

CASE 2015-08

**TE JOHN HARDIE
VS.
METRO ATLANTA PRESBYTERY**

**DECISION ON APPEAL
MARCH 3, 2016**

On September 16, 2014, Metropolitan Atlanta Presbytery (MAP) appointed a Commission in response to a request submitted by the Session of Grace North Atlanta (GNA). On January 24, 2015, that Commission made its report to MAP. After receiving the report, MAP appointed a judicial commission, appointed a prosecutor and suspended TE John Hardie (Appellant), without censure, from all official functions while he was under process.

The MAP Judicial Commission conducted the trial and found Appellant guilty of three charges and imposed the censure of indefinite suspension. Appellant filed an appeal citing numerous irregularities in the proceedings and prosecution of the case. The SJC is denying the Appeal.

I. SUMMARY OF THE FACTS

09/15/14 The Session of Grace North Atlanta submitted a request asking

the Shepherding Committee which has already met with us, to provide appropriate help as needed as we initiate pursuing reconciliation with various staff members in keeping with Matthew 18:15-18 and Matthew 7:1-5. We as a Session recognize we need ongoing help in living out repentance and putting into place safeguards to wisely shepherd the church community of Grace North Atlanta so that we, congregation and Session, may grow more in the grace of our Lord Jesus Christ.

09/16/14 At the September 16, 2014 Stated Meeting of MAP, the Presbytery passed the following motion:

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To form a Commission to come alongside of the Session, to meet with elders, members, and the pastor of a MAP church [TE John Hardie and Grace North Atlanta] in a holy attempt to investigate, discern and help all work through disorder that has come to the surface.

- 09/23/14 The Commission (referred to hereafter as the “9/16/14 Commission”) convened and began its work.
- 01/24/15 The 9/16/14 Commission presented its report and recommendations to MAP at the January 24, 2015, Stated Meeting. The 9/16/14 Commission’s report included a finding that there was a “strong presumption of guilt regarding TE Hardie’s violation of his ordination vows, *BCO 31-2*.”

At the January 24, 2015 meeting, MAP passed the following motions:

MSP that Presbytery begin process concerning TE Hardie per *BCO 31-2*;
MSP that Presbytery appoint a judicial commission and appoint a prosecutor per *BCO 31-2*; and
MSP while TE Hardie is under process, Presbytery suspended him from all official functions without censure per *BCO-31-10*.

- 03/24/15 Appellant met with the Judicial Commission to hear charges and enter a plea.
- Appellant waived the reading of the charges and entered a plea of not guilty to all charges.
- 05/09/15 The Judicial Commission of MAP began the trial. The trial continued on May 16, 2015 and May 30, 2015.
- 06/29/15 MAP held a Called Meeting to consider the report of the Judicial Commission. At that meeting, the Commission reported “The commission found TE Hardie guilty of three counts of breaking his ordination vows and indefinitely suspended him from the exercise of his office until he gives

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satisfactory evidence of repentance.” (Underline in original)
A motion to approve the commission’s judgment was made and passed.

At that same meeting, the MAP inflicted the censure: “We, the Metropolitan Atlanta Presbytery in the name and by the authority of the Lord Jesus Christ, do now declare you suspended from the exercise of your office, until you give satisfactory evidence of repentance.”

MAP also approved a resolution that read in part and concluded:

WHEREAS, Should TE John Hardie give, or subsequently file, notice to appeal the Judicial Commission trial, verdict and censure, as approved by Metropolitan Atlanta Presbytery, the following action is deemed proper and appropriate to be recorded as an official act of Metro Atlanta Presbytery and inscribed in the official minutes of this said meeting.

NOW THEREFORE BE IT RESOLVED, that Metropolitan Atlanta Presbytery does hereby evoke the provisions of BCO 42-6; to-wit, “prevent him from exercising...all of his official functions, until the case is finally decided. (cf BCO 31-10).”

