

**THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

PRESBYTERY OF SANTA FE

Appellee

v.

Disciplinary Case 206-5

THOMAS C. TRUSCOTT

Appellant

This is a disciplinary case that has come before this commission on appeal by Thomas C. Truscott, minister, from a decision of the Permanent Judicial Commission of the Synod of the Southwest in a case initiated by the Presbytery of Santa Fe.

Pursuant to Book of Order, D-13.1200a, this commission finds that it has jurisdiction, that the appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order.

HISTORY

In the fall of 1988, Thomas C. Truscott became pastor of the First Presbyterian Church of Santa Fe, New Mexico. Between May, 1991, and March, 1992, a staffperson of that church retrieved from Mr. Truscott's office wastebasket torn-up letters from a woman in New York state, which raised suspicion that a sexual relationship existed between her and Mr. Truscott. She was a member of a church of which Mr. Truscott had formerly been the pastor.

On May 1 and 2, 1992, four members of the church met with Mr. Truscott over a period of several hours to inquire of him whether he was "having an affair." Mr. Truscott initially denied that he was "having an affair," but subsequently admitted that he "had had an affair" with the author of the letters, and had repented of and broken off the relationship. On June 18, 1992,

he submitted a letter of self-accusation of adultery to the Presbytery of Santa Fe which he amended on July 1, 1993. He also requested an inquiry for vindication (Book of Order, D-7.0500) in regard to rumors of other unethical ministerial behavior which were circulating in First Presbyterian Church of Santa Fe. The presbytery appointed a special disciplinary committee which investigated both the self-accusation of adultery and the matters concerning which Mr. Truscott had requested an inquiry for vindication.

On October 19, 1992, the special disciplinary committee filed with the stated clerk of the Presbytery of Santa Fe seven charges against Mr. Truscott, which were accompanied by a list of the witnesses for the prosecution.

A trial was held before the Permanent Judicial Commission of the Presbytery of Santa Fe on December 5, 6, and 8, 1992. During the trial, the presbytery permanent judicial commission, over the objection of Mr. Truscott's counsel, allowed some witnesses to testify by telephone. In addition, the presbytery permanent judicial commission allowed testimony from certain witnesses who had not been named in the statement of charges filed by the special disciplinary committee, also over the objection of Mr. Truscott's counsel. A notice of the names of those witnesses had been mailed to Mr. Truscott on November 25, 1992, and delivered to his home during his absence for the funeral of a family member.

The presbytery special disciplinary committee brought seven charges against Mr. Truscott. Mr. Truscott pled guilty to charge 1. The presbytery permanent judicial commission found him guilty of all seven charges. The charges were:

1. Marital infidelity,
2. Lying,
3. Inappropriate personal use of the church telephone,

4. Illegal use of church nontaxable transaction certificates,
5. Improper handling of gifts,
6. Improper continuation of a pastoral care relationship,
7. Use of vulgar language.

On December 21, 1992, the presbytery permanent judicial commission imposed the censure of exclusion from exercise of ordained office for four years following the termination of his compensation by First Presbyterian Church of Santa Fe, and provided that at the end of the term of exclusion he might apply to the committee on ministry of the Presbytery of Santa Fe for reinstatement. On January 29, 1993, the stated clerk [clerk] of the presbytery permanent judicial council [commission] sent to the stated clerk of the presbytery a letter "to clarify the intent of the Degree of Censure", stating:

Exclusion from the exercise of ministry began on December 21, 1992, the date of filing the decision with the Stated Clerk of Presbytery, and will continue for four years following the termination of his compensation by First Presbyterian Church, Santa Fe.

On December 30, 1992, Mr. Truscott filed a timely notice of appeal to the Synod of the Southwest. His specifications of error by the Presbytery PJC included the following:

1. Irregularity in the proceedings.
 - a. The SDC failed to discuss with the accused options to avoid trial.
 - b. In stating the Degree of Censure, the Presbytery PJC set the exclusion from ordained office at four years and then said that "At the end of the term of exclusion, he may apply for reinstatement" contrary to the automatic reinstatement at the end of the term provided in the Rules of Discipline.
2. Receiving improper evidence (D-13.0300c) and manifestation of prejudice.

- a. The Presbytery PJC was in receipt of and prejudiced by ex parte material.
 - b. The Presbytery PJC should have excused itself by reason of the reception of ex parte material.
 - c. The Presbytery PJC conducted the hearing in a manner indicative of bias.
- 2 [sic]. Refusing the defendant reasonable opportunity to present evidence. (D-13.0300b)
- 3. Receiving improper evidence and testimony.
 - 4.
 - a. Hastening to a decision before the evidence or testimony is fully received.
 - b. The apparent lack of clarity as to the duration of the term of censure was evidence of undue haste on the part of the Presbytery PJC.
 - 5. Manifestation of prejudice in the conduct of the case.
 - 6. Mistake or injustice in the decision.
 - 7. Undue severity of censure.
- 7 [sic]. Failure to state charges which show violation of church (or any) laws.
- 8. No basis for consideration by the Presbytery PJC of the charge of marital infidelity.

