

In the Matter of Certificate of Service No. E-735463  
Issued to: CARLOS SOTO

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

358

CARLOS SOTO

This appeal comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 18 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" supported by a specification alleging that while Appellant was serving as a scullery deck boy on board the American SS SANTA PAULA, under authority of Certificate of Service No. E-735463, he had in his possession, on or about 28 April, 1949, two marijuana cigarettes, contrary to law. (26 U.S.C. 2593)

The hearing was adjourned so that the person charged could obtain an interpreter who was present for the remainder of the hearing. Although Appellant was adequately advised of his right to obtain counsel, he voluntarily chose to represent himself. Upon the request of the Investigating Officer, the Examiner changed Appellant's qualified plea of "guilty" to a plea of "not guilty." At the conclusion of the hearing, the Examiner found the specification and the charge "proved" and entered an order revoking the Appellant's Certificate of Service No. E-735463.

In his appeal, which is now submitted by an attorney, Appellant contends that he had no knowledge of the presence of the marijuana among his belongings until he was searched by the Customs Officer and, therefore, he is perfectly innocent. Appellant also states that he was not represented by counsel; he was not familiar with the proceedings, and he was not able to express himself very well inasmuch as he speaks very little English. For these reasons, he requests that he be given another hearing if his appeal is not granted.

His appeal also contains a plea for clemency in that he has a wife and four children to support with the money he receives from going to sea.

There is no record of any previous disciplinary action having been taken against the Appellant.

#### *FINDINGS OF FACT*

On or about 28 April, 1949, Appellant was serving as a member of the crew in the capacity of scullery deck boy on board the American SS SANTA PAULA, under authority of Certificate of Service No. E-735463, while the ship was at the port of New York. On this date, Appellant was searched by a Port Patrol Officer while he was leaving the pier at which the ship was berthed. Appellant was carrying a suitcase and when asked if he had anything to declare, he replied in the negative. The Officer searched his suitcase and found two hand-rolled marijuana cigarettes inside a spool of thread in Appellant's sewing box which was in the suitcase. Appellant told the Officer that somebody on the ship must have put the cigarettes in the sewing box which he often loaned to members of the crew. He said he did not smoke that type of cigarette; he did not know how they had gotten there, and that he did not roll any cigarettes but smoked regular cigarettes. The Officer also found one marijuana seed in a pocket of Appellant's shirt, another seed in the bottom of the suitcase, and some Bull Durham papers for rolling cigarettes in his pants pocket. Appellant did not reply when the Officer asked him why he had the paper for rolling cigarettes if he never rolled any cigarettes. A search of Appellant's quarters aboard the ship failed to disclose any further traces of marijuana. Appellant's quarters consisted of a room which he shared with five other men aboard the ship.

*OPINION*

The evidence in this case clearly establishes that Appellant had possession of two marijuana cigarettes, but there is no positive or affirmative evidence in the record upon which to base the Examiner's finding that such possession was contrary to law. To warrant a finding that the possession was contrary to 26 U.S.C. 2593 where a plea of not guilty is entered there must be some evidence showing that the Appellant had not paid the transfer tax on the cigarettes. Moreover, the citation of that statute in the specification precludes the possibility of proving that the possession was unlawful under any other statute, such as the Food and Drugs Act, 21 U.S.C. 184-a.

*CONCLUSION AND ORDER*

The order of the Examiner dated New York on 18 May, 1949, is VACATED, SET ASIDE and REVERSED, and the record in this case will be REMANDED for further proceedings not inconsistent herewith.

J.F. FARLEY  
Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 7th day of September, 1949.

\*\*\*\*\* END OF DECISION NO. 358 \*\*\*\*\*

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