

IN RE KING: IS REHABILITATION FROM SERIOUS CRIMES POSSIBLE?

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INTRODUCTION

To be admitted to practice law in Arizona, an applicant must prove he or she possesses the appropriate character and fitness, which includes a showing of good moral character.¹ In 2005, the Arizona Supreme Court stated that such a showing by an applicant whose background includes serious criminal behavior may be a “near impossibility.”² Just a year later, in *In re King*, the court addressed whether a convicted felon who had pleaded guilty to attempted murder could satisfy that character and fitness requirement.³ In a split decision, the majority noted that it may be “virtually impossible” for an applicant convicted of a serious crime, such as attempted murder, to prove his or her good moral character through rehabilitation.⁴ The court found that King had not met this high threshold.⁵

I. FACTUAL AND PROCEDURAL BACKGROUND OF *IN RE KING*

A. King’s Crime

Twenty-nine years before applying for admission to the Arizona Bar, James King shot two men in a drunken outburst and was convicted by a Texas court of attempted murder.⁶ At the time, King was a twenty-four-year-old reserve deputy constable, a position that permitted King to carry a handgun while in uniform and to keep the gun in his glove compartment when off duty.⁷

1. ARIZ. SUP. CT. R. 36(b). Rules of the Supreme Court of Arizona 33–38 establish the evaluation process for candidates for admission to the State Bar of Arizona. The court most recently amended these rules in 2005. *See In re King*, 136 P.3d 878, 881 n.5 (Ariz. 2006). These most recent amendments did not apply to King’s case because he filed his application for admission prior to their effective date of December 1, 2005. *Id.* Except where noted, the rules cited in this Case Note were not affected by the 2005 amendments. *See infra* notes 27, 36–38 and accompanying text.

2. *In re Hamm*, 123 P.3d 652, 662 (Ariz. 2005).

3. *King*, 136 P.3d 878.

4. *Id.* at 882.

5. *Id.* at 886.

6. *Id.* at 880–81.

7. *Id.* at 880.

The shooting occurred in the early morning of December 31, 1977, following several hours of drinking at a neighborhood bar.⁸ Earlier the previous day, King learned that he had been "passed over" for a position as a full-time deputy constable.⁹ While in civilian clothing and off-duty, he became severely intoxicated at the bar and began to argue with two other men whom he knew were convicted felons.¹⁰

When King left the bar some time after midnight, the two men soon followed.¹¹ Both men were unarmed.¹² Reports about what happened outside the bar conflict, but it was not disputed that King shot both men with his service handgun "several times at close range, emptying his fully loaded weapon and firing some bullets through the bar door."¹³ There was no evidence that King warned the men that he would shoot if they did not stay back.¹⁴ Although the gunshots seriously wounded the victims, both survived.¹⁵

King then got into his car, where a security guard who witnessed the shootings aimed his own gun at King, ordered him out of the car, and placed him under arrest.¹⁶ King tried to shoot himself with his gun, but after realizing it was empty, he took out a knife and made superficial cuts on his leg and throat.¹⁷ Finally, King threw the knife out of the car, got out, and was handcuffed.¹⁸

King was indicted on two counts of attempted murder and pleaded guilty to one count as part of a plea agreement.¹⁹ The Texas court sentenced him to seven years in prison.²⁰ He only served four months, however, before the court suspended his sentence and put him on probation.²¹ During probation, King participated in counseling and group therapy before the court set aside his conviction in February 1985.²²

B. King's Life After Prison

King later graduated from college and law school, and passed the Texas Bar Exam.²³ The Texas Board of Law Examiners found that King had the good moral character required for admission to the Texas Bar and admitted him to

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8. *Id.*
 9. *Id.*
 10. *Id.*
 11. *Id.*
 12. *Id.*
 13. *Id.*
 14. *Id.*
 15. *Id.* at 880-81.
 16. *Id.* at 881 n.2.
 17. *Id.*
 18. *Id.*
 19. *Id.* at 881.
 20. *Id.*
 21. *Id.*
 22. *Id.*
 23. *Id.*

practice in 1994.²⁴ Between 1994 and 2003, King practiced law in Texas, married, adopted his wife's child, and had additional children with his wife.²⁵

In 2003, King transferred to his firm's Phoenix office, passed the Arizona Bar Exam, and applied to practice law in Arizona.²⁶ The Committee on Character and Fitness ("the Committee")²⁷ found that King had failed to prove his good character and fitness as required for admission to the Bar, even though it recognized that he had presented significant evidence of both rehabilitation and social contributions.²⁸ The Committee recommended that the Arizona Supreme Court not admit King because it "was unable to overlook the seriousness of his crime."²⁹ When the court subsequently declined to consider King's petition for review, it effectively denied his application for Bar membership.³⁰

