

Permanent Judicial Commission  
The Synod of the Northeast, Presbyterian Church (U.S.A.)  
Decision and Order  
18 October 2023

Rev. Dr. Scott Foster  
Appellant

SNE 2023-01

V.

Decision and Order

The Presbytery of the Highlands  
of New Jersey  
Appellee

This is an appeal to the Synod of the Northeast Permanent Judicial Commission (hereinafter "Commission" or "SJPC") filed by the Rev. Dr. Scott Foster (hereinafter "Appellant") from a decision of the Permanent Judicial Commission of the Presbytery of the Highlands (hereinafter "Appellee") dated January 21, 2023.

#### JURISDICTIONAL STATEMENT

The Executive Committee of this Commission found on March 13, 2023, that the SPJC has jurisdiction, that Appellant has standing to file the appeal, that the appeal was properly and timely filed, and that the appeal states one or more grounds for appeal under D- j 3.0106. There were no challenges by either party to this finding.

#### APPEARANCES

The Appellant was present at the hearing and was represented by Ruling Elder Sharon M. Davison. The Presbytery of the Highlands (hereinafter "Appellee") was represented by Ruling Elder Tania M. Nemeth.

#### HISTORY

This disciplinary case came before this Commission on an appeal filed by Appellant from the decision of the PPJC rendered on January 21, 2023.

The case originated with a written complaint filed with the Acting Stated Clerk of the Presbytery of the Highlands on August 19, 2021, by the Rev. Jacqui Van Vliet, who succeeded Appellant as a Pastor of the Presbyterian Church of Madison. The Investigating Committee filed formal charges against the Rev. Foster on June 8, 2022.

The appeal of the decision of PPJC was received by the Synod of the Northeast's Stated Clerk on March 4, 2023. The Presbytery of the Highlands' Stated Clerk filed the Record of the Case with the Synod's Stated Clerk on August 1, 2023. The Appellant filed his brief on August 30, 2023. Appellee filed its brief on September 29, 2023. The Executive Committee of this Commission met via Zoom with both parties' counsel for a pre-hearing conference on October 4, 2023. The hearing on the appeal took place in Guilderland, NY, on October 17, 2023.

The Appellant, both in the Notice of Appeal and in Appellant's Brief, claimed four Specifications of Error. This case is governed by the Book of Order in effect between 2019 and 2023<sup>1</sup>. This Commission's decision on each Specification is presented and explained below:

Specification # 1. Manifestation of prejudice in the conduct of the case

Appellant argues that the "[PPJC] allowed manifestation of prejudice in the conduct of the case" (Appellant's brief, p. 3) because Appellee's counsel raised questions about whether Appellant was texting during the trial in violation of the order of sequestration of witnesses. (Transcript Nov. 19, 2022, Vol. 1 of 2, pp. 91-94, 97-99, 135). Appellant further argues that the PPJC allowed manifestation of prejudice in the conduct of the case when the PPJC issued an order that limited access to electronic devices on the second day of trial. (Transcript Jan. 21, 2023, Vol. 1 of 2, pp. 5-6).

This specification of error is not sustained.

This Commission determines that there was no prejudice to Appellant when (a) Appellee's counsel raised the question of whether Appellant was texting a witness; (b) the PPJC'S mandate that only certain persons could have computers or cell phones present at the second day of trial; or (c) Appellant lacked access to a computer or cell phone during the second day of trial.

No evidence was presented that supported Appellant's argument that Appellee's counsel's questions during the referenced cross examination had any influence at all, let alone prejudicial impact, on the ultimate decision of the PPJC. Nor do we believe that the exchanges during or the determinations made at trial would result in such prejudice. The PPJC's mandate prior to the second day of the trial was applied equally to all parties. The PPJC was acting within its authority to manage the order of sequestration by limiting access to electronic devices. Finally, Appellant was not prejudiced by the limited access to electronic devices on the second day of trial because he was able to use a notepad instead of a computer to take notes. (Transcript, Nov. /9, 2022, Vol. 1 of 2, p. 98).

Specification # 2. Injustice in process or decision

The Appellant contends that "the PPJC did not use the beyond a reasonable [sic] standard in deciding this matter." (Appellant 's Brief p. 4). Appellant also contends that the PPJC "did not have a basis to find that the evidence compelled an abiding conviction that the material facts necessary to prove the charge are true." (Id.).