FURTHER BE IT RESOLVED that this action is not taken in the way of inflicting censure, but rather is to protect the peace, purity and unity of the Church. (bold and underline in original)

07/13/15 Appellant filed an Appeal.

01/15/16 The Panel conducted its hearing.

II. STATEMENT OF THE ISSUE

Shall the specifications of error raised by the Appellant be sustained?

III. JUDGMENT

No. The Appeal is denied.

IV. REASONING AND OPINION

The standard of review for this Court is set forth in *BCO 39-2* and 3:

2. A higher court should ordinarily exhibit great deference to a lower court regarding those factual matters which the lower court is more competent to determine, because of its proximity to the events in question, and because of its personal knowledge and observations of the parties and witnesses involved. Therefore, a higher court should not reverse a factual finding of a lower court, unless there is clear error on the on the part of the lower court.

3. A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties. Such matters of discretion and judgment would include, but not be limited to: the moral character of candidates for sacred office, the appropriate censure to impose after a disciplinary trial, or judgment about the comparative credibility of conflicting witnesses. Therefore, a higher court should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court.

This Court is charged, therefore, to give “great deference” to MAP’s decision and to reverse only if there is “clear error.”

Appellant alleged seventeen specifications of error under six categories. These errors will be addressed in the order they were raised in the Appeal. The format for addressing these errors will be to summarize the alleged error in *italics* and present the reasoning and opinion in regular font.

Category I-Irregularities in the Proceeding of the Presbytery

- a. *The Presbytery erred in how it formed its Judicial Commission. There is no record of a BCO 31-2 investigation, no finding of a*

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strong presumption of guilt and no indictment was drawn. Further, MAP invoked BCO 31-10 to suspend TE Hardie from his official functions.

The issues raised in this specification of error are essentially the same issues raised in the Complaint SJC 2015-03. The only documents in the ROC that address these issues are materials from Case 2015-03 that were included in this ROC by reference.

At its January 24, 2015 meeting, MAP heard the report of its 09/16/14 Commission, which commission had been charged, in part, “to meet with elders, members, and the pastor of a MAP church [TE John Hardie and Grace North Atlanta] in a holy attempt to investigate, discern and help all work through disorder that has come to the surface.”

In the course of its work, the 09/16/14 Commission, which was not established to conduct judicial process, (but was commissioned “to investigate”) came to the conclusion that judicial process should begin against Appellant. The 09/16/14 Commission concluded that there was a strong presumption of Appellant’s guilt and recommended that MAP begin process against Appellant, appoint a judicial commission to try Appellant, and appoint a prosecutor. Further, the 09/16/14 Commission recommended that Appellant be suspended from all official functions while under process, without censure, per *BCO-31-10*.

MAP passed motions consistent with the recommendations of the 09/14/16 Commission. It was at this point that MAP authorized the appointment of a judicial commission. The Judicial Commission then began its work.

BCO 31-2 provides:

31-2. It is the duty of all church Sessions and Presbyteries to exercise care over those subject to their authority. They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character. This duty is more

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imperative when those who deem themselves aggrieved by injurious reports shall ask an investigation.

If such investigation, however originating, should result in raising a strong presumption of the guilt of the party involved, the court shall institute process, and shall appoint a prosecutor to prepare the indictment and to conduct the case. This prosecutor shall be a member of the court, except that in a case before the Session, he may be any communing member of the same congregation with the accused.

The investigation (which included a finding of a strong presumption of guilt) in this case originated from the work assigned to the 09/16/14 Commission; as such it was an investigation consistent with the provisions of *BCO* 31-2. The results and recommendations from the investigation were presented to MAP in the 9/16/14 Commission's report of January 24, 2015. MAP's action to form a judicial commission based on the report and recommendation of its 09/16/14 Commission was not, therefore, improper.

This Court is at a loss to give credence to Appellant's argument that "no indictment" was drawn, as this was in fact done by the prosecutor consistent with MAP's actions of January 24, 2015.

