in arrests to support his assertion that he is a good police officer. While that record is relevant to some facets of police work, the issue is what discipline should be taken in response to Kveene's conduct. Licensure as a peace officer requires adherence to all standards of licensure, not just those relating to apprehension of suspects.

The conduct of other police officers and the presence of other licensees in therapy are advanced by Kveene as reasons to pursue a lesser sanction than revocation. Kveene has not cited any licensing proceeding where conduct similar to his was sanctioned less severely. There is no evidence in the record as to what prior conduct, if any, these other, unnamed officers engaged in before entering therapy. There is no evidence that their employees were aware of these behaviors. Moreover, even if criminal sexual conduct of the type committed by Kveene had been overlooked in the past, it is clearly contrary to public policy to do so now. Kveene has not shown that the conduct of others warrants a lesser penalty or that some practice exists to support a lesser sanction.

Part of the motivation of this appeal was for the Board to consider facts not considered in Kveene's second criminal conviction. Kveene appealed that conviction, asserting that relevant facts bearing on the reliability of the complaining witness were improperly excluded and his prior conduct toward two female juveniles should not have been included. The Court of Appeals upheld his conviction stating:

The district court found that the prior incidents of misconduct were proven by clear and convincing evidence. Kveene conceded the clear and convincing nature of the proof at the pretrial hearing. The court also found that the past misconduct was relevant to the charged offense because of the similarity in making sexually suggestive conversation and touching the buttocks of young women, and the sufficiently close time period between the past misconduct and the charged offense. See State v. Bolte, __ N.W.2d __, __ (Minn. April 14, 1995) (court considers whether sufficiently close relationship in modus operandi and time exists between charged offense and other misconduct in determining relevancy and materiality). Although some differences between the past misconduct and the charged crimes exist, absolute similarity is not required to establish relevancy. See State v. Filippi, 335 N.W.2d 739, 743 (Minn.1983).

State v. Kveene, 1995 WL 311550, 311550 *3 (Minn.App. 1995).

The Court of Appeals has already addressed what evidence was properly considered in the criminal case and has upheld Kveene's conviction. The evidence he seeks to present constitutes rearguing the conviction, which is not allowed in licensing matters when the standards for applying collateral estoppel are met. See In the Matter of the Teaching License of Falgren, 545 N.W.2d 901 (Minn. 1996). The issue of violating standards was resolved in the Order Partially Granting Summary Disposition and cannot be relitigated here.

Kveene's stated reason for not acquiescing in the revocation of his license is that he seeks to avoid mentioning a license revocation on future non-police job applications. The effect of not revoking his license, however, would be to leave him eligible to seek employment as a police officer in another state or to reapply for licensure in the future in Minnesota. A desire by the offender to put prior misconduct firmly into the past is not a mitigating factor when assessing appropriate discipline. The misconduct demonstrated in this matter was severe and repeated. Revocation of his peace officer's license is an appropriate sanction for Kveene's conduct. The record contains insufficient evidence to justify mitigation of revoking Kveene's license. Therefore, the

Administrative Law Judge recommends that Kveene's license be REVOKED.

S.M.M.