This specification of error is not sustained.

After hearing the proof at trial in a disciplinary matter, the Book of Order provides as follows:

After careful deliberation, the session or permanent judicial commission shall vote on each charge separately and record the vote in its minutes. In order to find the accused guilty of a charge, the session or permanent judicial commission must find that the pertinent facts within that charge have been proven beyond a reasonable doubt. Proof beyond a reasonable doubt occurs when the comparison and consideration of all the evidence compels an abiding conviction that the material facts necessary to prove the charge are true. [Book of Order D-1 1.0403a].

1 Although Counsel for the Appellee referred to the most recent edition of the Book of Order during the hearing on appeal, our determinations are based solely on the Book of Order in effect between 2019 and 2023 and reported decisions of the GAPJC.

The PPJC found Appellant guilty on three of the four charges as follows:

1. (ADULTERY) That beginning in or about March 2019, SCOTT FOSTER did commit the offense of adultery in that while married to [REDACTED] by engaging in a sexual relationship with [REDACTED]. The relationship continues to date while [REDACTED] remains legally married to [REDACTED].

2. (SEXUAL MISCONDUCT) That beginning in or about March 2019, SCOTT FOSTER, while serving as Pastor of the Presbyterian Church of Madison, did violate the Standards of Conduct of the Sexual Misconduct Policy by participating in an inappropriate relationship with [REDACTED]

This relationship is in violation of the Sexual Misconduct Policy and the Standards of Ethical Conduct of the Presbytery of Newton now the Presbytery of the Highlands of New Jersey, and of the ordination vows in the Directory for Worship (W-4.0404).

3. (ACCEPTING PAYMENTS) That beginning in or about March 2019 and continuing through November 2019, SCOTT FOSTER did accept payments in the amount of \$23,000.00 from [REDACTED]

The PPJC determination was unanimous on charges 1 and 2, and was 7-1 on charge 3. The PPJC deadlocked on the charge of "Lying to the IC" by a vote of 4-4, resulting in a finding of not guilty on that charge.

Appellant contends that the PPJC failed to apply the "beyond a reasonable doubt" standard when reaching its verdict. According to Appellant, this Commission should set aside the PPJC's verdict and conduct a de novo review of the evidence. However, that is not the standard of review that applies to this appeal. "Appeals in disciplinary cases exist to review proceedings of lower governing bodies ... and not to retry issues of fact." Presbytery of Wyoming v. King (Disciplinary Case 218-06).

In reaching its decision, the PPJC necessarily made factual findings.<sup>2</sup> "Factual determinations made by a trier of fact are accorded a presumption of correctness." (Presbytery Qf New York City v. Edmonds, 220-09) "These determinations are not to be disturbed on appeal unless they are 'plainly wrong, without supporting evidence or manifestly unjust.'" (Id. quoting Chesterbook OK Taiwanese Presbyterian Church v. National Capital Presbytery, Minutes, 2006, p. 493).

This Commission may reverse a PPJC decision only if it is contrary to the evidence. This Commission may not substitute its own judgment for that of the PPJC. (Lewis v. Presbytery of New York City Remedial Case 207-13). Based on our review of the record, there is sufficient evidence from which the PPJC could find beyond a reasonable doubt that Appellant did commit the three offenses set forth above. Appellant provided no basis upon which to conclude that the PPJC failed to apply correctly the "beyond a reasonable doubt" standard, and there was nothing presented to demonstrate that the factual determinations were "plainly wrong, without supporting evidence or manifestly unjust."

Specification # 3. Error in constitutional interpretation

3a. Appellant contends that the PPJC erred in finding that Appellant engaged in sexual misconduct.

This specification of error is not sustained.

<sup>2</sup> Some of the evidence supporting a conviction is circumstantial. However, the Book of Order provides that, "No distinction should be made between direct and circumstantial evidence as to the

degree of proof required." [D-14.0101].

