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**MAY - 3 2019** *W*

STATE BAR COURT  
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**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

**En Banc**

In the Matter of	)	Case No. 17-C-02875
	)	
MICAH JARED SMITH	)	RECOMMENDATION OF
	)	SUMMARY DISBARMENT
State Bar No. 289527.	)	
_____	)	

On March 8, 2019, the Office of Chief Trial Counsel of the State Bar (OCTC) filed its second request for summary disbarment based on Micah Jared Smith's felony convictions.<sup>1</sup> Smith did not respond. We grant the request and recommend that Smith be summarily disbarred.

On May 17, 2017, Smith was found guilty of violating Title 11, Delaware Code, section 776 (continuous sexual abuse of a child); section 778A (sexual abuse of a child by person in position of trust, authority or supervision – second degree); and section 769 (unlawful sexual contact – first degree) involving a child less than 13-years old (three counts). On June 5, 2017, OCTC transmitted proof of the record of Smith's conviction. On July 6, 2017, we ordered that Smith be placed on interim suspension, effective July 31, 2017, pending final disposition of this proceeding.

Thereafter, Smith timely appealed his conviction and sentence on direct appeal. On June 14, 2018, the Supreme Court of the State of Delaware (Supreme Court) issued its Mandate, noting that Smith could not raise a meritorious claim on appeal, and affirmed the judgment of the

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<sup>1</sup> OCTC's previous request for summary disbarment was dismissed without prejudice after it made the court aware through supplemental pleadings that Smith's convictions were not yet final due to his appeal.

Superior Court. On February 7, 2019, OCTC provided proof of finality on Smith's convictions. OCTC stated that the Supreme Court's Mandate ended Smith's avenue of direct appeal, rendering his convictions as final for disciplinary purposes. (Rules of Crim. Proc., Super. Ct. of Del., rule 61(m) [judgment of conviction is final when defendant files direct appeal, and the Supreme Court issues mandate finally determining the case on direct review]; *In re Phillips* (1941) 17 Cal.2d 55, 59 [conviction is final where attorney appeals conviction and judgement is affirmed].) Therefore, Smith's convictions are now final. (Cal. Rules of Court, rule 9.10(a).)

After a judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony...and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes both criteria for summary disbarment.

First, Smith's offenses are felonies. Business and Professions Code section 6102, subdivision (d), provides that a conviction under the laws of another state or territory of the United States shall be deemed a felony if: (1) the judgment or conviction was entered as a felony; and (2) the elements of the offense for which the member was convicted would constitute a felony under the laws of the State of California at the time the offense was committed. The indictment charged each criminal violation as a felony, and Smith was convicted of felony violations of the Delaware Code. (Del. Code, §§ 776 [continuous sexual abuse of child is class B felony], 778A [sexual abuse of child by person in position of trust, authority or supervision in the second degree is class D felony], and 769 [unlawful sexual contact in the first degree is class D felony].)

Additionally, the analogous crimes in California, Penal Code section 288, subdivision (a) (lewd or lascivious act upon or with the body of a child who is 14 years of age or younger with

the intent to arouse or gratify sexual desires) and subdivision (b) (lewd or lascivious act upon or with the body of a child who is 14 years of age or younger with the intent to arouse or gratify sexual desires committed by force) are felonies. (See Pen. Code, § 17, subd. (a) [crime punishable by imprisonment in state prison is a felony]; Pen. Code, § 288, subds. (a) [punishable in state prison for three, six, or eight years], (b) [punishable in state prison for five, eight, or ten years].)

Second, Smith's felony convictions involve moral turpitude because they stem from the sexual abuse of a child under thirteen years old. (*In re Lesansky* (2001) 25 Cal.4th 11, 17 [intention to satisfy sexual desire with child is serious sexual offense]; *In re Fahey* (1973) 8 Cal.3d 842, 849 [conviction for serious sexual offense establishes "moral turpitude on its face"].) In *Lesansky*, the Supreme Court held that the intent required by Penal Code section 288, subdivision (a), "arousing, appealing to, or gratifying the lust, passions, or sexual desires of [the perpetrator] or the child," necessarily involves an intention to harm a child, constitutes a serious breach of the duty adults owe children, and demonstrates flagrant disrespect for the law and social norms.<sup>2</sup> (*Id.* at p. 17; see also *People v. Massey* (1987) 192 Cal.App.3d 819, 823 [willful and lewd touching of a child in violation of Penal Code section 288, subdivision (a) is an act of moral depravity; child molesting in California is a crime of moral turpitude for impeachment and other purposes].) Smith's crimes should be classified as involving moral turpitude per se.

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

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<sup>2</sup> In *Lesansky*, the Court analyzed an attempted violation of Penal Code section 288, subdivision (c)(1), (lewd act on a child 14 or 15 years old where petitioner is at least 10 years older than child), which requires the same intent stated in Penal Code section 288, subdivision (a).

We therefore recommend that Micah Jared Smith, State Bar number 289527, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**PURCELL**

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Presiding Judge

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 3, 2019, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED MAY 3, 2019

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICAH JARED SMITH  
P.O. BOX 9279  
WILMINGTON, DE 19809-0279

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 3, 2019.



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Mel Zavala  
Court Specialist  
State Bar Court