

Filed August 13, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	No. 17-R-05126
)	
STEPHEN LIEBB,)	OPINION
)	
Petitioner for Reinstatement.)	
_____)	

Petitioner Stephen Liebb requests review of a hearing judge’s decision denying his reinstatement to the practice of law. In 1981, Liebb viciously attacked and killed his college friend, and violently beat the victim’s brother and another family friend. In January 1983, he was convicted of first-degree murder and assault with a deadly weapon. Liebb was sentenced to 26-years-to-life in prison. He was released on parole in October 2013, after serving 31 years of his sentence, and remained on supervised release until November 2016. Nine months later, Liebb filed his petition for reinstatement. The hearing judge found that, given the seriousness of the crimes, Liebb did not demonstrate a sustained period of exemplary conduct during the 16 months between termination of his supervised release and the hearing on his petition for reinstatement. The judge denied his petition. Liebb asserts that the judge improperly focused only on the time after his discharge from supervised release, and that his time in prison, where he engaged in positive programming activities, should be given more weight. The Office of Chief Trial Counsel of the State Bar (OCTC) requests that we affirm the hearing judge’s decision.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and find that the hearing judge’s opinion fairly and accurately details the facts and correctly applies the governing law. We focus our analysis on the key issue on review: Did Liebb present

overwhelming proof of his rehabilitation by a *sustained* period of exemplary conduct following his discharge from supervised release? Like the hearing judge, we find that he did not.

I. PROCEDURAL BACKGROUND

On August 29, 2017, Liebb filed a petition for reinstatement. On January 8, 2018, OCTC filed its opposition to the petition. At the March 19, 2018 pretrial conference, Liebb stipulated to the facts set forth on pages 2 through 11 of OCTC's pretrial statement, which was filed on March 8, 2018.

A five-day trial was held on March 27, 28, and 29, and April 17 and 18, 2018. Following closing arguments on April 18, the matter was submitted for decision.

II. LIEBB'S MISCONDUCT LEADING TO CONVICTION AND RESIGNATION

A. Background

In 1977, Liebb moved from Brooklyn, New York to California to attend law school at the University of California at Los Angeles (UCLA). During the summer of 1978, Liebb became friends with Michael Diller (Michael),¹ who was an undergraduate student at UCLA, and met his family. Michael's father, Stanley, hired Liebb to manage an apartment building he owned in Beverly Hills (Diller Apartments) in exchange for a rent-free apartment in the building. As the Chairman of the Board of Los Angeles New Hospital, Stanley also hired Liebb as a clerk at the hospital.

In May 1980, Liebb graduated from UCLA law school. In October 1980, he began working for the law firm of Kelly Bixby. On December 16, 1980, Liebb was admitted to the State Bar of California.

¹ We refer to the Dillers by their first names to differentiate among the family members and not out of disrespect.

B. Disputes with Diller Family and Associates and Related Assault and Threats

In November 1980, David Altschuler became the supervising manager of Diller Apartments. He also worked for Stanley at Los Angeles New Hospital. With Stanley's approval, Altschuler sent Liebbs a letter on February 9, 1981, to inform him that his rent would thereafter be \$100 per month.

In February 1981, Liebbs rented apartment number 103 at Diller Apartments to Dr. Eugene Landy without informing Stanley or Altschuler. Liebbs collected six months' rent in advance, gave Dr. Landy a receipt that he signed as "Stephen Claymore," and told Dr. Landy that he was a professional boxer. Liebbs never provided Altschuler or Stanley with the rent he collected. Altschuler believed the apartment was empty.

On March 31, 1981, Liebbs charged into Altschuler's office, causing a commotion and repeatedly insulting Altschuler. Joe Gold, a friend of the Diller family, was also at the office. As Liebbs was leaving the office, he angrily said to Gold, "You want it next?" Altschuler told Gold not to respond and Gold stopped talking to Liebbs and resumed working. When Gold went to the elevators in the hall, Liebbs came out of the office lobby area and started to threaten and swing at him. Liebbs chased Gold back into the lobby area, struck him hard on the side of the head, put his hands around Gold's neck, and pushed him toward the door of the waiting room with great force. Several people attempted to pull Liebbs away from Gold before Liebbs fled the premises. After Gold filed a police report, Liebbs called him on three occasions to try to talk him into withdrawing his complaint. Gold eventually dropped the charges.