We review questions of constitutional interpretation for error. This Commission gives deference to the PPJC as to findings of fact and credibility findings. In reaching its decision, the PPJC necessarily made factual findings. "Factual determinations made by a trier of fact are accorded a presumption of correctness." (Presbytery of New York City v. Edmonds, 220-09). "These determinations are not to be disturbed on appeal unless they are 'plainly wrong, without supporting evidence or manifestly unjust.'" (Id. quoting Chesterbook OK Taiwanese Presbyterian Church v. National Capital Presbytery, Minutes, 2006, p. 493).

"Rather than contain a criminal code, where conduct specifically proscribed may be prosecuted, the Constitution is infused with principles and standards to which ordained officers voluntarily submit." (Presby. of Greater Atlanta v. Ransom 219-02; 2010). As a member of what is now the Presbytery of the Highlands, Appellant voluntarily submitted to and is subject to the presbytery's sexual misconduct policy. On April 11, 2018, Appellant signed a statement in which he certified that he had read the sexual misconduct policy and understood its terms. Section C Responding of the Newton Presbytery Sexual Misconduct Policy (March 2018) signed by Appellant states that violations of the policy by teaching elders would result in their being "subject to inquiry and discipline (censure and correction) under the 'Rules of Discipline' of the Book of Order." At the appeal hearing, Appellant's counsel conceded that a violation of the misconduct policy could constitute an offense under the Rules of Discipline. There is sufficient evidence to support the PPJC's findings that the presbytery's sexual misconduct policy applied to Appellant's conduct and that Appellant's actions in this matter violated the presbytery's sexual misconduct policy.

3b. Appellant contends that the PPJC erred in constitutional interpretation when it found the Appellant guilty of adultery.

This specification of error is not sustained.

As we stated above, we review questions of constitutional interpretation for error; and this Commission gives deference to the PPJC as to findings of fact and credibility findings.

In Appellant's brief Appellant states "[a]dultery is defined as voluntary sexual intercourse between a married person and a person who is not his or her spouse [...]" (Appellant's Br. P. 15) At the appeal hearing, Appellant's counsel stated that their definition is a general "legal" definition of what constitutes adultery. The definitions of adultery that are found in the Book of Confessions are far broader than the definition supplied by Appellant and do not assist him in this matter. (See e.g. The Book of Confessions, 7.247-7.249, The Larger Westminster Catechism). Even applying Appellant's narrower definition of adultery to the facts found by the PPJC, the PPJC did not err in its interpretation of Scripture or the Constitutions of the Presbyterian Church (L.S.A.) when it determined that Appellant had engaged in adultery because evidence supported that Appellant began a sexual relationship with someone not his spouse while still married.

Specification # 4. Undue severity of censure

The Appellant contends that the censure established is unduly severe because (a) Appellant was placed on administrative leave, (b) the open-ended nature of the temporary exclusion is too broad; (C) the PPJC gave the Presbytery the power to continue to investigate this matter on an ongoing basis; (d) no standards were established by which to end the temporary exclusion; and (e) there is no evidence that the Appellant has any psychological issues which need to be addressed.

The Appellant's specification of error is not sustained.

Placing Appellant on administrative leave has no direct correlation to the specific requirements of the censure. The decision to place Appellant on administrative leave was appropriate under terms of the Presbytery's sexual misconduct policy in accordance with the Book of Order D-10.0106.

The temporary exclusion is not open-ended. Appellant with his therapist shall determine the timing of the final assessment which then leads to the Presbytery's Committee on Ministry's consideration of the appellant's request to be restored to active ministry in the Presbyterian Church (U.S.A.).

The censure does not state or imply that the Presbytery has the power to continue to investigate this matter on an ongoing basis. As stated in Appellee's brief, "the investigation was concluded prior to the filing of the charges." (Appellee's Br. p. 31). In addition, we find it persuasive that "this [censure] is not a search for new evidence but is a restorative process." (Appellee's Br. p. 31).

The censure process ordered by the PPJC provides the standards which need to be met. They are: (a) the two psychological and leadership assessment reports of a pastoral assessment center chosen by the Committee on Ministry, (b) counseling services of an accredited professional therapist chosen by Appellant, (c) the support of a four member committee, two of whom shall be appointed by Appellant; and (d) apologies to the Presbyterian Church of Madison and to the Presbytery of the Highlands.

