

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

2017 OCT -9 AM 8: 50

SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

17 M 4588

WAKE COUNTY

BY _____

ORDER

IN RE Johnny Gaskins

Attorney At Law

10th Judicial District

This matter is before the court for hearing commencing on September 9, 2017, upon the state's Motion for Sanctions before the undersigned judge alleging conduct by Attorney Johnny Gaskins, which if proven, would constitute violations of the North Carolina State Rules of Professional Conduct.

The Superior Court of Wake County has exercised the inherent authority of the court to take disciplinary action against attorneys practicing in this court to initiate these proceedings.

The state was represented by Assistant District Attorney Kathryn Pomeroy and Mr. Johnny Gaskins represented himself.

BASED UPON ALL THE EVIDENCE BEFORE THIS COURT, BY CLEAR, COGENT AND CONVINCING EVIDENCE THE COURT MAKES THE FOLLOWING:

FINDINGS OF FACTS

1. The defendant, Carmelo Ortiz, represented by Attorney Johnny Gaskins, hereafter referred to as Mr. Gaskins, was charged on February 25, 2015 with conspiracy to traffic in cocaine and heroin.
2. On March 3, 2016, the defendant, Carmelo Ortiz, with his attorney present, pled guilty to the charges of conspiracy to traffic in cocaine

and heroin and agreed to cooperate with law enforcement officers in their investigation. Sentencing in the case was continued for sixty (60) days or until the state prayed judgment.

3. On March 8, 2016, the defendant participated in a debriefing at the Office of the Wake County District Attorney. In attendance at the debriefing was Mr. Gaskins, Ms. Pomeroy and Ms. Casey Young of the District Attorney's office, a member of United States Drug Enforcement Authority and an officer with the Raleigh Police Department. The defendant alleges that at that debriefing he provided substantial assistance in exchange for a promise that he would receive credit for providing substantial assistance. However, the state contends that the defendant did not provide substantial assistant.
4. On June 5, 2017, the defendant filed a Motion to Remove Wake County Assistant District Attorney Kathryn Pomeroy from Prosecuting the Defendant and All of His Alleged Co-Conspirators. In the aforementioned Motion Mr. Gaskins made the following allegations:

6. Assistant Wake County District Attorney Kathryn Pomeroy willfully concealed from the defendant the information that she had concerning the arrest of Antonio Pineda-Rivera. She has intentionally refused to schedule a sentencing hearing for the defendant despite her ethical duty to do so. She has subverted the administration of justice by concealing the "fruits" of the substantial assistance that the defendant provided to her in an effort to prevent him from receiving credit for having provided the State of North Carolina with substantial assistance.

7. Wake County Assistant District Attorney Kathryn Pomeroy has compromised her ability to fairly prosecute the defendant by concealing the fact that his substantial assistance has resulted in the identification of numerous co-conspirators and the arrest of Antonio Pineda-Rivera. The defendant is now entitled to be sentenced for the offenses to which he pled guilty with credit for having provided substantial assistance in the arrest of Antonio Pineda-Rivera and the identification of others pursuant to N.C.G.S. § 90-95(h)(5).

5. On June 9, 2017, this court heard the defendant's Motion to Remove Ms. Pomeroy. Present representing the state was Ms. Pomeroy and Mr. Gaskins represented the defendant. After reviewing the defendant's motion and hearing the arguments of counsel the court denied the defendant's motion to remove Ms. Pomeroy and at the same hearing the state made an oral Motion for Sanctions based on the allegations in the defendant's motion.
6. At the same hearing regarding the state's Motion for Sanctions on June 9, 2017, this court inquired of the Mr. Gaskins the evidence supporting the allegations against Ms. Pomeroy contained in the defendants Motion to Remove. Mr. Gaskins reluctantly advised the court that the basis for the allegations came from a client . The court then inquired whether Mr. Gaskins had verified or substantiated the allegations contained in the motion.
7. At the same hearing on June 9, 2017, this court recessed the hearing and ordered Mr. Gaskins to provide information verifying or substantiating the information supporting the allegations against Ms. Pomeroy contained in the Motion to Remove within 30 days.
8. On July 5, 2017, Mr. Gaskins filed a Response to the court's request for supporting information/evidence for the allegations against Ms. Pomeroy in the Motion to Remove previously filed on June 5, 2017.
9. The court reviewed Mr. Gaskins Response filed on July 5, 2017 and found no evidence that supported the allegations against Ms. Pomeroy and this matter was scheduled for continuation of the previous hearing on September 29, 2017.
10. At the September 29, 2017 hearing the State again asked this court to grant the Motion for Sanctions and find Mr. Gaskins in contempt of court. The state further argued that the allegations contained in the aforementioned Motion to Remove were false, unsupported by the evidence and a direct attack on Ms. Pomeroy and the Office of the Wake County District Attorney. The court allowed Mr. Gaskins to respond to the arguments of Ms. Pomeroy and he did so by asserting the he had not disobeyed an order of the court and therefore a contempt finding was not appropriate, however, if the court determined that sanctions were appropriate then the court should impose sanctions. The court notes that Mr. Gaskins offered no further