At the end of April 1981, Liebbs vacated his apartment. Altschuler found the apartment badly damaged—with chairs turned over, windows broken, stains on the floor, and filthy sinks and fixtures.

Thereafter, Gold took over managing Diller Apartments. On May 4, 1981, Liebb called Dr. Landy and offered to reduce the rent for a longer rental period. Dr. Landy accepted and paid Liebb another six months' rent in advance. On May 11, Gold entered apartment 103, discovered that someone was living there, and arranged to have the locks changed. Liebb called Dr. Landy's secretary, Ms. Turner, to tell her that someone was tampering with the apartment locks. Ms. Turner drove to the apartment and discovered that her key no longer worked. She demanded that Gold allow her access to the apartment, which he refused. He informed Ms. Turner that it was listed as vacant and the owners had not received any rent for it.

At about 7:00 p.m. on May 11, 1981, Gold, Michael, and Michael's brother, Arthur, left Diller Apartments. As they were leaving, Liebb jumped out of the bushes, and charged up the front stairs carrying a baseball bat. He attacked Gold with the bat, hitting him 15 times over his head and body. As Arthur tried to intervene, Liebb hit him on the thigh and shoulders several times. Gold was seriously injured and filed a police report against Liebb.

Michael and Arthur's mother, Dorothy, telephoned Liebb's father in Brooklyn, told him about the attack, and asked him to come to California to help with the situation. On July 9, 1981, Liebb repeatedly called Dorothy and threatened to kill the entire Diller family if she did not call his parents and retract what she had said. Dorothy refused. After speaking with Dorothy, Arthur decided to talk to Liebb the next morning.

On July 10, Arthur went to Liebb's apartment building and confronted him. They traded blows, and Liebb hit Arthur with a pipe, breaking his nose and causing injuries that required stitches on his face.

C. Murder of Michael Diller

Two days later, on July 12, Liebb hid behind a tree and waited for Michael to pick up his girlfriend, Jody Popkin, from her apartment building. Liebb was wearing a motorcycle helmet

with a tinted shield that covered his face, and carrying a knife he had recently purchased. When Michael arrived, Popkin opened the passenger side door and entered the vehicle. Liebb ran up, grabbed the door before she could close it, and jumped onto Popkin. Liebb hit her and then began to attack Michael. Michael accelerated the car, and Liebb grabbed the steering wheel, causing the car to crash into a building. After the crash, Michael jumped out of the driver's side and ran toward a park. Liebb chased Michael to the park office, where Michael dove through a half-open window. Liebb lay across the window sill, holding the knife. Michael grabbed the knife and cut his own hand. He pleaded with Liebb to stop, but Liebb stabbed Michael in the chest, and twisted the blade. As Michael lay mortally injured, Liebb walked calmly away and then left the scene on his motorcycle. Michael died shortly thereafter from loss of blood and a stab wound through his lung and heart. He was 23 years old. Liebb admitted that his murder was premeditated.

D. Conviction and Resignation

On September 9, 1982, Liebb was found guilty by a jury of: (1) one count of murder in the first degree, in violation of California Penal Code section 187, using a knife, in violation of Penal Code section 12022(B), with intent to inflict great bodily injury, in violation of Penal Code section 1203.075; and (2) one count of assault with a deadly weapon, in violation of Penal Code section 245. Liebb was formally convicted in January 1983, and sentenced to imprisonment of 26-years-to-life. On December 30, 1982, having been convicted of first degree murder, a crime involving moral turpitude, the California Supreme Court placed Liebb on interim suspension effective January 28, 1983. On December 2, 1988, after litigating the State Bar matter, Liebb signed a Resignation with Charges Pending form, and filed it with the State Bar Court on December 8, 1988. On February 2, 1989, the Supreme Court accepted Liebb's resignation, effective March 3, 1989.

