

In the Matter of Certificate of Service No. A-16068
Issued to: STELIOS MONTSOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

436

STELIOS MONTSOS

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

On 16 December, 1949, an Examiner of the United States Coast Guard at New York City, revoked Certificate of Service No. A-16068 issued to Stelios Montsos upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as boatswain on the American S. S. FRANCIS SCOTT KEY, under authority of the document above described, on or about 24 April, 1947, he wrongfully assaulted and killed a fellow crew member, William J. Detlef, with a pocket knife while the ship was in the port of Chinwangtao, China.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of the Judgment and Commitment of Appellant by the U. S. District Court

for the Southern District of California, Central Division, in the case of United States v. Montsos. He then rested his case.

In defense, Appellant offered in evidence two U.S. Consular Reports, the testimony of Appellant's Federal Probation Officer and a transcript of the imposition of sentence by the Federal Court on which the above Judgment and Commitment is based. Appellant also testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner found the charge "proved" by proof of the specification and entered an order revoking Certificate of Service No. A-16068 and all other licenses, certificates or documents issued to Appellant by the U. S. Coast Guard or competent authority.

From that order, this appeal has been taken, and it is urged that the killing was not "wrongful" (which connotes "with intent" and "wilfully") because Appellant did not know, due to his intoxicated condition, that his action was wrong; that Appellant's extradition was illegal and, consequently, his conviction by the Federal court was illegal; that Appellant was not advised of his rights before answering questions contained in the consular reports; that Appellant was placed in double jeopardy; that the Examiner erred in basing his decision exclusively on the Federal court conviction; that Appellant's good record and the testimony of his Federal Probation Officer were given no consideration as mitigating facts; and that it is not the province of the Coast Guard to protect the shipping companies against law suits resulting from possible future assaults by Appellant.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 24 April, 1947, Appellant was serving as boatswain on board the American S.S. FRANCIS SCOTT KEY, acting under authority of his Certificate of Service No. A-16068, while the ship was in the port of Chinwangtao, China.

The FRANCIS SCOTT KEY had arrived at Chinwangtao on 19 April,

1947, and Appellant had been drinking heavily since 21 April, 1947. Due to his intoxicated condition, he had been relieved of his duties aboard the ship at about noon on 23 April and Detlef was put in charge of the deck crew. These two men had their quarters in the same room aboard the ship and were good friends.

At about noon on 24 April, 1947, Appellant and Detlef who had been drinking Chinese vodka while ashore were in their room drinking liquor. They had both been drinking heavily. Two seamen, who were standing outside of the room near one of its portholes, heard Appellant and Detlef arguing. Detlef then left the room saying that he was going to the toilet but that he would be back. After Detlef left the room, one of the seamen glanced through the porthole and saw Appellant standing alone with a knife in his hand. The two seamen ran around to the entrance to the room but, by the time they reached the entrance, Detlef had returned and been stabbed by Appellant in the left side of his chest near the heart. Appellant had also wounded himself in the right groin while trying to strike Detlef with the knife. When the two seamen entered the room, Appellant still had the knife in his hand and was attempting to stab Detlef a second time. One of the seamen disarmed Appellant before he could strike again. There was no indication that Detlef had used a knife or other weapon during the struggle.

Both men were taken ashore to a hospital. Detlef died about an hour later. Six stitches were taken in Appellant's groin and he returned to the ship the following day. Appellant was brought back to the United States, in the custody of the Master of the FRANCIS SCOTT KEY, and turned over to the Federal authorities.

On 15 October, 1947, Appellant was convicted, upon the verdict of a jury in the U. S. District Court for the Southern District of California, Central Division, of voluntary manslaughter as a result of the stabbing and death of Detlef. The jury deliberated about six hours before returning the verdict. At the trial, Appellant was represented by counsel appointed by the court. Counsel were commended by the judge for the careful and able manner in which they had conducted Appellant's defense.

Appellant was sentenced to three years imprisonment, the maximum penalty being ten years imprisonment. On 10 May, 1949, Appellant was released on parole under the supervision of the

Federal Probation Officer who testified at the hearing that his conduct has been entirely satisfactory since his release except for the fact that he has experienced difficulty obtaining work ashore. Appellant's parole release was conditioned on the agreement that he engage in no voyages other than coastwise.

Appellant is 53 years of age and has been going to sea for 25 years. There is no record of any previous disciplinary action having been taken against him by the Coast Guard, its predecessor authority, or civil authorities. He was on voyages in several theaters of war during the recent conflict and his ship was hit during the Normandy invasion.

OPINION

The contentions of Appellant that the Examiner relied exclusively on the res judicata aspects of the Federal Court conviction and that he gave no consideration to Appellant's excellent record are adequately discussed in the Examiner's decision. As stated therein, the conviction by the Federal court must be accepted as conclusive when the issues are substantially the same in both cases. Hence, the Examiner necessarily found that the specification and charge were "proved". And after discussing the statements made by the parole officer, the Examiner stated that he was precluded from mitigating the order due to the very serious nature of the offense committed.

There is no question concerning extradition involved in this proceeding nor is there any evidence that this jurisdictional point was raised in the Federal court or that the conviction was appealed on such grounds. Appellant was on an American ship when he committed the offense alleged and United States District courts have jurisdiction in such cases.

Appellant also contends that his actions were not "wrongful" because he was so intoxicated he did not know what he was doing and therefore he did not have the necessary "intent". Appellant was convicted of voluntary manslaughter in the Federal Court. Although "intent" and "wrongful" are not synonymous, it is self-evident that Appellant's act was "wrongful" because for committing it he was convicted of voluntary manslaughter. If the latter offense were not wrongful, it would not be a crime.

No question involving "double jeopardy" is or can be present in this case. The Fifth Amendment is addressed to the exposure of an individual to peril of "life and limb" twice for the same offense. No such peril is present here. The most serious result possible from this proceeding is revocation of a certificate which permits Appellant to sail as a seaman on American merchant vessels. In addition, this is a remedial proceeding and the doctrine of "double jeopardy" is applicable only to proceedings which are essentially criminal. *Helvering V. Mitchell (1938)*, 303 U.S. 391. The fact that punishment is inflicted, in a certain sense, is not enough to label the statute in question as a criminal one. *Brady v. Daly (1899)*, 175 U.S. 148.

Appellant also contends that his rights were infringed when he was questioned by the U. S. Consul in China. Whether this be true or not, it does not constitute reversible error since the Federal court record is ample evidence on which to find the charge "proved" without considering the consular reports which contain Appellant's answers to the questions he states improperly invaded his rights. Moreover, the consular reports were voluntarily introduced in evidence by Appellant's counsel despite no attempt by the Investigating Officer to use any part of them.

I agree with Appellant's argument that it is not the duty of the Coast Guard to protect the shipping companies against damage suits by revoking seamen's certificates. The conspicuous absence, from the opinion of the Examiner of reference to any such duty obviously indicates that the severity of the order was not affected by this factor. The Examiner has aptly stated that "the statutory duty of the agency is to take the utmost precaution to maintain discipline and to safeguard the lives of seamen serving aboard American merchant vessels at sea. * * * * There is no assurance that he, if permitted to return to sea, * * * * might not again * * * * wrongfully wound and kill another shipmate." Since I am in accord with the above statement, the order must be sustained despite Appellant's commendable record up to the time of this incident.

ORDER

The Order of the Examiner dated 16 December, 1949, should be,

and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 31st day of May, 1950.

***** END OF DECISION NO. 436 *****

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