

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS No. Z-1069553
Issued to: Miguel A. DIAZ

DECISION OF THE COMMANDANT

1957

Miguel A. DIAZ

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

By order dated 6 March 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's seaman's documents upon finding him guilty of "conviction for a narcotics drug law violation." The specification found proved alleges that Appellant was convicted of violation of the narcotic drug laws of the United States by the United States District Court for the Southern District of New York, a court of record.

The hearing was held in absentia. A plea of not guilty to the charge and specification was entered on behalf of Appellant.

The Investigating Officer introduced in evidence the record of conviction.

At the end of the hearing, the Administrative Law Judge

rendered an oral decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then entered an order revoking all document issued to Appellant.

The entire decision was served on 1 July 1972. Appeal was timely filed on 10 July 1972.

FINDINGS OF FACT

On 8 September 1971, Appellant pled guilty to violation of a narcotics drug law of the United States and was convicted.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) the order of revocation is cruel and inhuman in light of the fact that he was only experimenting with marihuana; and

(2) he did not receive adequate notice of the charge.
APPEARANCE: Appellant, on his own behalf.

OPINION

I

It is first noted that Appellant did not appear at his hearing, even though he had previously received two continuances. In failing to appear he waived his right to present evidence in mitigation of the charge and such evidence is not appropriately raised on appeal. Therefore, Appellant's contention that he was only experimenting with marihuana for the first time in his life when he was apprehended is not properly raised at this level of the proceedings.

II

Appellant's argument that revocation is cruel and inhuman is presumed to mean that revocation is "cruel and unusual punishment"

prohibited by the Sixth Amendment. This point is not well taken since revocation under 46 U.S.C. 239b has never been held to constitute punishment much less "cruel and unusual punishment." Under 239b, once a conviction of a violation of a narcotics drug law is proven, revocation is mandatory. In entering the order of revocation the Administrative Law Judge was following the mandate of the Statute.

III

Appellant's contention that he did not receive adequate notice of the charge is likewise without basis. The original charge and specifications were dismissed without prejudice by the Administrative Law Judge prior to hearing at the request of the Investigating Officer. However, when a new charge was drawn based upon Appellant's conviction for possession of marihuana, the record clearly indicates that a copy was served on Appellant and he acknowledged receipt by his signature on the reverse side of the charge sheet. There is also the unrefuted testimony of the Investigating Officer that he personally delivered the copy to Appellant and at that time advised him as to all pertinent matters relating thereto. Consequently, Appellant received adequate notice as required by statute.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 6 March 1972, is AFFIRMED.

T. R. SARGENT
Vice Admiral United States Coast guard
Acting Commandant

Signed at Washington, D.C., this 27th day of June 1973.

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