E. Prison, Parole Hearings, Release, and Discharge from Supervised Release

In March of 1989, Liebb was involved in a prison fight with another inmate. A Rules Violation Report indicated that Liebb continued to attack the inmate after being ordered to stop and after the other man stopped fighting. An investigation into the attack determined that it was reasonable to conclude that Liebb had engaged in the fight as a diversion from the murder of another inmate that occurred the same day, in which he was suspected of being a co-conspirator.

Liebb was considered for and found unsuitable for parole six times. Each time, the Board of Parole Hearings (the Board) found that Liebb would pose an unreasonable risk of danger to society and a threat to public safety if released from prison.

At Liebb's first hearing in 1996, the Board denied parole because Liebb's offense exhibited a cold-hearted disregard for the life and suffering of another, and because he had not participated in sufficient self-help and therapy programming. In 2000, the Board denied parole because his offense was carried out in a dispassionate or calculated manner, with exceptionally callous disregard for human suffering. The Board found that Liebb had not participated sufficiently in self-help and therapy programs, including group programs, which were necessary for his adjustment. In 2003, the Board denied parole again based on the especially cruel manner in which the offense was carried out, and found that the motive was inexplicable since the crime was unprovoked by the victim. The Board noted Liebb's record of assaultive behavior, including attacking a library monitor while he was at UCLA. The Board also found that Liebb had only participated in programs in a limited manner, failed to take full advantage of vocational opportunities, and did not sufficiently participate in beneficial self-help or therapy programs. The Board considered Liebb's excuses for not attending self-help programs to be weak. The Board pointed out that Liebb's gains in therapeutic programming were recent, and that he had to demonstrate an ability to maintain them over an extended period of time.

In 2006, the Board again denied parole stressing that Liebb's offense involved callous disregard for the victim and his family, whom Liebb had befriended. Liebb also exhibited a cruel disdain for human suffering in that he lay in wait, had the opportunity to stop, but still chased down the victim, ignored the victim's pleas for his life, and stabbed him to death. The Board mentioned Liebb's record of assaultive behavior, building up before the murder. It acknowledged that Liebb had participated in positive programming, but asserted that he did not engage in self-help programs until 2003, after the panel at that time advised him to do so. The Board stated that Liebb's self-help programs should have started long before. Liebb was commended for completing paralegal training, and received commendations from correctional staff and people with whom he worked.

In 2008, the Board denied parole again observing that Liebb's institutional behavior was commendable, but the offense was especially cruel and callous, and his self-help programming was relatively recent. The Board identified the group programs Liebb had participated in, including non-violent communication, community violence prevention, Incarcerated Men Putting Away Childish Things (IMPACT), yoga, and a class to learn Arabic. However, it questioned Liebb's insight into his crime due to his lack of emotion when discussing his victim and the victim's family, and from the findings of a psychiatrist. The Board deemed Liebb's description of the stabbing non-emotional and clinical, and recommended further self-help, including therapy.

In 2010, the Board again denied parole, remarking that Liebb's offense was especially heinous, atrocious, and cruel, and involved multiple victims. It doubted Liebb's insight and sincerity because of inconsistencies between his present and past testimony regarding the crime. The Board cited Liebb's admission that he had lied about several issues concerning the facts of the crime and that his untruthful statements related to his motivation, direct involvement in the crime, blaming others, minimizing his role, and not taking full responsibility for his actions. The

Board acknowledged numerous programs that Liebb had participated in, but concluded that the negative circumstances heavily outweighed these positive factors. The Board recommended continued self-help, especially in the area of insight.

Two years later, in 2012, the Board granted Liebb parole based on his demonstration of remorse at the hearing, his identification of character defects that negatively influenced his behavior in the past, a positive risk assessment report, his positive programming while in prison, and his 21-year history without discipline. In January 2013, the Governor exercised his discretion to reverse the grant of parole, based on the especially atrocious and cruel offense and on Liebb's lack of insight. Liebb challenged this finding by filing a writ of habeas corpus. On August 22, the Los Angeles Superior Court granted the habeas petition and vacated the Governor's decision. Liebb was released from San Quentin on October 30, 2013.