Six months later, King re-applied, and the Committee held another hearing on April 21, 2005.³¹ King presented additional evidence to prove his good character and fitness to practice law in Arizona.³² This time, the Committee recommended King be admitted, although it failed to explain the reasons for this different conclusion.³³ On its own motion, the Arizona Supreme Court took King's application under consideration.³⁴

II. PROCESS FOR MEMBERSHIP TO THE STATE BAR OF ARIZONA

The Arizona Supreme Court Rules require an applicant to the Arizona Bar to submit a character report.³⁵ At the time King applied for admission, the applicant bore the "burden of proving by a preponderance of the evidence that he possesses the requisite character and fitness qualifying him for admission to the Arizona [B]ar."³⁶ The most recent amendments to the Rules changed the standard so that an applicant must prove his character and fitness by clear and convincing

24. *Id.*

25. *Id.*

26. *Id.*

27. The Committee on Character and Fitness determines whether Arizona Bar applicants possess the requisite character and fitness to practice law in Arizona. ARIZ. SUP. CT. R. 33(a), 34, 36. Prior to the most recent amendments to the rules, the Committee could recommend to the Arizona Supreme Court that the applicant be admitted, conditionally admitted, or denied admission. R. 36(a)(4) (2004) (amended 2005). The current rules alternatively permit the Committee to recommend denial of admission with an accompanying suggestion that the applicant reapply after specific circumstances occur, such as his receiving treatment. R. 36(a)(4)(C).

28. *King*, 136 P.3d at 881.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* By the time of the second hearing, King had secured legal representation, and the Committee membership had changed. *Id.*

33. *Id.* The court noted that explanation was not required, but would have been helpful. *Id.* at 881 n.6.

34. *Id.* at 881

35. See ARIZ. SUP. CT. R. 34(a).

36. *King*, 136 P.3d at 882 (citing ARIZ. SUP. CT. R. 36(a)(3), (f)(5) (2004) (amended 2005)).

evidence.³⁷ The Rules direct the Committee to consider the applicant's criminal history and current and past possession of the following characteristics: honesty, trustworthiness, diligence, reliability, and respect for the law and the legal institutions and for ethical codes governing attorneys.³⁸

If the applicant has a felony conviction, such as attempted murder, the Committee must conduct an investigation into the criminal conduct and, if the crime was violent, it cannot recommend admission without holding at least an informal hearing.³⁹ An informal hearing panel requires at least three Committee members.⁴⁰ At least three members of the informal hearing panel or a majority of the panel, whichever is greater, must recommend admission to the Bar.⁴¹ If the panel recommends against admission, the Committee must hold a formal hearing.⁴²

In evaluating an applicant's criminal history, the Committee must consider several factors to determine the significance of the prior conduct.⁴³ These include the applicant's age at the time of the conduct, the recency of his conduct, the seriousness of the conduct, evidence of rehabilitation, proof of positive social contributions since the conduct, the applicant's candor during the admissions process, and the materiality of any omissions or misrepresentations by the applicant.⁴⁴

The Committee's decision to deny admission to the Arizona Bar is final unless the applicant petitions the Arizona Supreme Court for review⁴⁵ or the court decides to consider the application on its own motion.⁴⁶ When the court reviews an application, it independently evaluates whether the applicant possesses the requisite character and fitness to practice law.⁴⁷ The court reviews the application *de novo* and decides questions of both law and fact.⁴⁸

When an applicant previously convicted of a serious crime applies for admission to the Arizona Bar, the court conducts a two-part inquiry.⁴⁹ First, the court determines whether the applicant has proven "complete rehabilitation from the character deficits that led to the commission of the crime."⁵⁰ If the applicant

37. ARIZ. SUP. CT. R. 36(b), (f)(2)(E).

38. R. 36(b)(1). The 2005 amendments to the Rules did not change these factors.

39. R. 36(d).

40. R. 36(e)(3).

41. R. 36(e)(5).

42. *Id.*

43. R. 36(b)(4).

44. *Id.* Other factors include the reliability of the information concerning the conduct, the consideration given by the applicant to relevant laws at the time, the factors underlying the conduct, and the cumulative effect of the conduct. *Id.*

45. R. 36(f)(6), (g)(1).

46. R. 33(a).

47. *Hamm*, 123 P.3d at 656.

48. *Id.*; see Flynn P. Carey, Case Note, *In re Hamm: From Behind Bars to the Arizona Bar?*, 48 ARIZ. L. REV. 397, 399 (2006).

49. *King*, 136 P.3d at 882.