On May 3, 1993, the synod permanent judicial commission held a hearing of the appeal.

On May 22, 1993, the synod permanent judicial commission issued its decision in which it sustained two specifications of error, 1b and the first #7:

1b. In stating the Degree of Censure . . . the (Presbytery) PJC set the exclusion from ordained office at four years and then said that "At the end of the term of exclusion, he may apply for reinstatement" contrary to the automatic reinstatement at the end of the term provided in the Rules of Discipline.

- 7. Undue severity of censure.

The synod permanent judicial commission stated, "It is the judgment of the commission that the period of exclusion be modified to three years commencing December 21, 1992." The synod permanent judicial commission did not respond to specification of error 2.b. which was moot after its decision on Specification 2.a., and decided not to sustain the other specifications of error.

On June 16, 1993, Mr. Truscott filed a notice of appeal from the decision of the synod.

SPECIFICATIONS OF ERROR

Appellant alleged three specifications of error:

(1) The permanent judicial commission of the Synod of the Southwest erred in failing to sustain the position of the respondent/appellant that the permanent judicial commission of the presbytery . . . committed prejudicial error in permitting the taking of testimony of witnesses by telephone and by permitting the special disciplinary committee to add witnesses just before trial in spite of the fact that the committee had known the identity of those witnesses at the time charges were filed against the respondent/appellant.

This specification is sustained.

The Rules of Discipline in D-9.0400a provide that one test of a witness's credibility may be "the witness's demeanor while testifying and the manner in which the witness testifies." Such demeanor cannot be observed when a witness testifies by telephone. Further, the Rules of Discipline (D-9.1300) provide one exception to testimony in person: testimony taken by deposition. It may be assumed that the omission of other exceptions is deliberate. The ruling by the moderator of the presbytery permanent judicial commission, "I'm going to permit the testimony by telephone . . . What is not forbidden is possible in the Book of Order," was in error.

Further, the Rules of Discipline, D-7.1500c provide:

c. Every charge shall set forth the alleged offense with the specification of the facts relied upon to sustain the charge. Each such specification shall state, as far as possible, the time, place, and circumstances of the commission of the alleged offense, and shall be accompanied by a list of the names and addresses of the witnesses for the prosecution and a description of the records and documents to be cited for its support. (Book of Order, D-7.1500c)

Therefore the special disciplinary committee should not have introduced testimony from witnesses whose names and addresses, then known, had not accompanied the filing of the charges.

Nevertheless, in view of our holding on specification number 2, we do not reverse on the ground of this specification being sustained.

(2) The synod permanent judicial commission erred in failing to determine that there was insufficient evidence to sustain a finding of guilty on a number of charges brought against the respondent/appellant.

This specification is not sustained.

Appellant himself admitted to having committed adultery and to lying. These offenses in themselves are ample warrant for the censure imposed. Therefore it is not necessary to determine the sufficiency of evidence relating to the other charges.

(3) The synod permanent judicial commission erred in failing to recognize that the receipt of ex parte material by the presbytery permanent judicial commission prior to the trial, which material was extremely prejudicial to the respondent/appellant, made it improbable that the respondent/appellant could receive a fair trial by the members of the presbytery permanent judicial commission.

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

Reception of ex parte material was error. The allegation that that reception led to an unfair trial we do not find supported by the record.

The ex parte material referred to is the response of the special disciplinary committee to the respondent/appellant's request for vindication, which was sent to the members of the presbytery permanent judicial commission along with the statement of the charges being filed.

The stated clerk of the presbytery should not have provided the presbytery's permanent judicial commission with any material not included in the charges. Neither D-7.1400 nor D-7.1500 allows a stated clerk to attach any other material to a charge. If the special disciplinary committee has discovered information supportive of its charges, it is the responsibility of that committee to introduce that information as evidence during the trial.

Nevertheless in view of our holding on specification number 2 we do not reverse on the ground of this specification being sustained in part.

FURTHER FINDING

This commission further finds that the moderator and clerk of the presbytery permanent judicial commission signed briefs relating to the appeals to synod and to General Assembly. A lower permanent judicial commission is not a party to a case on appeal, either disciplinary or remedial. Therefore, neither the lower permanent judicial commission, nor its officers ought to be involved in briefs relating to an appeal of its decision.

ORDER

It is therefore ordered that the decision of the permanent judicial commission of the Synod of the Southwest be sustained. The effect of this decision is that Mr. Truscott is temporarily excluded from the exercise of ordained office for a period of three years, commencing December 21, 1992.

The censure of temporary exclusion terminates December 21, 1995, and Mr. Truscott is then in good and regular standing in relation to the church (Book of Order, D-11.0100b). Mr. Truscott may request restoration prior to December 21, 1995, in accordance with the Rules of Discipline (Book of Order, D-11.0400).

It is further ordered that the stated clerk of the Presbytery of Sante Fe report this decision to the presbytery at its first meeting after receipt, that the presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly. (Book of Order, D-8.1900)

The untimely death of Harold Densmore on October 24, 1993, precluded his participation in the proceedings. Ferdinand Pharr was not present and took no part in the proceedings.