Finally, as to MAP's action to suspend Appellant from all official functions while under process, without censure, per *BCO*-31-10, the authority for such action is provided in *BCO* 31-2, and Appellant offers no evidence to show clear error on the part of MAP.

The Appellant has failed to show that MAP clearly erred in establishing the Judicial Commission or in appointing a prosecutor, or invoking *BCO* 31-10 to suspend Appellant from his official functions while the case was pending.

- b. *The indictment was improperly drawn and the citation was improperly signed.* *On February 28, 2015, TE Hardie was served with an indictment along with a citation to appear before*

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the Judicial Commission on March 11, 2015. The indictment was signed by the Moderator of MAP, TE Rienstra; TE Reinstra's involvement in the process was out of order since a Judicial Commission had been appointed.

The ROC does not include a copy of the indictment, but the ROC does show:

- On January 24, 2015, MAP passed the following motion: that *Presbytery* appoint a judicial commission *and* appoint a prosecutor per *BCO 31-2* (emphasis ours). Therefore, MAP did not give the judicial commission the power to appoint the prosecutor.
- One of the duties assigned to the prosecutor is the preparation of the indictment. (*BCO 31-2*).
- The Judicial Commission conducted a proper “first meeting” of the court given that the Presbytery did not give the Commission power to appoint the prosecutor. (*BCO 32-3*)
- The Judicial Commission cited Appellant to appear on March 24, 2015.
- On March 24, 2015, Appellant met with the Judicial Commission to hear charges and enter a plea, at which time Appellant waived the reading of the charge and entered a plea of not guilty.
- The Judicial Commission's March 24, 2015 meeting was, therefore, a proper “second meeting” of the court. (*BCO 32-3*)

It is the responsibility of the prosecutor to prepare the indictment (*BCO 31-2*). The Court will assume for the sake of argument that the MAP moderator signed the indictment prepared by the prosecutor. The Court fails to see, however, how the signature of the MAP moderator on the indictment is a violation of *BCO* procedure, much less a basis for finding clear error on the part of MAP.

- c. *The Presbytery erred in allowing RE Bob Edwards to serve as a member of the Judicial Commission.* *In this specification of error, the Appellant raises two issues.*

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- 1) *That RE Edwards should not be allowed to be a member of the commission “since he is a ruling elder in the church pastored by a member, who was also the chairman, of the Presbytery Commission that brought charges against the Appellant.”*

Appellant made this objection at the March 24, 2015 meeting of the court. The Commission denied his request. Appellant produced no evidence that RE Edwards was biased because of his relationship to the Chairman of the Presbytery Commission and therefore there is no clear error mandating reversal.

- 2) *That RE Edwards should have been disqualified from sitting on the Commission because he was not present for the final day of the trial, May 30, 2015.*

On May 16, 2015, the Court decided to reconvene the trial on May 30, 2015. On May 30, 2015, a quorum (two Teaching Elders and two Ruling Elders) was present for the proceedings. RE Edwards’s absence from the May 30, 2015, proceedings was noted and discussed, and Appellant did not object to RE Edwards’s absence.

There is nothing in the *BCO* that requires a member of a Judicial Commission to be physically present to hear all testimony in a trial. In fact, *BCO* 32-17 allows the court to grant permission to a member of the court to be absent from a sitting of the court. Appellant’s failure to object to the Judicial Commission’s decision to allow RE Edwards to be absent and to hear the case in video format constitutes a waiver of the objection. Appellant did not even ask the Judicial Commission to consider an alternative. Therefore, Appellant cannot raise the issue after the trial.

The ability of a commission member to perform his duties is a matter of discretion and judgment on the part of the lower court. This court notes that allowing a temporarily absent member of a judicial commission to vote on a decision could be the basis of a challenge to a

lower court's decision, but we do not have sufficient information to make that determination in this case.

