

**FILED**

**December 13, 2001**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**

**December 14, 2001**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, J., concurring:

I concur with the majority opinion's refusal to approve Mr. McMillian's admission to the practice of law at this time. I write separately to point out that nothing in the majority's *per curiam* opinion, in which I fully join, would preclude Mr. McMillian, after a period of time, from reapplying for the privilege of practicing law in West Virginia. Allowing a longer period to pass before reapplying for admission may give Mr. McMillian the opportunity to demonstrate that he has been rehabilitated.

Rehabilitation is at the heart of our American judicial system. "Rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct." Syllabus Point 2, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980). This same principle of rehabilitation applies to an applicant seeking initial admission to the practice of law.

A felony is a strong negative to overcome, but, depending on the gravity of the felony, one that may be overcome with time and exemplary behavior. "Time provides the applicant an opportunity to build a record of good character and integrity." *In Re Brown*, 166 W.Va. at 235, 273 S.E.2d at 572. *In accord*, *Matter of Hiss*, 368 Mass. 447, 460 n.19, 333 N.E.2d 429, 437 n.19 (1975) ("[A] long time span between disbarment and petition for reinstatement, during which the petitioner's conduct was exemplary, reinforces his claim to rehabilitation.").

If Mr. McMillian hopes to ever be admitted to the West Virginia State Bar sometime in the

future, he might be wise to put his legal education to use in both his employment and private life -- *e.g.*, working as a paralegal and volunteering at a legal aid office. In this way, Mr. McMillian might demonstrate his rehabilitation through his commitment to the law. *See In Re Brown*, 166 W.Va. at 235, 273 S.E.2d at 572 (“A further important area of inquiry is the applicant’s activity and conduct since the date of his disbarment, since it is upon this objective record that good character must be judged.”).

In addressing Mr. McMillian’s concern that this Court is holding him to a higher standard than we hold disbarred lawyers, I note that Mr. McMillian is different from most other applicants seeking admission or reinstatement to the practice law. His misconduct was not the result of a youthful indiscretion, but rather was the act of a former law enforcement officer who certainly should have known better. *See In Re Brown*, 166 W.Va. at 235, 273 S.E.2d at 572 (“Another factor to be considered on reinstatement is the maturity and experience of the practitioner at the time of his disbarment -- a recognition that a youthful and inexperienced attorney may have blundered as a result of inexperience rather than as a result of deliberate calculation.”).

Lawyers and those who wish to be lawyers are held to a high standard because of the unique position that they hold in our society. “Woven throughout our disciplinary cases involving attorneys is the thought that they occupy a special position because they are actively involved in administering the legal system whose ultimate goal is the evenhanded administration of justice. Integrity and honor are critical components of a lawyer’s character as are a sense of duty and fairness.” *In Re Brown*, 166 W.Va. at 232, 273 at 570. By not admitting Mr. McMillian to the practice of law at this time, we are merely holding him to the same high standard that we hold others who wish to practice law in West Virginia.

Considering the offenses that Mr. McMillian committed, as a former law enforcement

officer, he should be grateful that this Court is simply denying his admission to practice law at this time, as opposed to making an explicit holding that he may never practice law in the State of West Virginia.