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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001595-MR

WILLIAM A. CAUDILL, DMD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
CIVIL ACTION NO. 03-CI-006923

KENTUCKY BOARD OF DENTISTRY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

MINTON, JUDGE: Kentucky law allows the Board of Dentistry to discipline dentists who are convicted of any misdemeanor involving moral turpitude. William A. Caudill was convicted of Medicaid fraud, and the Board placed his dentistry license on probationary status until he paid the restitution ordered by the sentencing court. On appeal, Caudill argues that the Board erred by considering his conviction since it was based upon his

Alford plea.¹ We reject Caudill's argument. An Alford plea is a plea of guilty, regardless of any denial of underlying facts; and it constitutes a criminal conviction. We, therefore, affirm the opinion and order of the Jefferson Circuit Court upholding the Board's disciplinary action.²

The facts in this appeal are simple and uncontested. Caudill had practiced pediatric dentistry in Somerset, Kentucky, for over twenty years when he entered an Alford plea in the Franklin District Court to a misdemeanor charge of knowingly making a false statement to receive benefits under a medical assistance plan—more commonly called Medicaid fraud.³ The plea to the single misdemeanor charge, brought by information, was made under a plea bargain agreement that concluded a lengthy investigation and numerous potential charges. The court sentenced Caudill to 12 months in jail, probated for two years or until he paid \$143,632.79 as restitution to the Kentucky Medical Assistance Program and an additional \$25,000 as

¹ So named because of North Carolina v. Alford, 400 U.S. 25 (1970), an Alford plea is "[a] guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt." Black's Law Dictionary (8th ed. 2004).

² Jefferson Circuit Court was a proper venue for Caudill's appeal by virtue of the fact that Kentucky Revised Statute (KRS) 313.195(7) provides that an appeal from the Board may go to either the Franklin Circuit Court or the Jefferson Circuit Court.

³ See KRS 194A.505.

restitution to the Kentucky Attorney General, whichever was longer.

Following disposition of the criminal charge, the Board issued a formal complaint against Caudill's dentistry license based on his conviction. The Board held a hearing at which Caudill was permitted to explain the circumstances giving rise to his conviction. Ultimately, over Caudill's objection, the Board entered an order placing Caudill's license to practice dentistry on probationary status until he paid the restitution ordered in the criminal case. The sole reason for the Board's decision was Caudill's criminal conviction of a crime involving moral turpitude. Caudill then filed this appeal.

Many of Caudill's contentions in his brief appear to be collateral attacks on his criminal conviction. But the propriety of that conviction is not before us because the only order Caudill mentions in his notice of appeal is the order of the Jefferson Circuit Court upholding the decision of the Board. So this opinion will address only the propriety of the administrative penalties imposed by the Board. Any irregularities Caudill believes to exist in his criminal conviction may be raised only in a separate post-conviction petition for relief.

KRS 313.130(1) permits the Board to discipline any dentist following "[c]onviction of any felony or conviction of

only those misdemeanors involving moral turpitude, in which case the record of conviction or a copy thereof . . . shall be conclusive evidence." Caudill admits that his conviction involved a crime of moral turpitude. He also admits that the Board was presented an acceptable copy of the judgment of conviction. So the Board had sufficient evidence under KRS 313.130 to take disciplinary action against Caudill. Nevertheless, Caudill believes that the Board's action was improper.

Caudill argues that the Board was not required to discipline him because KRS 313.130 uses permissive, not mandatory, language. Specifically, Caudill points to the discretionary tone of the statute, which says that the Board may—rather than must—discipline a dentist convicted of a misdemeanor involving moral turpitude. We agree with Caudill that the Board was not required to discipline him. But the fact that the Board was not required to impose discipline does not mean that the Board lacked the authority to impose discipline. Such an argument runs afoul of the clear statutory grant of authority to the Board expressed in KRS 313.130(1).

Caudill's next argument in opposition to the Board's action is his contention that an Alford plea is not an acceptable method of adjudicating a criminal case under Kentucky law, presumably meaning that no proper conviction exists for the

Board to rely upon to impose discipline. Kentucky courts routinely accept Alford pleas, as is best illustrated by the existence of an official form promulgated by Kentucky's Administrative Office of the Courts entitled "Motion to Enter Guilty Plea Pursuant to North Carolina v. Alford."⁴

The crux of Caudill's argument is his contention that Kentucky law authorizes courts to accept guilty pleas or not guilty pleas, but not *nolo contendere* pleas. This point we accept.⁵ But Caudill ignores the settled fact that an Alford plea is only a specialized type of guilty plea.⁶ So Caudill's argument that his entry of an Alford plea has diminished the effectiveness of his criminal conviction for purposes of the Board's ability to impose discipline against him is without merit.

Finally, we reject Caudill's argument that he should not be disciplined because he was unaware that his entry of an

⁴ Form AOC-491.2 is viewable at <http://www.kycourts.net/forms/InProgressForms/491.2.pdf>.

⁵ Commonwealth v. Hillhaven Corp., 687 S.W.2d 545 (Ky.App. 1985) (holding that the Kentucky Rules of Criminal Procedure authorize courts to accept only guilty or not guilty pleas, not pleas of *nolo contendere*).

⁶ Robert G. Lawson, The Kentucky Evidence Law Handbook § 2.55[3] (4thed. 2003) (stating that an Alford plea is "a guilty plea by an accused who refuses to acknowledge guilt but waives trial and accepts all the consequences of a conviction."); Pettitway v. Commonwealth, 860 S.W.2d 766, 767 (Ky. 1993) ("An Alford plea is a 'plea of guilty,' regardless of any denial of underlying facts, and clearly constitutes a criminal conviction.").

Alford plea would subject him to discipline by the Board. Even assuming for the sake of argument that Caudill was ignorant of the possibility of Board action against his license based on his Alford plea, he is entitled to no relief. Clearly, a defendant does not have to be told of all the numerous possible collateral consequences of a guilty plea in order for that plea to be legally permissible, proper, and binding.⁷

In summary, we have thoroughly examined the record and find the trial court and Board's decisions to be neither arbitrary⁸ nor clearly erroneous.⁹ Thus, we affirm.

ALL CONCUR.

⁷ See Turner v. Commonwealth, 647 S.W.2d 500-501 (Ky.App. 1982) ("However, a knowing, voluntary and intelligent waiver does not necessarily include a requirement that the defendant be informed of every possible consequence and aspect of the guilty plea. A guilty plea that is brought about by a person's own free will is not less valid because he did not know all possible consequences of the plea and all possible alternative courses of action. To require such would lead to the absurd result that a person pleading guilty would need a course in criminal law and penology.").

⁸ Burch v. Taylor Drug Store, Inc., 965 S.W.2d 830, 834 (Ky.App. 1998) ("The standard of review before the circuit court and before this Court is the same. Judicial review of the acts of an administrative agency is concerned with the question of arbitrariness.").

⁹ Fayette County Bd. of Educ. v. M.R.D. ex. rel. K.D., 158 S.W.3d 195, 201 (Ky. 2005) ("CR [Kentucky Rules of Civil Procedure] 52.01 requires that, in appeals of administrative agency decisions, appellate courts review the determinations of the circuit courts for clear error.").

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