Finally, the Court notes that had the Judicial Commission decided to disqualify RE Edwards, the required quorum would have still been present.

This Court is compelled to defer to the lower court unless there is clear error on the part of the lower court. Appellant has failed to prove clear error.

- d. The Commission received advice from the Presbytery's Parliamentarian. *The appellant contends that once a case is committed to a Judicial Commission, seeking and receiving outside advice constitutes interference in the trial process.*

To commit a case to a commission is to place the commission in charge of the case; it does not isolate or quarantine the commission. In the course of a case, it is advisable that a court consult competent authority for advice. Appellant provides no evidence to show that consulting the MAP Parliamentarian interfered with the trial, and therefore there is no clear error mandating reversal.

- e. The Commission allowed two witnesses (RE John Norris and RE Chuck Lia) to join the Prosecution team after they had testified. *In this specification of error, the Appellant raises two issues:*

- 1) *That both witnesses were disqualified because "these men were known to 'indulge a malignant spirit towards the accused' and were 'deeply interested in any respect in the conviction of the accused.' (BCO 31-8)"*

Appellant raised this objection at trial and the Commission denied the objection. Making a determination on the presence of a malignant spirit or deep interest in the conviction of an accused is a matter of judgment and discretion for the lower court. Appellant did not produce any evidence that a malignant spirit or deep interest in conviction existed in John Norris. Appellant did cite a reference in ROC 2356 concerning Chuck Lia, to wit "To write a formal rebuke

from the commission to Chuck Lia and refer his disciple [sic] to the provisional session for refusing to met [sic] with John and the commission.”

The matter of qualifying witnesses is a matter of judgment and discretion for the lower court. In the absence of clear error, the higher court must defer to the lower court. (*BCO* 39.3.3)

- 2) *There was a possibility that these two ruling elders could be recalled to testify as witnesses for the defense*

Although it may be argued that the two ruling elders could not be recalled, Appellant did not raise the issue of *possibly* recalling either witness, and therefore this aspect was not raised in trial by objection. Appellant had opportunity to cross-examine both witnesses when they testified. Appellant has presented no evidence that he even considered recalling either witness or that the inability (if there was, in fact, an inability) to recall the witnesses was detrimental to his defense. Appellant has not established clear error on the part of the lower court.

Category II-Receiving Improper Evidence

- a. *The Judicial Commission allowed Prosecution witnesses to be asked questions that were not specific to the questions listed in the charges*

Appellant has failed to show from the ROC that MAP committed clear error regarding the questions that were asked during the trial.

- b. *Witnesses could not testify to specifics since the indictment itself was not specific regarding when alleged offenses occurred*

Though the Specifications of the Indictment were not included in the ROC, the Record does not show that objections were made or properly preserved that testimony was non-specific or irrelevant to the indictment, or that testimony was generally disadvantaged by the state of the indictment.

- c. *The Commission allowed witnesses to present other than firsthand, eyewitness testimony that was based on hearsay.*

In support of this specification, Appellant cited incidents found in ROC 133, 163, 171, 177, 271, 328, 458, 510, 517, 528, 819, 1159, 1160, and 1161. In examining those incidences, it is our opinion that the Commission acted properly in responding to the objections and issued proper warnings and guidance to the parties and witnesses. On numerous occasions, the members of the court cautioned witnesses about the nature of their testimony. When testimony was found to be improper, the Court declined to hear it or explained that they would grossly discount its value as evidence. [E.g., ROC 153-158, 165-166, 271, 298, 510-511, 516-517] Appellant failed to produce evidence that the testimony taken at the trial violated the rules of evidence as outlined in the *BCO*; therefore, there is no clear error on the part of the Commission.

- d. *The Commission allowed emails and written statements as documentary evidence from a number of individuals that declined to testify. Appellant contends that these documents should not have been entered into evidence since the Appellant would not have an opportunity to cross examine the authors of those documents.*

In support of this specification, Appellant cited ROC 161-164, 1946, 2067-2077 (regarding Morgan Havig); 167 (regarding David Conner); 237 (regarding David Wilhite); and 2135 (regarding Mary Stewart).