The process of censure does not assume that Appellant has psychological issues which need to be addressed, but rather lists a number of questions that shall be asked during the process of assessment and counseling. Given that the PPJC found Appellant guilty of three out of four charges, the PPJC's process of restoration reasonably includes an assessment of psychological health and fitness for ministry.

#### ORDER

Therefore, it is ordered that the decision of the PPJC is affirmed.

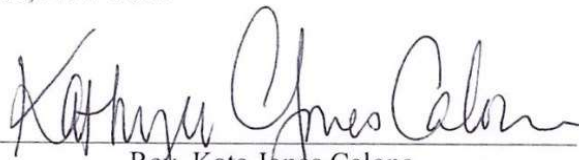
It is further ordered that the Stated Clerk of the Synod of the Northeast report this Decision to the synod at its next meeting, that the synod enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Presbyterian Church (U.S.A.). (D-13.0404f)

It is further ordered that the Stated Clerk of the Presbytery of the Highlands of New Jersey report this Decision to the presbytery at its next meeting, that the presbytery enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Synod of the Northeast. (D-13.0404f)

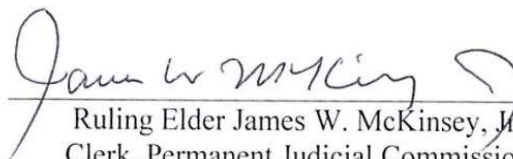
#### ABSENCES

Ruling Elder Craig Barth, a member of this Commission, is a member of a congregation in the Presbytery of the Highlands and thus was recused from this case and took no part in either the hearing or the deliberations.

Dated this 18<sup>th</sup> day of October, 2023 in Guilderland, New York



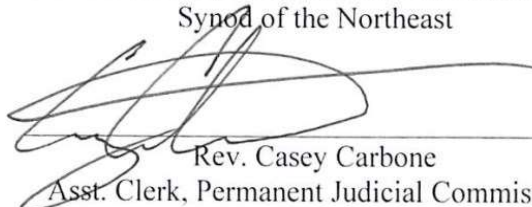
Rev. Kate Jones Calone  
Moderator, Permanent Judicial Commission  
Synod of the Northeast



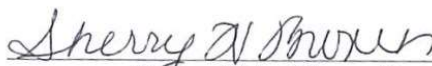
Ruling Elder James W. McKinsey, Jr.  
Clerk, Permanent Judicial Commission  
Synod of the Northeast



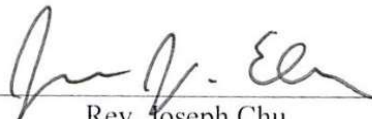
Ruling Elder Peter Weishaar  
Vice-Moderator, Permanent Judicial Commission  
Synod of the Northeast



Rev. Casey Carbone  
Asst. Clerk, Permanent Judicial Commission  
Synod of the Northeast



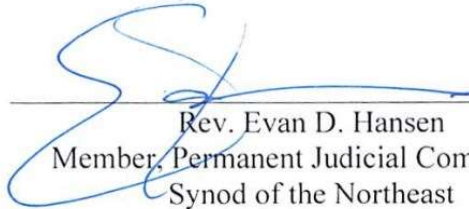
Ruling Elder Sherry Brown  
Member, Permanent Judicial Commission  
Synod of the Northeast



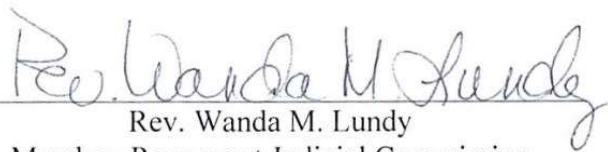
Rev. Joseph Chu  
Member, Permanent Judicial Commission  
Synod of the Northeast



Ruling Elder Caroline Demers  
Member, Permanent Judicial Commission  
Synod of the Northeast



Rev. Evan D. Hansen  
Member, Permanent Judicial Commission  
Synod of the Northeast



Rev. Wanda M. Lundy  
Member, Permanent Judicial Commission  
Synod of the Northeast



Ruling Elder Brunhilda Sanders-Lane  
Member, Permanent Judicial Commission  
Synod of the Northeast



Rev. Cass L. Shaw  
Member, Permanent Judicial Commission  
Synod of the Northeast