Liebb complied with his parole until he was discharged from supervised release on November 15, 2016.

III. REQUIREMENTS FOR REINSTATEMENT

Rule 5.445 of the Rules of Procedure provides that a petitioner for reinstatement to the practice of law, who previously had been disbarred or resigned with charges pending, must: (1) pass a professional responsibility examination within one year prior to filing the petition; (2) establish rehabilitation; (3) establish present moral qualifications for reinstatement; and (4) establish present ability and learning in the general law by providing proof of taking and passing the Attorneys' Examination within three years prior to the filing of the petition. In accordance with the parties' stipulation, the hearing judge found that Liebb had passed the Multistate Professional Responsibility Examination within one year of filing his petition, and that he had passed the Attorneys' Examination within three years prior to filing his petition. The

judge's decision was focused on whether Liebb established, by clear and convincing evidence,² his rehabilitation and present moral qualifications for readmission. The hearing judge concluded that Liebb failed to make this showing. We agree.

IV. LIEBB'S REHABILITATION/POSITIVE PROGRAMMING DURING AND AFTER PRISON

A. Positive Programming/Self-Help Activities During Prison

As found by the hearing judge, Liebb participated in multiple programs while in prison, including individual and group therapy and self-help treatment programs. In 2002, Liebb enrolled in the Father's Program. In December 2003, he enrolled in the Insight Meditation class. Also in 2003, he was involved in the Insight Prison Project, which had a four-pronged program emphasizing: (1) violence prevention; (2) offender accountability; (3) emotional intelligence; and (4) the mind-body integration aspect of yoga.

From 2003 to 2009, Liebb participated in the IMPACT program, which was designed to teach incarcerated men empathy, self-control, and humility. In November 2005, Liebb participated in Friends Outside, Creative Conflict Resolution Workshop, and focused on anger management, conflict resolution, and communication. In 2007, Liebb completed 32 hours of instruction in Nonviolent Communication, a means of improving communication skills and promoting peace and partnership. Throughout 2008 and 2009, Liebb participated in the Teaching Responsibility Utilizing Sociological Training, a year-long course focused on examining one's values and understanding how they were shaped by historical and cultural realities of race relations in America. Liebb also participated in the New Leaf on Life Group program and the Change Is Possible program. Change Is Possible explored factors that led to Liebb's offense.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

In 2010, Liebb also began attending Alcoholics Anonymous (AA) sessions. In 2012, he completed the year-long Guiding Rage Into Power, a life-skills program that highlights stopping violence, becoming emotionally intelligent, cultivating mindfulness, and coming to understand victim impact. In March 2013, Liebb completed the 50-week restorative justice program called the Victim Offender Education Group, which focused on helping incarcerated men fully understand and take responsibility for the impact of their crimes and to make necessary changes to live a productive life free from prison.

While in prison, Liebb also completed a three-year paralegal program, and earned a paralegal certificate. In 2012, he received an Associate of Arts degree from a college program run by the Prison University Project. During his time in prison, Liebb worked as a food services clerk, janitor, and education clerk. He also helped his fellow inmates with legal work, preparing dozens of habeas petitions on behalf of his peers. In addition, he assisted with civil rights actions against the California Department of Corrections, and helped his cellmate to challenge the Prison Litigation Reform Act's administrative exhaustion requirement. From 2011-2013, he served as a legal writer for the San Quentin News.

B. Conduct After Release From Prison

Upon his parole to Alameda County in 2013 and before his discharge from supervised release in November 2016, Liebb began taking mandated anger management classes and attended mandatory group classes and AA meetings five days a week. He continued anger management classes when his parole was transferred to San Francisco, and also took yoga classes at least three times a week. From February 2014 until July 2015, he was part of a mentorship program for recently released life sentence prisoners, and called or met with his assigned mentee several times a week. From April 2015 through August 2017, Liebb engaged in

weekly therapy. When his therapy ended, he began weekly sessions with a “somatic” coach to improve his relationships.

