

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-649171-D1 AND  
ALL OTHER SEAMAN DOCUMENTS

Issued to: Albert B. McPherson

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1540

Albert B. McPherson

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 July 1965, an Examiner of the United States Coast Guard at Baltimore, Maryland revoked Appellant's seaman documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a messman on board the United States SS MORMACPRIDE under authority of the document above described, Appellant wrongfully failed to perform his duties from 26 June through 9 July 1965. The voyage was completed on the latter date at Baltimore.

Appellant was present, without counsel, when the hearing was convened on the morning of 12 July; but after a recess prior to arraignment, Appellant did not return. The hearing was then conducted in absentia. Entries in the ship's Official Logbook, which were introduced in evidence, established the required prima facie case with respect to all of the offenses alleged.

As a result of a branch of the law on 12 or 13 July, Appellant

was arrested. He was hospitalized for mental observation on 13 July and transferred to another hospital a month later due to his mental condition. In a letter dated 24 November 1965, the resident psychiatrist at the first hospital expressed the opinion that Appellant was incompetent to stand trial and that the act, for which he had been arrested, was a product of his mental illness.

On appeal, Appellant requests a rehearing because he was suffering from mental illness at the time of the hearing on 12 July. Appellant states that he has now recovered after hospitalization for several months.

### *Opinion*

In view of the proximity of the hearing to the time when Appellant was hospitalized and found to be suffering from mental illness, it is my opinion that Appellant would have been mentally incompetent to conduct his defense if he had returned after the recess. Therefore, the conclusion that the specifications were proved is set aside and the case will be remanded to give Appellant a reasonable opportunity to present evidence in his defense.

Although the Examiner's opinion states that the allegations were proved by substantial evidence (entries in the Official Logbook), the opinion also states that, by his default in failing to remain until the end of the hearing, Appellant admitted the offenses alleged. The latter statement was not only superfluous but erroneous. See *Commandant's Review* No. 6.

### *Order*

The order of the Examiner dated at Baltimore, Maryland, on 14 July 1965, is VACATED. The record is REMANDED with the directions to reopen the hearing for further proceedings not inconsistent with this decision. Such proceedings shall be conducted at Houston, Texas by a different Examiner unless some other location is mutually agreeable to the Examiner and Appellant. The Examiner shall then render a decision including an appropriate order.

W. D. SHIELDS  
Vice Admiral, United States Coast Guard

Acting Commandant

Signed at Washington, D. C., this 28th day of January 1966.

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