In examining Appellant's citations, it is our opinion that the Commission gave proper consideration to the evidence and testimony properly presented to the Commission. In considering the interaction between Morgan Havig and Appellant, the Judicial Commission relied on the testimony of HL Jackson, Kimberly Jackson and Tom Schuler. Information that may have been provided by David Conner and David Wilhite is not cited in the Commission's finding of fact and Mary Stewart did testify and was questioned regarding her diary entries.

The Court notes that Appellant presented written statements from witnesses who did not appear before the Judicial Commission and who were not subject to cross-examination, e.g., ROC 2188, 2190, 2193 and 2293. Appellant's claim of harm due to the fact that he could not cross-examine certain witnesses and their written statements is weakened by the fact that Appellant submitted to the Judicial Commission substantial amounts of the same type of evidence.

Appellant has failed to produce evidence that the Commission committed clear error by giving undue consideration to any of these documents.

- e. *The Commission allowed testimony from individuals that should have not been allowed to testify under provisions of BCO 31-8.*

Making a determination on the presence of a malignant spirit or deep interest in the conviction of an accused is a matter of judgment and discretion for the lower court. The question for this Court is whether MAP committed clear error in reaching its decision. Appellant has not produced any evidence from the ROC that would demonstrate that any of the individuals who testified were not qualified and has not demonstrated that the lower court committed a clear error; therefore, the higher court must defer to the lower court. (BCO 39.3.3)

Category III-Refusal of Reasonable Indulgence

- a. *The Court repeatedly changed the date for the beginning of the trial such that it affected the Appellant's ability to inform its witnesses when they could be expected to be called to testify. The Appellant contends that the trial was originally scheduled for April 18, then rescheduled for May 2, and then, at the request of the Prosecutor, was delayed until May 9.*

According to the ROC, the trial date of May 9, 2015 was set by the Court on April 17, 2015 during a conference call attended by Appellant. During the second day of the trial, May 16th, all parties were involved in setting May 30, 2015 as the third day of the trial. Appellant raised no objection to the date at that time. By setting May 30, 2015 as the date for the trial to continue,

Appellant had 14 days to notify and line up witnesses. Appellant has failed to provide any evidence from the ROC that would demonstrate that the scheduling was a refusal of reasonable indulgence and constituted clear error on the part of the Court.

- b. The Commission directed the Appellant to present and conclude his case on May 30, 2015.

There is nothing in the ROC that indicates that the Commission ever gave such direction to Appellant. Further, there is no evidence in the Record that Appellant asked for more time and was denied, or that Appellant objected to any time limits alleged to have been imposed. Consequently, this Court cannot say that MAP clearly erred and refused reasonable indulgence to the Appellant.

Category IV-Manifestation of Prejudice in the Case

- a. Manifestation of prejudice is evidenced by beginning the judicial process in an unconstitutional manner, the improper drafting and lack of proper approval of an indictment, the unconstitutional interference of persons in the judicial process, the Court being deferential to the prosecution, failing to heed the concerns of the Appellant and the development of factual findings without corroborative evidence, the use of hearsay and the testimony of witnesses not supported by other witnesses.

This Court has addressed above Appellant's claims of error which are set out in summary fashion in this specification of error. The Appellant failed to demonstrate from the ROC that MAP clearly erred and manifested prejudice in this case.

- b. The Court manifested prejudice on January 24, 2015, when it suspended TE Hardie under the provisions of BCO 31-10. Appellant contends that the suspension sent a prejudicial signal that only a guilty verdict would be the right outcome.

The decision to suspend a member under process is a decision that is made at the discretion of the court. Appellant failed to produce any evidence in the ROC to indicate that MAP's

decision to suspend TE Hardie on January 24, 2015, was a clear error or prejudiced the eventual outcome of his case in any way.