50. *Id.*

meets this prerequisite, the court must then decide whether the applicant "presently possesses good moral character."⁵¹

The seriousness of the past criminal conduct affects the burden of proving complete rehabilitation, with the burden increasing in relation to the seriousness of the crime.⁵² Although no per se rule prohibits applicants convicted of serious crimes from being admitted to the Bar,⁵³ proving rehabilitation is virtually impossible for someone convicted of extremely damning past misconduct, such as first-degree murder or attempted murder.⁵⁴ To prove rehabilitation, the applicant must "identify the weakness that caused him to engage in criminal misconduct and then demonstrate that he has overcome that weakness,"⁵⁵ and must demonstrate that he or she accepted responsibility for the criminal conduct.⁵⁶

If the applicant proves he or she is rehabilitated, the court must then evaluate his or her present moral character⁵⁷ because "showing rehabilitation from criminal conduct does not, in itself, establish good moral character."⁵⁸ In doing so, the court considers past misconduct to "determine what past bad acts reveal about an applicant's current character."⁵⁹

III. ANALYSIS OF KING'S APPLICATION

Applying the two-prong test to the facts in *In re King*, the court determined that King failed to prove the rehabilitation required by the first prong.⁶⁰ That failure made discussion of the second prong superfluous; thus, the court did not consider whether King had otherwise proven his good moral character.⁶¹ Despite urgings by the Arizona State Bar to the contrary, the Arizona Supreme Court has declined to adopt a per se rule excluding applicants convicted of serious crimes from Bar membership.⁶²

A. The Majority Decision.

The four-justice majority concluded that King had not proved his rehabilitation and, on that basis, denied him admission to the Arizona Bar.⁶³ Due to the seriousness of King's crime, he needed to present "an extraordinary amount or quality of evidence,"⁶⁴ even under the preponderance of the evidence standard.⁶⁵

51. *Id.*; see also *Hamm*, 123 P.3d at 657.

52. *King*, 136 P.3d at 882.

53. *Id.*; *Hamm*, 123 P.3d at 656.

54. *King*, 136 P.3d at 882; *Hamm*, 123 P.3d at 658.

55. *King*, 136 P.3d at 884.

56. *Hamm*, 123 P.3d at 658.

57. *King*, 136 P.3d at 882.

58. *Hamm*, 123 P.3d at 659.

59. *Id.* at 657.

60. *King*, 136 P.3d at 886.

61. *Id.*

62. *King*, 136 P.3d at 882 n.8.

63. *Id.*

64. *King*, 136 P.3d at 883. The court emphasized that King shot two unarmed men at close range and also that he was a peace officer, a position of public trust, at the time. *Id.* at 882 & n.9.

Additionally, proof of complete rehabilitation required King to show that he “both (1) accepted responsibility for his past criminal conduct, and (2) identified and over[came] the weakness that led to the unlawful conduct.”⁶⁶

The court found that some evidence showed King had accepted responsibility for his conduct, while other evidence indicated he had not done so fully.⁶⁷ King had accepted responsibility for his conduct by admitting during Committee hearings that he shot the men, by telling friends, coworkers, former employers, and judges of his crime, and by expressing his remorse to them and the Committee.⁶⁸ On the other hand, he minimized his culpability by stating on his applications to law school and the Arizona Bar that he had accepted the plea agreement because it was in his best interest given the lack of witnesses on his behalf, the anti-police feelings of the day, and his emotional state.⁶⁹ According to the court, these statements by King implied that he had a defense to the crime but chose not to use it.⁷⁰ In addition, the court felt King had not been entirely candid.⁷¹ During the Committee hearings, he remembered details of the crime that would have supported his defense that he shot the victims out of fear, yet he claimed he could not remember events related by witnesses that contradicted his version of what had occurred.⁷²

Further, the court found that King had not identified and overcome the weakness that caused his criminal conduct, and thus had not met the rehabilitation requirement.⁷³ The court noted that King did not explicitly identify, during Committee hearings, either the weakness in character that led to his misconduct or, in fact, to any other possible cause of the misconduct.⁷⁴ At oral argument, King pointed to stress and alcohol abuse as the causes of his misconduct, but he still failed to identify the character flaw that led to his inappropriate response to the stress and abuse of alcohol.⁷⁵ According to the court, he could have identified his character weakness by presenting evidence that he suffered from emotional problems at the time.⁷⁶ The court stated that King’s failure to identify his character

65. The court indicated that the nature of the crime affects the “quantum of evidence” needed to satisfy the applicant’s burden, not the burden itself. *Id.* at 883. Presumably, the amended Rule 36, under which bar applicants must prove good moral character by clear and convincing evidence, ARIZ. SUP. CT. R. 36(b), will make it even more difficult for someone convicted of a serious crime to meet the character and fitness requirement. See *Carey*, *supra* note 48, at 402.

