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MAY 18 2018 *sc*

STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 17-C-06638
)	
R, SCOTT DERVAES II, AKA)	ORDER
R. SCOTT DERVAES, JR., AKA)	
ROBERT S. DERVAES)	
)	
A Member of the State Bar, No. 202133.)	
_____)	

On April 26, 2018, the Office of Chief Trial Counsel of the State Bar (OCTC) filed Transmittal of Records of Conviction of Respondent. Since respondent (R, Scott Dervaes II, AKA R. Scott Dervaes, Jr., AKA Robert S. Dervaes), State Bar Number 202133 has been convicted of violating Penal Code section 236 (false imprisonment, effected by violence, menace, fraud and deceit), a felony, it is ordered pursuant to Business and Professions Code section 6102 that respondent be suspended from the practice of law effective June 11, 2018, pending final disposition of this proceeding. (Cal. Rules of Court, rule 9.10(a).) It is further ordered that respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this suspension.

We have classified felony false imprisonment in two ways: (1) as involving moral turpitude, and (2) as may or may not involving moral turpitude, depending on how the crime was effected. The offense is divisible. When committed by means of fraud or deceit, it inherently



involves moral turpitude. When committed by violence or menace, it does not inherently involve moral turpitude.

In its transmittal, OCTC requests classification of this crime as one involving moral turpitude, citing to the language of count III of the felony charging document, to which respondent pled guilty. That count stated in standard language that the false imprisonment was “effected by violence, menace, fraud and deceit.” OCTC urges this is “a specific allegation of engaging in fraud and deceit.” As noted, however, felony false imprisonment is a divisible statute that can be committed by violence, menace, fraud, *or* deceit. (See *Turijan v. Holder* (9th Cir. 2014) 744 F.3d 617, 621, fn. 2.) “When a statute is divisible into several crimes, some of which may involve moral turpitude and some not, it is appropriate to examine the ‘record of conviction’ to determine which part applies to the defendant. [Citation.]” (*Carty v. Ashcroft* (9th Cir. 2005) 395 F.3d 1081, 1084.) Examination of the record of conviction for this purpose may include consideration of the “ ‘charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.’ ” (*Omari v. Gonzales* (5th Cir. 2005) 419 F.3d 303, 308, citing *Shepard v. United States* (2005) 544 U.S. 13, 16 [125 S.Ct. 1254, 1257].) We find that the statement OCTC cites in the charging document does not, but itself, establish that the false imprisonment at issue was committed by fraud and/or deceit, such that it should be classified as a moral turpitude offense.

Within 10 days of this order, OCTC is ordered to submit further records establishing whether respondent’s conviction for the false imprisonment conviction was effected by violence, menace, fraud *and/or* deceit and, based on such records, the reasons for its classification request.

Respondent will have 10 days from the service of OCTC’s brief to respond.

PURCELL

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 18, 2018, I deposited a true copy of the following document(s):

ORDER FILED MAY 18, 2018

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:

R. SCOTT DERVAES, JR
SIXTH FLOOR
140 2ND ST
SAN FRANCISCO, CA 94105 - 3727

- ☒ by email (as a courtesy) to:

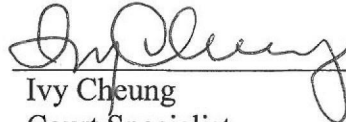
R. Scott Dervaes, Jr. at sdervaes@sbcglobal.net

Kevin B. Taylor at Kevin.Taylor@calbar.ca.gov

- ☒ 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 18, 2018.



Ivy Cheung
Court Specialist
State Bar Court