

In the Matter of Merchant Mariner's Document No. Z-756907  
Issued to: MIGUEL A. GUERRERO

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

503

MIGUEL A. GUERRERO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 18 April, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-756907 issued to Miguel A. Guerrero upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS JAMAICA under authority of the document above described, on or about 26 March, 1951, while said vessel was in the port of New York, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although repeatedly advised of his right to be represented by counsel of his own selection and the seriousness of the charge, Appellant voluntarily elected to waive that right and act as his own counsel. After stating that he had read the charge and specification, understood them and had no questions to ask about them, Appellant entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the port patrol officer who had apprehended Appellant with the marijuana cigarette in his possession.

During the hearing, Appellant admitted possession of the marijuana cigarette, stated that he had never smoked marijuana and that he was so nervous when questioned by the patrolman that he didn't know how he answered the questions addressed to him.

At the conclusion of the hearing, having given Appellant an opportunity to submit any further statement, the Examiner announced his findings and concluded that the charge had been proved by plea and entered the order revoking Appellant's Merchant Mariner's Document No. Z-756907 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was deprived of a fair hearing since he was not represented by counsel and because he was not provided with an interpreter to inform Appellant of the nature of the charge and to permit him to explain his side of the case in an orderly and lucid manner; that there is no adequate basis in the record for the finding of the Examiner that Appellant knew the package contained a marijuana cigarette and the plea should have been changed to "not guilty" since he denied such knowledge; and that, therefore, Appellant should have been found innocent since the Examiner used the plea of "guilty" as the determining factor rather than requiring the Investigating Officer to sustain the burden of proof which would have been required under a plea of "not guilty."

APPEARANCES: Messrs. Feingold and Falussy of New York City, by  
Alfred Feingold, Esquire, of Counsel

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

*FINDINGS OF FACT*

On 26 March, 1951, Appellant was serving as a wiper on board the American SS JAMAICA and acting under authority of his Merchant Mariner's Document No. Z-756907 while said vessel was berthed at Pier 3, North River, New York City, upon completion of a foreign voyage.

At about 1640 on this date, Appellant had departed from the ship and was about to leave the pier when he was stopped by a port patrol officer and asked if he had anything to declare. Appellant said he had nothing to declare and the patrolman proceeded to search him. There was a sea stores package of Camel cigarettes in Appellant's outside overcoat pocket. Appellant was evasive and nervous as the patrolman examined this package. The top of this package had been partially opened in the usual manner. The patrolman broke the seal in order to completely open the flaps of the package and he found a marijuana cigarette which had been concealed from sight behind four Camel cigarettes under the closed portion of the flap. Appellant told the patrolman that he had found the package on the deck of his ship near the gangway and that he knew there was a marijuana cigarette in the package. A search of Appellant's belongings and his quarters aboard the ship failed to disclose any further evidence of narcotics.

There is no record of any prior disciplinary action having been taken against Appellant since he started going to sea in 1935.

#### *OPINION*

Upon carefully reviewing the record, I do not find that Appellant was denied his constitutional right to a fair hearing nor that there was other prejudicial error which dictates the propriety of reversing or modifying the action taken by the Examiner in revoking Appellant's documents.

Appellant was advised on 3 April, 1951, of the "serious" charge against his document. The hearing was held on 10 April, 1951 - a week later - during which time he had full opportunity to think over the advice given him by the Investigating Officer and prepare to defend himself. This chronology demonstrates to my satisfaction that he had abundant time to arrange for representation by counsel or with an interpreter and if the record

contains any passages reflecting his ineptness of expression, I can find no one responsible but himself. His wife's linguistic knowledge, mentioned by counsel, could have afforded him maximum protection; and if he elected not to utilize her services no criticism should be laid against the Examiner for not calling an interpreter for a man who undertook to handle the situation without other assistance.

After having been thoroughly and repeatedly informed as to the seriousness of the alleged offense and his right to be represented by counsel, Appellant stated without hesitation that he would represent himself (R. 1, 2). With equal facility, Appellant further stated that he had read the charge and specification, understood them, and had no questions to ask about them (R. 3). Then the Examiner read the charge and specification to Appellant and he replied, "I am guilty," although the Examiner had told him to plead "not guilty" if there was any doubt in his mind (R. 3).

