

In the Matter of Certificate of Service No. C-130970
Issued to: JUAN GONZALEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

508

JUAN GONZALEZ

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 20 March, 1951, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. C-130970 issued to Juan Gonzalez upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as oiler on board the American SS PIONEER BAY under authority of the document above described, on or about 23 January, 1951, while said vessel was in the port of Boston, Massachusetts, he wrongfully had marijuana in his possession and he wrongfully deserted said vessel.

At the hearing an interpreter was obtained for Appellant and he 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 advised of his right to be represented by an attorney of his own selection, Appellant voluntarily stated that he would represent himself. He entered a plea of "not guilty" to the charge and each specification proffered against him and read to him through the interpreter.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of extracts from the official log book of the PIONEER BAY for the voyage terminated on 30 January, 1951, the deposition of the U. S. Customs port patrol officer who arrested Appellant, and a certified copy of the U. S. Customs Laboratory report.

In defense, Appellant testified under oath in his own behalf. He stated that he had found half a package of Australian cigarettes on the deck and was taking them to his wife because she liked to smoke foreign cigarettes in front of people. As to the desertion charge, Appellant claims that the Master refused to sign him off by mutual consent or to pay him any wages when Appellant left the ship with a certificate to report to the hospital in Boston; and that he reported to the New York hospital instead since his family was in that city.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his opinion and findings and concluded that the charge had been proved by proof of the specifications and entered the order revoking Appellant's Certificate of Service No. C-130970 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's release by the Customs authorities is indicative that they believed Appellant's statement that he did not know the package of Australian cigarettes contained one partially smoked marijuana cigarette; that since Appellant left the ship with the Master's permission to report to a hospital and because he left some of his personal belongings on board, he was not guilty of desertion for having gone to the New York hospital instead of the one in Boston. There is also a plea for clemency based on the necessity for Appellant to support his family by pursuing the only work which he is fitted for and enjoys doing.

FINDINGS OF FACT

On 23 January, 1951, Appellant was serving as oiler on board the American SS PIONEER BAY and acting under authority of his

Certificate of Service No. C-130970 while said vessel was in the port of Boston, Massachusetts.

On this date, Appellant was issued a hospital certificate by the Master who refused to give Appellant a release from the shipping articles by mutual consent or to give him any of his wages before he left the ship at Boston. There had been a request for "money to go and pay taxi" but not a demand for half-wages by Appellant.

Rather than going to the Boston hospital after leaving the ship on the 23rd, Appellant proceeded to New York where his family lived, and reported to the U. S. Marine Hospital in New York on the 26th. He was given several treatments at the latter hospital.

In the meanwhile and before departing from Boston on the 26th, the Master of the PIONEER BAY ascertained that Appellant had never reported to the Boston hospital and thereupon logged Appellant on the 26th as a deserter. On the 29th, it was brought to the Master's attention that Appellant had left all of his clothing in a suitcase aboard the ship.

On 23 January, 1951, Customs officials conducted a routine search of the ship in the course of which a Customs Officer examined Appellant's belongings, quarters, and his person. Inside of a package of Australian cigarettes which was found on top of the clothing in Appellant's suitcase, there was about one-half of a cigarette which was a partially smoked marijuana cigarette. The cigarette package was the box-like cardboard type which opens up and contains two sections of cigarettes wrapped in paper. In addition to the marijuana cigarette, there were three or four Australian cigarettes in the package. Subsequent analysis disclosed that the partially smoked cigarette contained .02 ounces of marijuana, net weight (9 grains). Further search at the time and a subsequent research of Appellant's suitcase failed to disclose any additional evidence of marijuana. Appellant was interviewed in his quarters by the Customs officer making the discovery and then released without any subsequent action having been taken by the Federal authorities.

There is no record of any prior disciplinary action having been taken against Appellant during his twenty-three years at sea.

Appellant is married and is forty-four years of age.

OPINION

A review of the record indicates that the conclusion of the Examiner, that the second specification (which charges Appellant with the offense of desertion) is proved, should be reversed and the second specification dismissed for lack of evidence that Appellant had an unjustified intent to abandon the ship.

Appellant departed from the ship with the full authority and permission of the Master to report to a U. S. Public Health Service hospital for treatment. He had obtained the proper medical certificate to gain admission for such treatment. Appellant had left his suitcase containing his clothing aboard the ship. Presumably, he was to report to the Marine Hospital in Boston and when it was discovered that he had not put in an appearance there after a lapse of three days, the Master logged him as a deserter. It also appears from a later log entry that at the time of the desertion logging it was not known to the Master that Appellant had left his clothes aboard. Nor was it known that he had reported to a different hospital.

