Presbyterian Church (U.S.A.)
General Assembly Permanent Judicial Commission

Presbyterian Church (U.S.A.) Appellee	)	
v.	)	Disciplinary Case 204-2
The Rev. Randall Ross Appellant	)	

This is a disciplinary case which has come before this Commission on appeal by the Rev. Randall Ross from a decision by the Permanent Judicial Commission of the Synod of Lincoln Trails (Synod PJC).

This Permanent Judicial Commission finds that it has jurisdiction, that appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order.

History

A Special Disciplinary Committee was formed to investigate certain allegations related to Mr. Ross, Pastor of the First Presbyterian Church of Portage, Indiana. The Special Disciplinary Committee filed its Charges and Specifications with the Presbytery of Wabash Valley. Mr. Ross was charged with adultery, fraud and conduct unbecoming a Presbyterian minister.

On the 8th day of January, 1991, a preliminary hearing was held. The disciplinary case was scheduled for trial on the 1st day of February, 1991, and was concluded on February 12, 1991. The Commission presented its verdict and findings on February 12, 1991. Mr. Ross was found guilty of two specifications of adultery and was also found guilty of five specifications of conduct unbecoming a Presbyterian minister. On February 12, 1991, the Commission established the degree of censure as removal from office. On the 21st day of October, 1991, the Synod PJC affirmed the decision of the Presbytery Commission.

Requested Remedy

Mr. Ross is asking for relief from this Commission alternatively as follows:

1. Set aside the judgment of guilty on all counts.
2. Reverse the prior judgments and remand the case for a new trial.
3. Reduce the censure of removal to a censure of temporary exclusion.

4. Reduce the censure of removal to one of temporary exclusion but restore Mr. Ross only upon conditions which the Commission determines to be appropriate.

5. Remand to the Presbytery of Wabash Valley Permanent Judicial Commission to reconsider the censure of removal.

Findings

Appellant's Specification of Error #1:

> Whether the Commission and the Synod erred by failing to dismiss all charges by virtue of the participation of two Committee on Ministry (COM) members in the preliminary investigation process being conducted by the Special Disciplinary Committee thereby violating the process described by the Book of Order.

This specification is not sustained.

The proceedings were not tainted fatally by the presence of COM members at the Special Disciplinary Committee preliminary investigation meeting. Upon arrival at the meeting, the appellant's counsel objected to the presence of the COM members. The Chair of the Special Disciplinary Committee responded by requesting the COM members to leave the meeting. The COM members complied with the request, remaining outside the room until the appellant and his counsel completed their testimony and left the meeting.

Appellant's Specification of Error #2:

> Whether the attempt by the Presbytery of Wabash Valley to call the accused, Randall Ross, as its first witness was an improper, unfair and unduly prejudicial comment on his right to remain silent and his right to refuse to testify.

This specification is not sustained.

D-7.0900 provides that "Before each and every conference with the accused, the Special Disciplinary Committee shall inform the accused of the right to remain silent." This right to remain silent continues throughout all proceedings including trial. Mr. Ross exercised his right to remain silent. Even though he was inappropriately called as a witness by the prosecution, he was not compelled to testify and no adverse comment on his failure to testify was made by the prosecution. The proceedings in this instance were not tainted fatally by calling Mr. Ross as a witness.

Appellant's Specification of Error #3:

> Whether the intentional introduction of inadmissible hearsay evidence by counsel

for the Presbytery of Wabash Valley constitutes a manifestation of prejudice in the conduct of the case.

This specification is not sustained.

The proceedings were not tainted fatally by the offering of hearsay evidence before the Presbytery of Wabash Valley PJC. The Presbytery of Wabash Valley PJC excluded hearsay testimony from the deliberations and decision, thereby rendering this specification moot.

Appellant's Specification of Error #4:

> Whether there was sufficient evidence to prove the offense of adultery beyond a reasonable doubt.

This specification is not sustained.

We have reviewed the evidence offered to substantiate Count I, Specification 1, and hold it sufficient to convict Mr. Ross of the offense of adultery, beyond a reasonable doubt. (Adultery is sexual intercourse between a male and a female, at least one of whom is married to a third person.)

Similarly, we find that the evidence offered to substantiate Count I, Specification 2, is sufficient to convict the appellant of the offense of adultery, beyond a reasonable doubt.

Appellant's Specification of Error #5:

> Whether there was sufficient evidence to prove the offense of conduct unbecoming a Presbyterian minister.

This Specification is sustained in part and not sustained in part.

We find that Count III, Specifications 4 and 9, alleging breach of confidentiality in regard to counseling and Specification 5, alleging procurement of a sexual partner, are supported by the evidence sufficiently to convict the appellant of each specification, beyond a reasonable doubt, and constitute conduct unbecoming a Presbyterian minister.

As to Count III, Specifications 3 and 8, alleging suggestive statements to female members of the congregation, we find that the evidence was not sufficient to support the charge of conduct unbecoming a Presbyterian minister, beyond a reasonable doubt.

Appellant's Specification of Error #6:

> Whether the introduction of extraneous, immaterial, irrelevant testimony concerning "problems" that witnesses may have had with their minister unrelated to any

charges or specification constitutes an irregularity in the proceedings to such an extent to justify a new trial.

This specification is not sustained.

Appellant's claim that extraneous testimony was introduced at trial resulting in irregular proceedings is not supported by the record. Since the charges concerned the behavior of the appellant, it was necessary to hear testimony of persons who had knowledge and experience of said behavior.

We do not find the allegations of irregularity convincing. Accordingly, the request for a new trial is denied.

Appellant's Specification of Error #7:

> Whether the degree of censure, removal from office, was unduly severe given the entire facts and circumstances surrounding this case.

This specification is not sustained.

Opportunity was not provided the appellant to offer matters in explanation or mitigation prior to the imposition of the censure of removal from the office of Minister of the Word and Sacrament. In this case, since we have set aside the convictions under Specifications 3 and 8 of Count III, basic fairness requires that this appellant should have the opportunity to address the body empowered to censure prior to the imposition of that censure.

Order

We vacate the imposition of censure and remand the case with the convictions affirmed as stated above. We direct the PJC of the Presbytery of Wabash Valley promptly to conduct a hearing to receive and consider evidence as to mitigation, rehabilitation, and redemption and then to determine the degree of censure to be imposed.

All other relief sought is denied.

James MacKellar and Alberta Mercado were not present and took no part in the proceedings.

The Commission approved this decision and adopted the Order in this case on the 16th day of May, 1992.