

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

Presbyterian Church (U.S.A.) through the)	
Presbytery of Wyoming,)	
Complainant/Appellant,)	
)	DECISION AND ORDER
v.)	
)	Disciplinary Case 218-06
Gordon R.J. King,)	
Respondent/Appellee.)	

Headnotes

1. **Appeals in disciplinary cases:** Appeals in disciplinary cases exist to review proceedings of lower governing bodies (D-13.0100) and not to retry issues of fact. The determinations of facts are made by the trier of fact, not the appellate body.

2. **Standard of review:** Factual determinations made by a trier of fact have a presumption of correctness and are not to be disturbed on appeal unless they are “plainly wrong, without supporting evidence or manifestly unjust” (*Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery, Minutes, 2006, p.493, and Hardwick v. Permanent Judicial Commission of the Synod of North Carolina, Minutes, 1983, p. 45*).

3. **Record of proceedings:** While D-11.0601 does require an accurate verbatim recording of all testimony and oral proceedings at trial, it does not require such recording to be available during commission deliberations.

Arrival Statement

This disciplinary case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by the Complainant/Appellant, Presbytery of Wyoming (Presbytery), from a decision of the Permanent Judicial Commission of the Synod of the Rocky Mountains (SPJC) dated November 17, 2006.

Jurisdictional Statement

On December 4, 2006, the Executive Committee of the GAPJC found that this Commission has jurisdiction; that the Presbytery has standing to file the appeal; that the appeal was properly and timely filed; and that the appeal states one or more of the grounds for appeal under D-13.0106b.

Appearances

The Presbytery was represented by Lynne Reade. Gordon R.J. King, minister, was represented by Elizabeth T. Dunning.

History

This disciplinary case began on May 31, 2003, with the filing of four charges by an Investigating Committee of the Presbytery against Mr. King. One of those charges became the subject matter of the instant case. On July 20, 2003, the SPJC accepted jurisdiction of the case on reference from the Presbytery (D-4.0100).

Previously, on July 16, 2002, Mr. King had been convicted in a Utah state criminal court for sexual abuse of a child and was incarcerated. This conviction comprised the substance of the original charge in this matter. Mr. King was unable to appear in person at an ecclesiastical trial because of his incarceration. Mr. King's conviction was reversed and remanded in 2004 and Mr. King was released from prison. The release of Mr. King was communicated to the Investigating Committee in 2005. On April 21, 2006, the Presbytery Prosecuting Committee (Prosecuting Committee) filed a "Request for Action by the Synod PJC."

On August 8, 2006, the Prosecuting Committee amended the original charge against Mr. King by replacing the charge based on his conviction with charges based on the specific alleged acts of sexual abuse of a minor child. The trial was held by the SPJC on October 16 and 17, 2006. The Prosecuting Committee presented no live witness testimony in support of its direct case at trial. In lieu of live testimony, the Prosecuting Committee attempted to enter the transcript of the Utah criminal prosecution into evidence. While the written transcript was not admitted into evidence, portions of that trial transcript were read into the record, including testimony of the alleged victim and other witnesses. The ruling of the SPJC Moderator, affirmed by the SPJC, was "to proceed to hear the testimony on the transcript" without admitting the full transcript as an exhibit into evidence. Additional responsive and rebuttal witnesses were present and testified on behalf of both parties including Mr. King and another person who was present when the alleged incident occurred.

This is an appeal filed by the Presbytery on November 27, 2006, from the SPJC Decision finding that Mr. King was not guilty. This Commission heard the arguments of the parties on July 27, 2007.

Specifications of Error

Appeals in disciplinary cases exist to review proceedings of lower governing bodies (D-13.0100) and not to retry issues of fact. The determinations of facts have already been made by the SPJC, the trier of fact in this case.

Factual determinations made by a trier of fact are accorded a presumption of correctness. These determinations are not to be disturbed on appeal unless they are "plainly wrong, without

supporting evidence or manifestly unjust” (*Chesterbrook Taiwanese Presbyterian Church v. National Capital Presbytery, Minutes*, 2006, p. 493, and *Hardwick v. Permanent Judicial Commission of the Synod of North Carolina, Minutes*, 1983, p. 45). Those Specifications of Error addressing factual findings have been considered in light of this principle.

Specification of Error No. 1. The SPJC erred in constitutional interpretation
(a) *by conducting the trial under outdated rules; and,*
(b) *by the Moderator stating on the record that the accused has “a right to be confronted by a witness.”*

This specification of error is not sustained.

(a) An outdated Preamble to the Rules of Discipline (D-1.0101) was read at the beginning of the trial. The current Preamble was read later during the trial. It was acknowledged by both parties at oral argument that this did not affect the conduct or outcome of the case.

(b) The Moderator did state during the trial that the accused has “a right to be confronted by a witness.” Nevertheless, the Moderator’s statement did not preclude the Prosecuting Committee from using transcript testimony at the trial. (See discussion in Specification of Error No. 2.)