Actually, Appellant reported to the New York Marine hospital for treatment on the same day on which he was logged as a deserter. It seems very unlikely that such an entry would have been entered in the official log book if the Master had known of this fact. This view is substantiated by the subsequent payment to Appellant of his wages for the voyage perforce of a mutual release signed by this same Master and the Shipping Commissioner of New York. This circumstance indicates that there was no attempt by the shipowners to claim a forfeiture of wages for desertion. While not conclusive in these proceedings, the absence of such a claim is persuasive especially when backed up by the fact that Appellant did report to a hospital and did obtain medical treatment. An additional factor which negatives proof of desertion is that Appellant left his packed suitcase of clothing aboard the ship. Therefore, the second specification must be dismissed.

The problem concerning the adequacy of the evidence with respect to the first specification are more difficult but I am not convinced that the allegations contained therein have been proven.

Despite minor inconsistencies in the testimony of the appellant which are probably due to a misunderstanding of the questions asked or slightly imperfect translations of his replies, his basic explanation concerning the presence of the partially smoked marijuana cigarette seems to me to be perfectly consistent throughout Appellant's testimony and it is in no way contradicted by the deposition of the Customs Officer who seized the marijuana. Appellant originally stated to the Customs Officer that he found the package of Australian cigarettes on the deck of the ship and he was taking it home to his wife.

At the hearing, Appellant testified that while the ship was in Australia, the Master was required to ration the sale of American cigarettes and issue them only once a week or once every ten days; and that at a time when no one had any American cigarettes, he found this package of Australian cigarettes on the deck of the ship. Appellant stated that later in the same day the Master sold American cigarettes to the crew and, therefore, Appellant put the package of Australian cigarettes in his locker after having smoked two or three of them and later put it on top of his clothes in his suitcase when he packed it before leaving the ship.

Appellant stated in the course of his testimony that he did not see or have any knowledge that the package contained a partially smoked cigarette until the Customs Officer took the paper wrapping off some of the cigarettes including the partially smoked one. And Appellant did not at any time testify that he did see and know that the package contained a half smoked cigarette of any type.

The impression gathered from the none too clear or coherent testimony is that Appellant smoked the remainder of the cigarettes contained in the already opened section of the package but that he did not open the other section of cigarettes which were wrapped in paper and that the marijuana cigarette was contained in this latter group together with three or four Australian cigarettes. Appellant stated: "I saved the half of package there" (R.17); "There are two little packages inside the package" (R.17); "I took half of it" (R.23); "That cigarette he [Customs Officer] found was probably on the bottom of the package. I never touched that one; just smoked this half where there is two or three in there" (R.23); "I didn't

see the cigarettes until the Customs broken open the pack" (R.23); "He feel it like this (indicates). He opened it like this" (R.23).

In view of these statements and in the absence of any contradictory testimony in the deposition of the Customs Officer, I discern no reason for attacking Appellant's credibility on the basis of alleged discrepancies in his testimony explaining his failure to detect or remove the partially smoked cigarette from the package. Nor is it likely that the inner smaller package was sealed in any such a manner that the half cigarette could not have been inserted and the paper wrapping folded in such a way as to conceal the marijuana cigarette from view when the box-like package was opened. And there was no attempt at concealment if the package was found on top of the other things in Appellant's suitcase.

Possibly, a detailed deposition from the Customs Officer would show up some fallacies in the testimony of the Appellant and lend weight to the belief that his statements did not adequately explain the presence of the marijuana cigarette. The deposition in the record contains no details as to the wrappings on the cigarettes, the type of package containing the cigarettes, the location of the package, or precisely to what extent it was necessary to search in order to discover the marijuana cigarette.

For these reasons, I do not feel that the statements of Appellant should have been totally rejected upon the premise stated in the decision that he contradicted himself numerous times.

CONCLUSION

I do not find in this case the elements present in so many other cases which have supported conclusions that the possession of discovered marijuana was "wrongful." There was no attempt at secretion of the cigarettes to escape detection; nor any other circumstance susceptible of interpretation as "guilty knowledge."

ORDER

The order of the Examiner dated 20 March, 1951, is VACATED, SET ASIDE and REVERSED. The record is remanded to an Examiner in the Third Coast Guard District with directions to dismiss the

Second Specification and to receive any further available evidence to support the allegations of "wrongful" possession of marijuana contained in the First Specification. In the alternative, the First Specification should be found not proved and dismissed.

REVERSED and REMANDED for further hearing not inconsistent herewith

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

Dated at Washington, D. C., this 27th day of September, 1951.

***** END OF DECISION NO. 508 *****

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