JUDGE MARTIN WAS INDICTED BY L.A. GRAND JURY, CONVICTED AND JAILED IN STATE PRISON FOR CONSPIRACY TO OBSTRUCT JUSTICE (IN COURT OR CHAMBERS) (PENAL CODE 182(a)(5) OF TODAY)

PEOPLE v. MARTIN [135 Cal.App.3d 710]

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[Crim. No. 38923.

Court of Appeals of California, Second Appellate District, Division Five.

September 14, 1982.]

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM MARTIN et al., Defendants and Appellants.

(Opinion by Hastings, J., with Feinerman, P. J., and Ashby, J., concurring.) **{Page 135 Cal.App.3d 711}**

COUNSEL

H. Anthony Miller, Lee Belgum, Belgum & Belgum, Richard A. Walton and G. Merle Bergman for Defendants and Appellants.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Shunji Asari and Gelacio L. Bayani, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

HASTINGS, J.

Appellant William Martin was a judge in the Citrus Municipal Court, a position he held for 20 years before his retirement in September 1977. Appellant Waldo A. Brown was an attorney in the community served by that court. This case involves the improper disposition of some 85 misdemeanor cases in which the defendants were charged with driving under the influence of alcohol and/or drugs (former Veh. Code, § 23102, now § 23152). In each case, Martin was the judge and Brown was the defense attorney. In a five-count indictment returned by the Los Angeles County Grand Jury, appellants were charged as follows: Count I, conspiracy to obstruct justice (Pen. Code, **{Page 135 Cal.App.3d 714}** § 182, subd. 5), consisting of 10 overt acts; count II, conspiracy to falsify documents (Pen. Code, § 182 and 134), consisting of 10 overt acts; count III, conspiracy to falsify public records (Pen. Code, § 182 and Gov. Code, § 6200), consisting of 10 overt acts; count IV, falsifying documents (Pen. Code, § 134); and count V, falsifying public records (Gov. Code, 6200).

Appellants' motion to set aside the indictment (Pen. Code, § 995) was granted as to counts II through V, but denied as to count I. After a court trial, both Martin and Brown were found guilty of conspiracy to obstruct justice, as charged in count I of the indictment, and were sentenced to

BY GRAND JURY

county jail for not more than one year, or in the state prison, or by a fine not exceeding five thousand dollars ($5,000) or both." In this case, the court sentenced both appellants to state prison, a sentence which Martin contends is too harsh.

[6] First, argues Martin, at common law the crime of conspiracy to obstruct justice was a misdemeanor, which the court has "bootstrapped" into a felony by imposing this particular sentence. However, since the sentence is provided by statute, and clearly a matter for the court's discretion, the fact that conspiracy was a misdemeanor at common law has no bearing here. fn. 5 It was the Legislature, not the trial court, which made this violation a felony.

Next, argues Martin, the harsh sentence resulted from the trial court's prejudice against him, or at least against the crime he committed. The court's comments to which Martin points as evidence of this prejudice are:

"I think this is the most uncomfortable case that I have ever tried.

"Fundamentally, [this crime]is really unforgiveable. **{Page 135 Cal.App.3d 725}**

"Judge Martin prostituted his robe. Mr. Brown prostituted his profession." fn. 6

Martin claims that "[b]ecause of his indignation and anger that appellant had sullied an honorable profession, Judge Ringer was led to the error of sentencing far too harshly."

Furthermore, Martin says "the sentence seems unduly harsh when compared to sentences which other judges have received." In the only other case in which a judge has been convicted of conspiracy to obstruct justice (People v. Hardeman (1966) 244 Cal.App.2d 1 [53 Cal.Rptr. 168], cert. den.387 U.S. 912 [18 L.Ed.2d 634, 87 S.Ct. 1700]), the judge received a suspended sentence, and the usual punishment for wilful misconduct in office by a judge is removal from office or censure. (In re Stevens (1982) 31 Cal.3d 403 [183 Cal.Rptr. 48, 645 P.2d 99];Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 678 [122 Cal.Rptr. 778, 537 P.2d 898];Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778 [119 Cal.Rptr. 841, 523 P.2d 1209];Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270 [110 Cal.Rptr. 201, 515 P.2d 1].)

Of course, by the time Martin was convicted, removal or censure was not an option, since Martin was retired before the indictment was even filed, and removal or censure were not within the trial court's power in any case.

Further, the fact that the court selected one of the sentences provided in section 182 does not mean that the court was prejudiced against Martin; the court was simply exercising the discretion granted to it under the statute. In fact, the sentence selected by the court was not the harshest it could have selected, since the court had the option of imposing a state prison sentence and a $5,000 fine.

What Martin is really saying is that he should be treated more favorably because he was a judge. It was apparently the trial court's opinion that judges and attorneys should be punished like everyone else when they commit felonies. The sentence imposed in this case was one of the

state prison for the term prescribed by law. These appeals followed.

Martin contends: (1) Penal Code section 182, subdivision 5, is void for vagueness and uncertainty; (2) there was insufficient evidence to establish that he was guilty of conspiracy to obstruct justice; (3) he was wrongly deprived of a postindictment preliminary hearing; and (4) the court should not have sentenced him to state prison.

Simply stated, Brown's contention is that the facts of this case do not support a conviction for conspiracy to obstruct justice because none of his or Martin's actions constituted criminal conduct.

For purposes of trial, the cases forming the basis of the prosecution were divided into five categories, based upon the type of disposition made. All of the dispositions occurred during the period between May 4, 1976, and September 17, 1977, when Martin retired. The purpose of presenting the cases in categories was to show that, in cases involving clients of Brown, Martin deviated from his normal practices and in fact handled the dispositions of these cases without the participation, consent, or knowledge of the district attorney's office. The various categories and dispositions were as follows:

I. Drunk Driving Reduced to Reckless Driving.

A misdemeanor complaint would be filed charging the defendant with driving under the influence. It was a common practice in Citrus Municipal Court to add a second count to the complaint, charging the lesser offense of reckless driving, to permit the defendant to enter a guilty plea to the second count, and then dismiss the drunk driving charge. **{Page 135 Cal.App.3d 715}**

It was the policy of the district attorney's office to oppose a reduction of the charge where the defendant's blood alcohol level was over .15, or where the defendant had refused to submit to a blood alcohol test. In such cases, the trial deputy assigned to a particular courtroom had no discretion to agree to a reduction; it would have to be approved by the head deputy, and approval was rarely granted. For all of the cases in this category, the circumstances were such that the district attorney's office would oppose the reduction, yet the docket sheets showed that the reduction had been agreed to by the deputy district attorney handling the case. The deputies named on the docket sheets testified that they had either not participated in the cases, or that they did not, and would not have, approved the reductions. fn. 1 Most of the cases involved high blood alcohol readings (.15 to .24) or refusals to take a blood alcohol test. There were other irregularities, however: the purported approval of a deputy who was on vacation at the time, two deputies appearing on the same case on the same day, or the absence of the pretrial settlement of constitutional waiver forms normally required by Judge Martin.

II. Prior Convictions Declared Unconstitutional.

In these cases, the complaints alleged that the defendant had suffered a prior conviction for driving under the influence within the past five years, under which circumstances the defendant could receive an enhanced penalty. Judge Martin would declare the prior convictions to be unconstitutional and would strike them from the complaints. Deputy District Attorney Arthur Godinez, who was the regularly assigned deputy in Judge Martin's courtroom from May 1976 to