66. *King*, 136 P.3d at 883 (internal citation omitted).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 884.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* Long ago in the context of a Bar application, the court acknowledged that young men “often have serious emotional and psychological problems.” *In re Walker*, 539 P.2d 891, 895 (Ariz. 1975). In *In re Walker*, the applicant failed to register with the Selective Service when he turned eighteen. *Id.* at 892. Although he admitted he became

weakness resulted in its uncertainty that he had “appropriately addressed and overcome the weakness.”⁷⁷

In any event, even if he had identified his character flaw, King did not convince the court that he had satisfactorily dealt with the weakness.⁷⁸ The court credited King for not engaging in other serious misconduct or alcohol-related incidents for twenty-nine years and for appropriately coping with stress during that time.⁷⁹ The court declined, however, to accept that as sufficient proof that King had overcome his weakness, instead requiring more than the “mere passage of time without incident.”⁸⁰

Although the court had previously stated that professional counseling is not required to prove rehabilitation, it did recognize that counselors can help individuals to identify reasons for inappropriate behavior and to develop appropriate responses to prevent future misconduct.⁸¹ While acknowledging the benefit of the counseling and alcohol-abuse prevention sessions that King participated in, the court found other evidence that countered that benefit.⁸² For example, King failed to provide details of the type of treatment he had undergone and could not say with certainty whether he had successfully completed any programs.⁸³ In addition, although he partially blamed alcohol abuse for his misconduct, he denied being an alcoholic and continued to drink occasionally.⁸⁴ Because the court concluded that King did not meet the rehabilitation requirement, it did not reach the second part of the two-prong inquiry, that is, consideration of King’s present good moral character.⁸⁵ Instead, the court denied King’s application for admission to the Bar.⁸⁶

B. The Dissent

The sole dissenter, Justice Hurwitz, argued that the court adopted in practice the bright-line rule that it expressly repudiated, a rule excluding anyone convicted of a serious crime from admission to the Arizona State Bar.⁸⁷ In his opinion, Justice Hurwitz expressed his belief that King certainly had proven his rehabilitation and should have been admitted to the Bar.⁸⁸ Justice Hurwitz

aware of his obligation when he was nineteen, he did not register until he was almost twenty-six. *Id.* The court found that Walker lacked the good moral character required to practice law because, although he legitimately may have suffered emotional and psychological problems, he continued to avoid registering for the draft after those problems ceased. *Id.* at 895.

77. *King*, 136 P.3d at 885.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 884 (citing *In re Arrotta*, 96 P.3d 213, 218 (Ariz. 2004)).

82. *King*, 136 P.3d at 885–86.

83. *Id.* at 886.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 887 (Hurwitz, J., dissenting).

88. *Id.* at 888.

emphasized King's longtime membership in the Texas Bar and Texas's finding that King possessed good moral character when it admitted him.⁸⁹ Additionally, he noted King's model citizenship for nearly thirty years, which included supporting a family, being involved with his church, and participating in an Inn of Court and other leadership and charitable groups.⁹⁰

Justice Hurwitz rejected the court's statement that proof of rehabilitation is "virtually impossible for *all* serious prior misconduct."⁹¹ He agreed with the finding in *In re Hamm* that it was virtually impossible for an applicant convicted of first degree murder,⁹² which is the most serious crime Arizona law recognizes, but distinguished first degree murder from attempted murder.⁹³ He concluded that King's record as an attorney, along with the numerous, emphatic recommendations he supplied to the Committee, adequately ensured that the public "would be safe with King practicing law" in Arizona.⁹⁴

CONCLUSION

In sum, the court's decision in *In re King* leaves open the slim possibility that someone convicted of a serious crime may eventually be admitted to membership in the Arizona Bar. The *In re King* court took a slight turn towards that eventuality by emphasizing that its decision did "not effectively exclude all applicants guilty of serious past misconduct from practicing law in Arizona."⁹⁵ This language differs from the court's unanimous decision in *In re Hamm*, where it acknowledged the difficulty such applicants faced in proving present good moral character and admitted "[p]erhaps such a showing, is, in practical terms, a near impossibility."⁹⁶ This change in language may indicate the court's inclination to admit an applicant convicted of a serious offense if the applicant meets the requirements of the two-prong test it applied in *In re King*, a difficult challenge to be sure.

89. *Id.* at 887.

90. *Id.* at 887-88.

91. *Id.* at 889 (internal quotation marks omitted).

92. *Id.*; see also *Hamm*, 123 P.3d at 653, 658.

93. *Id.*

94. *Id.* at 891.

95. *Id.* at 886.

96. *Hamm*, 123 P.3d at 662.