Due to the meticulous manner in which the Examiner proceeded in order to be certain that Appellant's rights were fully protected, I feel there is no merit to the contention that the lack of counsel and an interpreter deprived Appellant of a fair hearing. There is every indication that Appellant understood the nature of the charge and the full significance of his plea of "guilty." His own concluding words are significant: "I lost my fight." Consequently, it would not have been necessary for the Examiner to prolong the hearing to the extent of admitting evidence and statements into the record in order to comply with the requirements of a fair hearing.

While there is some indefiniteness in Appellant's subsequent statements, it does not appear that he said anything which was necessarily inconsistent with his definite plea of "guilty" so as to require the Examiner to enter a plea of "not guilty" for the person charged. Appellant stated that he knew it was a marijuana cigarette (R. 4) and that he told the patrolman it belonged to him (R. 10). This substantiates the patrolman's testimony that Appellant, at the time of the discovery, admitted knowing that one of the cigarettes in the package was made of marijuana (R. 9) and the Examiner's finding to this effect (R. 13). The Examiner stated that he was satisfied with the testimony of the patrolman as to what Appellant had said at the time of the search (R.11).

If there was any doubt as to the adequacy of the plea of "guilty" arising from the subsequent statements made by Appellant, the defect was cured by the disposition of the Examiner (acting as the best judge as to the credibility of the witnesses) to accept the testimony of the patrolman and to totally reject any statements by Appellant which could be interpreted as conflicting with such testimony.

Appellant stated that he was so nervous when the marijuana cigarette was discovered that he did not know whether he was answering "yes" or "no" to the questions addressed to him by the port patrol officer (R. 10). This does not explain the significance of the latter's testimony that Appellant was very nervous before the marijuana cigarette was produced. If he had no knowledge that the package contained a marijuana cigarette, there would have been no reason for this indication of apprehension on Appellant's part. And it is reasonable to assume that he would have emphatically denied knowing anything about the marijuana cigarette.

It may be conceded that the cases cited by counsel are quite persuasive on the legal proposition to which they apply, - viz., the protection of persons whose native language is foreign to ours who are charged with criminal offenses. But this Appellant is not before a criminal tribunal; he is not charged with any crime; and the administrative processes of the Coast Guard are not bound by rules of criminal procedure. However, the Coast Guard does extend to persons subject to its disciplinary authority every constitutional and reasonable protection to which they are entitled; and I take official cognizance of the presence of a Spanish-speaking employee of the Coast Guard in the office where this hearing was conducted - whose services could have been employed had Appellant so desired.

The numerous cases of this kind which have passed before me give ample reason to believe that an interpreter would have been called had either the Examiner or the Investigating Officer entertained any doubt respecting Appellant's ability to understand the charge and present a defense thereto. I feel strongly that, despite the well-known policy of the Coast Guard toward such cases, this Appellant did not treat the situation with the apprehension it required, and, having lost his "fight" now seeks a rehearing on

technical grounds that then he can take advantage of a privilege which was always present, but which, throughout a full week before the hearing he made no effort to utilize.

### CONCLUSION

The conclusions of the Examiner are supported by substantial evidence as well as by Appellant's plea of "guilty." The presumption of innocence in favor of Appellant was overcome by proof of possession which became conclusive proof of the allegations in the absence of any explanation which was considered by the Examiner to be satisfactory. Because of the harmful nature of narcotics, and the history of serious consequences attending their presence on shipboard, possession of narcotics by merchant seamen has been considered for a long time to be wrongful *per se* unless satisfactorily explained. Therefore, the allegation of "wrongfully" possessing marijuana was proved and the order of revocation must be sustained.

### ORDER

The Order of the Examiner dated 18 April, 1951, should be, and it is, AFFIRMED.

A. C. RICHMOND  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 19th day of October, 1951.

\*\*\*\*\* END OF DECISION NO. 503 \*\*\*\*\*

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