evidence in support of the allegations contained in the Motion to Remove filed on June 5, 2017 nor did he withdraw his allegations contained in the previously filed Motion to Remove.

11. After hearing from both sides, the court granted the state's Motion for Sanctions and ordered that Mr. Gaskins write letters of apology to Ms. Pomeroy, the office of the Wake County District Attorney, the investigating officers and their respective agencies. The court continued the hearing until October 9, 2017 at which time the court would announce whether it would impose additional sanctions against Mr. Gaskins.

BASED UPON THE AFOREMENTIONED FINDINGS OF FACTS, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. This court has the inherent authority to discipline attorneys for their conduct and that authority is not superseded by the State Bar's disciplinary powers. N.C.G.S. Stat. § 84-36.
2. The North Carolina Supreme court has recognized and expressed concern regarding the loss of civility in our courts and have encouraged trial court to take appropriate action.

"We have viewed with concern the apparent decline in civility in our trial courts. This Court shall not tolerate, and our trial courts must not tolerate, comments in court by which one lawyer tending to disparage the personality or performance of another. Such comments tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth finding function by distracting judges and juries from the serious business at hand. We admonish our trial courts to take seriously their duty to insure that the mandates of Rule 12 (of the General Rules Practice for the Superior and District Courts) are strictly complied with in all cases and to impose appropriate sanctions if they are not" *State v. Rivera*, 350 NC 285, 291 (1999)

3. Pursuant to Rule 3.3(a) of the North Carolina Rules of Professional Responsibility:

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact of law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

4. Pursuant to Rule 8.4 (c) and (d) of the North Carolina Rules of Professional Responsibility:

It is professional misconduct for a lawyer to:

- (b) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- (c) engage in conduct that is prejudicial to the administration of justice.

FINDING AND CONCLUSIONS OF REGARDING PUNISHMENT

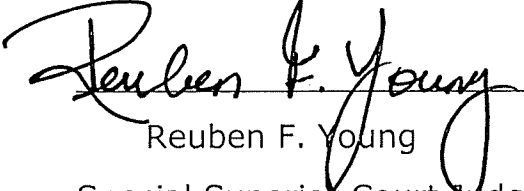
1. Attorneys are advocates for the sides that they represent, but first and foremost they are officers of the court sworn to uphold the integrity and fairness of our justice system. This court expects them to be professional, competent and ethical in their advocacy on behalf of the sides that they represent.
2. Mr. Gaskins has had a long and established honorable career in this profession which makes his actions in this case more disturbing.
3. Mr. Gaskins accusations against Assistant District Attorney Kathryn Pomeroy and the Wake County Office of the District Attorney are frivolous, false, unfounded and in violation of the North Carolina Code of Professional Conduct.

ORDER OF DISCIPLINE

1. Mr. Gaskins' license to practice law shall be limited and restricted. He shall not practice law in the criminal courts of Wake County until such time as all pending matters before the North Carolina State Bar are resolved.

2. This Order of Discipline is hereby referred to the North Carolina State Bar for its consideration.
3. The cost of this proceeding, including any prior hearings, are taxed to Mr. Gaskins. Mr. Gaskins shall pay those cost within sixty days of service of the statement costs as calculated by the Wake County Clerk of Court.
4. Mr. Gaskins shall not violate the North Carolina Rules of Professional Conduct or the laws of United States or of any state or local government.
5. This court shall retain jurisdiction of this matter to ensure compliance.

SO ORDERED THIS THE 9TH DAY OF OCTOBER, 2017


Reuben F. Young

Special Superior Court Judge