



In re Duckman

1998 | Cited 0 times | New York Court of Appeals | July 7, 1998

Kings County, Petitioner, For Review of a Determination of State Commission on Judicial Conduct, Respondent.

1. While petitioner attacks the Referee's Report as insufficient because it does not make explicit credibility findings, we note that the facts supporting the determination were largely established by documentary evidence, such as court transcripts of proceedings (which required no credibility determination) and petitioner's own testimony.
2. Defendant had slurred speech, red eyes and a blood alcohol content of .08%. Petitioner admitted before the Referee that he knew that a .07% blood alcohol content constitutes prima facie evidence of driving while impaired (see, Vehicle and Traffic Law § 1195), but maintained that "it's not illegal to drink and drive." Explaining further, petitioner testified that there needs to be a "reasonable relationship between the drinking and the driving to show that the alcohol * * * somehow affected the individual's ability to operate the motor vehicle. * * * Absent some proof that the drinking affected the driving you can't get a conviction." Petitioner therefore dismissed the case.
3. The former Chief of the Bronx Criminal Courts Bureau, Chief Assistant District Attorney in the Bronx, First Deputy Bureau Chief of the Criminal Courts Bureau in the Bronx and Bureau Chief of the Criminal Court in Brooklyn all testified that, based on complaints by others and, in some cases, direct observation, they repeatedly spoke with petitioner about the need to moderate his courtroom behavior. Petitioner acknowledges conversations with them, and admits to knowing that prosecutors from time to time ordered transcripts after his outbursts. Petitioner denies, however, having prior notice of the alleged wrongdoing. If in fact none of these indicators was sufficiently pointed to reach petitioner, that would underscore the problem that typified his misconduct.
4. While these comments may not be indicative of a racist or sexist bias harbored by petitioner, they are highly inappropriate and completely antithetical to the role of a Judge. Indeed, even isolated instances of such inappropriate behavior cast doubt on a Judge's ability to be impartial and fair-minded.
5. Samuels provides another example of petitioner's contradictory positions when testifying about his misconduct during the proceedings leading up to this appeal. When questioned about Samuels during the Commission's initial investigation, petitioner defended his actions in dismissing the case and was reluctant to admit that his intemperate treatment of prosecutors in that matter was inappropriate. During the hearing before the Referee, petitioner testified that his conduct was "a terrible example of [his] judicial demeanor and behavior" and that he was "embarrassed that [he] was the Judge that sat on [the] case." Petitioner also testified that he "dismissed the charges for the wrong reason" and "didn't handle [the case] properly." In his Post-Hearing Memorandum, which was submitted to the Referee, petitioner stated that he had "properly dismissed the complaint" and had acted "within the proper ambit of his powers and duties." In his brief to this Court, petitioner referred to Samuels as "an example of a dismissal, with its attendant conduct, which [petitioner] agrees



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was terribly mishandled by him."

6. Plainly the objective here is not to require contrition, bended knee or forfeiture of spine in return for the privilege of continued service as a member of the Judiciary (see, *Bellacosa, J. Dissent*, p 13), but rather to attempt to assess petitioner's fitness based on his prior conduct.

7. This matter does not involve "second-guessing" the adjudicative work of Judges, nor does it open a new avenue for Commission intrusion into that work (see, *Bellacosa, J. Dissent*, pp. 4-5, 12-14). *Matter of Greenfield* (76 NY2d 293) involved a different issue – the time limits within which judges should dispose of pending matters, an issue properly left in the first instance for the Judges themselves and secondarily for court administrators. Here the issue is not whether petitioner's decisions were right or wrong on the merits, but rather repeated, knowing disregard of the law to reach a result and courtroom conduct proscribed by the rules governing judicial behavior.

8The Commission subsequently obtained a judicial order directing these records be unsealed so that they could be used in evidence at the judicial conduct proceeding against Judge Duckman.

9While actual bias or even the appearance of bias is unacceptable in a judge (see, *Matter of Sardino v State Commn. On Judicial Conduct*, 58 NY2d 286, 290-291; *Matter of Spector v State Commn. On Judicial Conduct*, 47 NY2d 462, 466), it is commonplace for Judges to express their own viewpoints during the course of the proceedings before them. For example, sentencing minutes often contain statements by Judges about the evils of crime and the impact that criminal conduct has on society. Similarly, in pretrial proceedings, Judges frequently interject their own concerns about such policy questions as "overcharging" and prosecutorial delays in processing cases. Although it would clearly be improper for a Judge to bend or stretch the law to advance his or her views on such subjects, it would unrealistic – and probably even undesirable – to require total neutrality in judicial decision-making.

10Although Judge Duckman was charged with having made offensive racist and sexist remarks, the majority has wisely eschewed reliance on that aspect of the charges, since it is apparent from the record that Judge Duckman is not a person who harbors such biases.

