

In the Matter of Merchant Mariner's Document No. Z-51650-D5
Issued to: ERNEST DURHAM

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

484

ERNEST DURHAM

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

On 10 November, 1950, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-51650-D5 issued to Ernest Durham upon finding him guilty of "misconduct" based upon a specification alleging that while serving as utilityman on board the American SS LA GUARDIA, under authority of the document above described, on or about 8 November, 1950, he wrongfully had a narcotic substance, hashish, in his possession while said vessel was in the port of New York.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the seriousness of the alleged offense and the possible consequences. Although advised of his right to be represented by counsel, he elected to act as his own counsel and entered a plea of "guilty" to the charge and specification.

After the Investigating Officer had made his opening statement, Appellant made a statement and testified under oath in his own behalf. Appellant stated that he had purchased the hashish

at Haifa in October, 1950, and had smoked some of it during the same voyage. He then put the remainder of the hashish in his wallet and forgot about it until it was found there by a Customs patrol officer.

At the conclusion of the hearing, the Examiner found the specification and charge "proved by plea" and entered an order revoking Merchant Mariner's Document No. Z-51650-D5 and all other documents, licenses and certificates issued to Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken and it is contended that, contrary to his testimony at the hearing, the hashish had been "planted" in Appellant's wallet and he was astonished and bewildered when the Customs officer discovered it there. Appellant states that he committed perjury at the hearing because he was told that nothing would happen if he admitted having used the hashish. There is also a lengthy discourse on the prevalence of narcotics and its addicts on board American merchant vessels but Appellant definitely states that he has never used narcotics.

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

FINDINGS OF FACT

On 8 November, 1950, Appellant was serving as utilityman on board the American SS LA GUARDIA, under authority of Merchant Mariner's Document No. Z-51650-D5, while said vessel was in the port of New York. On this date, Appellant was searched by a Customs patrol officer aboard ship and about twenty-seven grains of hashish were found in his wallet. Prosecution by Federal authorities was declined because of the small quantity of hashish involved.

Appellant's documents were suspended for two months on twelve months' probation in 1949 for depositing his documents with another person; his documents were suspended for one month on six months' probation in 1944 for failure to join and fighting with a crew member; and he was admonished in 1945 for absence without leave. Appellant testified that he is thirty years old, single, and has

been going to sea almost fifteen years.

OPINION

Nothing need be added to the Examiner's opinion with respect to the consistency with which seamen's documents have been revoked in narcotics cases.

The detrimental and unpredictable effects of hashish are the same as marijuana since it is prepared from the flowering tops and leaves of the same plant - Cannabis Sativa. The use of only a very small quantity of this narcotic is known to have caused men to lose all control of their will power and go into violent rages which resulted in vicious assaults and, sometimes, murder. When subject to prosecution for such acts, the defense has been used that the defendant was temporarily insane because he was under the influence of the narcotic to such a degree that he was unable to appreciate the difference between right and wrong. Such potential danger, when this narcotic is aboard American merchant vessels, cannot be tolerated and the order of revocation in all such cases is the only means by which an attempt can be made to effectively remove this threat to the safety of life and property at sea.

In addition, Appellant is apparently such an irresponsible person that his word, that he would never do it again if given another chance, means absolutely nothing. His sworn testimony at the hearing and his appeal, sworn to before a notary, are admittedly completely inconsistent. Consequently, neither one is fully worthy of belief.

ORDER

The Order of the Examiner dated 10 November, 1950, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 25th day of January, 1951.

***** END OF DECISION NO. 484 *****

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