From April 2016 to April 2017, Liebb worked as a part-time legal clerk for the Law Offices of David Uthman. Since May 2017, Liebb has continued working for this office as a contractor. He also performs legal research for attorney Charles Carbone on a contract basis. Since July 2016, Liebb has worked as a part-time program assistant for the Asian Prisoner Support Committee, a non-profit agency that provides reentry assistance to formerly incarcerated persons of Asian and Pacific Islander descent. He also works with ROOTS (Restoring Our Original True Selves), a program based in Oakland that helps formerly incarcerated individuals reintegrate by immersing them in community events and providing opportunities to engage in service and build relationships. Since January 2014, Liebb has volunteered as an intern at the Center for Gender and Refugee Studies of the University of California, Hastings College of the Law. In 2015, Liebb received a certificate of honor from the San Francisco Board of Supervisors in recognition of his outstanding work as a Community Clean Team volunteer. Since December 2016, he has been a member of the Hastings Prisoner Outreach, a law student organization that raises awareness of criminal justice issues and provides legal assistance to inmates under a law professor’s supervision.

V. LIEBB FAILED TO SHOW EXEMPLARY CONDUCT OVER AN EXTENDED PERIOD OF TIME AFTER RELEASE FROM PRISON AND DISCHARGE FROM SUPERVISED RELEASE

A. Liebb’s Burden Is Heightened by the Gravity of his Crimes

Due to the gravity of Liebb’s crimes, he faces a heavy burden to prove his rehabilitation. As the Supreme Court noted, the taking of a human life is the ultimate offense. (*In re Nevill* (1985) 39 Cal.3d 729, 735.) Liebb “can be found morally fit to practice law only if the evidence shows that he is no longer the same person who behaved so poorly in the past, and only if he has

since behaved in exemplary fashion over a meaningful period of time. This heavy burden is commensurate with the gravity of his crimes.” (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

A person seeking reinstatement must present “stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question.” (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) In determining whether the burden has been met, the evidence of present character must be considered in light of the moral shortcomings displayed in the past. (*Ibid.*) Although Liebb need not demonstrate perfection, “overwhelming proof of reform” is necessary. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546.) When an applicant’s prior misconduct is sufficiently egregious, overwhelming proof must include a lengthy period of not only unblemished but exemplary conduct. (*In re Menna* (1995) 11 Cal.4th 975, 989.)

B. Liebb Must Show an Extended Period of Exemplary Conduct After Prison and Supervised Release

The hearing judge found that, although Liebb has made great strides in establishing successful rehabilitation and current moral character, he has not shown exemplary conduct over the required extended period of time since his discharge from supervised release in November 2016 and filing his petition for reinstatement in August 2017. Given Liebb’s grievous misconduct, a longer period of time is required. We do not consider, and decisional law does not support, 16 months of unsupervised conduct as sufficient to demonstrate an extended period of sustained exemplary conduct.³

³ See, e.g., *In re Menna*, *supra*, 11 Cal.4th at p. 989 (five and one-half years of unsupervised good conduct not sufficient for felony theft and drug convictions); *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883 (three years of exemplary conduct after sobriety from alcohol and gambling not sufficient for misappropriation and incompetence); *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423 (nine years between misappropriation and petition sufficient); cf. *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459 (10 years between resignation and reinstatement hearing sufficient for mail fraud where three years’ good conduct followed five years’ criminal probation).