- c. The Court manifested prejudice when it stated its intent to invoke the provisions of BCO 42-6 and to continue the suspension from all official duties of office before the Appellant gave notice of appeal. Appellant contends that the notice of appeal must be given before the court can consider the continuation of a suspension and to take the preemptive action was indicative of prejudice against the Appellant.

There is nothing in BCO 42-6 that would require a court to wait for a notice of appeal to be filed before considering the question of suspension. It is reasonable and prudent for a court to anticipate that a notice of appeal would be filed and make a determination regarding suspension immediately following the pronouncement of censure. By anticipating the notice of appeal, the court prevents any confusion regarding the status of a person between the time that the notice is received and the court is able to reconvene. The Appellant failed to provide evidence from the ROC to support his assertion that this action by MAP was a clear error or was indicative of any prejudice against him.

Category V-Hurrying to a Decision before All the Testimony Was Taken

The Appellant contends that the Court gave great latitude to the Prosecution to present its case and then informed the Defense that it had to complete presenting its case in a short period of time.

The Appellant failed to produce evidence from the ROC to substantiate this claim. The Appellant began his defense at about 5:15 PM on May 30, 2015. [ROC 1596]. Twelve witnesses, including Appellant, were examined and cross examined. Nothing in the ROC suggests that Appellant asked for additional time or that the Commission put any restriction on the time allowed for Appellant to make his defense. The Commission asked the defense if they were resting and the only response was “We’ll make a closing.” Appellant has failed to prove clear error.

Category VI-Mistake and Injustice in the Judgment

Appellant contends that in addition to the suspension imposed on January 24, 2015, the censure of Indefinite Suspension from Office is not commensurate with the offenses. The Appellant argues that a censure of Admonition or Definite Suspension from office would be more commensurate.

Appellant was convicted of three offenses; each offense involving the breaking of one of his ordination vows. BCO 30-1 states that definite suspension is only appropriate for “an accused who, upon conviction, satisfies the court as to his repentance and make restitution as appropriate.” The issue of whether or not the Appellant is repentant is left with MAP. MAP issued the only censure that was appropriate for the conviction, that is:

We, the Metropolitan Atlanta Presbytery in the name and by the authority of the Lord Jesus Christ, do now declare you suspended from the exercise of your office, until you give satisfactory evidence of repentance.” (underline in original).

For the reasons stated above, Appellant has failed to sustain any of the specifications of error raised in his appeal. The judgment of MAP is upheld.

BCO 35-7 allows the court of final appeal to assess the cost of transcription equitably among the parties. The SJC assesses the cost of transcribing this trial equally between the parties. However, we encourage MAP, as an act of mercy, to consider absorbing the entire cost.

The Panel’s Proposed Decision was drafted by RE Jones and RE Nusbaum and edited by the Panel, and further amended and approved by the SJC on the following roll call vote:

| | | |
|------------------------|-------------------------|---------------------------|
| Barker, <i>Concur</i> | Duncan, <i>Concur</i> | Meyerhoff, <i>Dissent</i> |
| Bise, <i>Concur</i> | Evans, <i>Concur</i> | Neikirk, <i>Concur</i> |
| Burnett, <i>Absent</i> | Fowler, <i>Concur</i> | Nusbaum, <i>Concur</i> |
| Cannata, <i>Absent</i> | Greco, <i>Concur</i> | Pickering, <i>Concur</i> |
| Carrell, <i>Concur</i> | Gunn’ <i>Concur</i> | Fowler, <i>Concur</i> |
| Chapell, <i>Concur</i> | Jones, <i>Concur</i> | Terrell, <i>Concur</i> |
| Coffin, <i>Concur</i> | Kooistra, <i>Concur</i> | White, <i>Recused</i> |
| Donahoe, <i>Concur</i> | McGowan, <i>Concur</i> | Wilson, <i>Concur</i> |