Specification of Error No. 2. The SPJC erred in refusing the Prosecuting Committee reasonable opportunity to present evidence, particularly by not receiving into evidence the entire criminal court transcript.

This specification of error is not sustained.

The entire transcript from Mr. King’s state criminal trial was not admitted into evidence in written or testimonial form; however, all the testimonial portions of the trial transcript requested by the Prosecuting Committee were read into the record in question and answer form. Therefore, the SPJC’s refusal to admit the written transcript into evidence did not prejudice the Prosecuting Committee’s case.

Specification of Error No. 3. The SPJC erred in receiving improper or declining to receive proper evidence or testimony.

(a) *The Moderator and Clerk made reference to information received only by them and not shared with the rest of the SPJC.*

(b) *The criminal case was referred to as a “nullity” by the Moderator, other commissioners, and counsel for Mr. King.*

This specification of error is not sustained.

(a) The record shows that the SPJC was made aware of all pertinent information at the time of the trial, including the existence of briefs regarding transcript evidence.

(b) The SPJC understood that, although Mr. King’s conviction had at the time been reversed, the trial testimony that was read into the record was not a “nullity.”

Specification of Error No. 4. The SPJC erred in that irregularities occurred in the proceedings, including

- (a) accepting a Reference from the Presbytery improperly;*
- (b) not making evidence read into the record available to the SPJC during its deliberations; and,*
- (c) allowing “wide-ranging” discussions during the trial.*

This specification of error is not sustained.

(a) Reference of a case from a lower to a higher governing body is both possible and proper in the Presbyterian Church (U.S.A.) as delineated in D-4.0000. The Presbytery itself requested Reference to the SPJC. While this step should have been documented, the Record does not show that the Reference was accepted irregularly (D-4.0201). The Prosecuting Committee asked the SPJC to proceed to trial and understood that the SPJC had accepted the Reference, as shown by the Prosecuting Committee’s “Request for Action by Synod PJC” dated April 21, 2006. The full SPJC and the parties proceeded to trial without objection, and thus must be presumed to have acquiesced in the acceptance of the Reference. Moreover, the Synod Decision states that the SPJC accepted jurisdiction on the PPJC’s request for Reference.

(b) While D-11.0601 does require an accurate verbatim recording of all testimony and oral proceedings at trial, it does not require such recording to be available during commission deliberations.

(c) Regarding the “wide-ranging” discussions, the Record does not sustain the allegation of error (D-11.0304).

Decision

None of the Specifications of Error is sustained; therefore, the Decision of the Synod Permanent Judicial Commission is affirmed.

In Mr. King’s brief to the GAPJC, he questioned, for the first time, the Presbytery’s standing to appeal. He argued against the retroactive application of D-13.0102 and D-11.0502.¹ Because the Decision of the SPJC is being sustained on independently sufficient grounds, no determination has been made on the jurisdictional question raised by Mr. King.

This Commission recognizes the gravity of the allegations in this matter and the concerns raised in this case for the alleged victim and the rights of the accused (D-1.0101). This case illustrates the need for careful adherence to procedural safeguards as set forth in the Rules of Discipline in order that the rights and interests of all concerned are given due accord.

¹ D-11.0502, as printed in the 2005-2007 *Book of Order*, conflicts with D-13.0102. This editorial error was corrected to conform to D-13.0102 by the Advisory Committee on the Constitution as published in the 2006 revision of the 2005-2007 *Book of Order*, in accordance with the *Manual of the General Assembly, 2006, A.5.a* and as reported to the 217th General Assembly.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Rocky Mountains is hereby affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Wyoming report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Rocky Mountains report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

Absences and Non-Participants

All members of the General Assembly Permanent Judicial Commission were present for the hearing and consideration of this case.

Certificate

We certify that the foregoing is a true and correct copy of the Decision and Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Disciplinary Case Number 218-06, Presbytery of Wyoming, Complainant/Appellant, v. Gordon R.J. King, Respondent/Appellee, on July 29, 2007.

Dated this 29th day of July, 2007.

Wendy G. Warner, Moderator
Permanent Judicial Commission of the General Assembly

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, Kentucky, on July 30, 2007:

Lynne Reade, Counsel for Appellant
Elizabeth T. Dunning, Counsel for Appellee
Fred Feth, Stated Clerk, Presbytery of Wyoming
Don A. Patterson, Stated Clerk, Synod of the Rocky Mountains

General Assembly Permanent Judicial Commission (regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on July 30, 2007.

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the Decision and Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly in Louisville, Kentucky, on July 29, 2007, in Disciplinary Case 218-06, Presbytery of Wyoming, Complainant/Appellant, v. Gordon R.J. King, Respondent/Appellee, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on July 30, 2007.

C. Laurie Griffith
Manager of Judicial Process
General Assembly of the Presbyterian Church (U.S.A.)