Liebb asserts that the hearing judge wrongly focused on the period of exemplary conduct after his supervised release ended and argues that more weight should be given to his positive programming in prison and during parole. However, the judge correctly focused on the time following Liebb's discharge from supervised release and determined that the less than two years between his discharge and his reinstatement hearing was insufficient to make the required showing of rehabilitation. The Supreme Court has held that little weight can be placed on good conduct while in prison for the purposes of showing rehabilitation in State Bar matters "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion." (*In re Gossage, supra*, 23 Cal.4th at p. 1099 [finding that Review Department's consideration of good conduct in prison viewed rehabilitation more broadly than case law allows]; see also *In re Menna, supra*, 11 Cal.4th at p. 989 [Liebb must show rehabilitation outside time in prison, halfway house, and parole because good conduct is normally demanded of prisoner and parolee].) In Liebb's case, it is clear that the Board required the positive programming he engaged in while in prison as a condition for his release. At each parole hearing where the Board denied him parole, it emphasized that he had not participated in enough self-help programs and encouraged him to do so. Liebb himself testified at his reinstatement hearing that it was not until he was discharged from parole that he actually felt free and gained additional insight. We give "far greater weight" to activities after Liebb's parole ended in 2016. (*Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 464.)⁴

Liebb relies on *Bodell, supra*, to distinguish the case law establishing that the showing of sustained exemplary conduct must come after prison and discharge from supervised release. *Bodell* involved an attorney convicted of one count of felony mail fraud, who spent no time in

⁴ See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 (inadequate that petitioner stayed out of trouble while being watched on probation); *In re Giddens* (1981) 30 Cal.3d 110, 116 (proof of rehabilitation needed "during a period when petitioner is neither on parole . . . nor under supervision of the bar").

prison, but was on criminal probation for five years. (*Bodell, supra*, 4 Cal. State Bar Ct. Rptr. at p. 463.) The *Bodell* court found that the attorney had established rehabilitation in the ten years following his conviction, and did not focus exclusively on his post-probation conduct. In *Bodell*, the court acknowledged that in *Gossage, supra*, and *Menna, supra*, the courts did not find an attorney's time in custody or under court or State Bar supervision to be particularly weighty, but distinguished *Bodell*'s misconduct from the "extremely serious misconduct for an extensive time" in *Gossage, supra*, and *Menna, supra*. Because *Liebb*'s misconduct is extremely egregious, the reasoning of *Gossage* and *Menna*, not *Bodell*, applies with regard to the weight given to his conduct while in prison or parole.

C. Lieb's Self-Help Activities and Character References Are Commendable, But Do Not Alone Establish Exemplary Conduct

As the hearing judge found, *Liebb* has made strides toward showing his rehabilitation. Much of his work in prison involved self-help activities and groups. After release from prison, he engaged in additional self-help programs, as well as therapy. However, these activities alone do not demonstrate truly exemplary conduct in the sense of returning something to the community *Liebb* harmed. As such, they are somewhat minimized because they contribute substantially to his personal well-being instead of paying back the community he harmed. (*In re Menna, supra*, 11 Cal.4th at p. 990; *In re Glass* (2014) 58 Cal.4th 500, 526 [12 years of therapy is not truly exemplary conduct because it primarily confers benefit on applicant to State Bar].) Further, *Liebb* has not continued anger management therapy after his release from supervised parole, which is important because it directly addresses his past violent criminal misconduct. (*In the Matter of Rudnick* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 27, 36 [quality of evidence, rather than number of years, is true measure of rehabilitation].)

Similarly, while *Liebb* presented character evidence that the hearing judge described as "an impressive array of 17 highly reputable character witnesses," we agree with the judge that

favorable character testimony about Liebb is neither conclusive nor determinative on the issue of rehabilitation. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547; *In re Menna, supra*, 11 Cal.4th at p. 988.) Also, while the hearing judge found that Liebb demonstrated remorse for his crimes and his victims, remorse alone does not demonstrate rehabilitation. A truer indication of Liebb's rehabilitation will be if he can demonstrate exemplary conduct over an extended period of time that establishes his moral fitness to practice law. (*In re Menna, supra*, 11 Cal.4th at pp. 990-991; *In re Glass, supra*, 58 Cal.4th at p. 526.)

VI. CONCLUSION

We affirm the hearing judge's decision and deny Stephen Liebb's petition for reinstatement to the practice of law.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.