In The Matter Of Merchant Mariner's Document No. Z-600675
Issued to: ELIJAH KINLOCK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

547

ELIJAH KINLOCK

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 23 October, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-600675 issued to Elijah Kinlock upon finding him guilty of misconduct based upon seven specifications alleging that while serving as ordinary seaman on board the American SS EXCAMBION and SS MORAZAN underauthority of the document above described, between 25 December, 1950 and 13 September, 1951 he did:

"First Specification: * * * on or about 26 December, 1950, while the vessel was at Leghorn. Italy, wrongfully fail to turn to by reason of intoxication.

"Third Specification: * * * on 28 December, 1950, while your vessel was at Genoa, Italy, wrongfully fail to turn to between 1300 and 1700.

"Fourth Specification: * * * on 29 December, 1950, while the vessel was at Genoa, Italy wrongfully fail to turn to on the

1200 to 1600 watch, during which the vessel was being prepared for sea

"Fifth Specification; * * * on 10 January 1951, at Boston, Massachusetts, wrongfully have in your possession or control a narcotic substance; to wit, marijuana

"Sixth Specification; * * * on 10 January, 1951, at Boston, Massachusetts, wrongfully have in your possession or control a narcotic substance; to wit, hashish.

"Seventh Specification: * * * at the Port of New York on 24 August,1951, wrongfully fail to turn to.

"Eighth Specification: * * * at Wilmington, California wrongfully fail to join your vessel on 12 September, 1951."

The Second Specification was dismissed upon completion of the Investigating Officer's case in chief.

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 advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the first, third, fourth and eighth specifications proffered against him; and a plea of "not guilty" was made to the second, fifth, sixth and seventh specifications.

Thereupon, the investigating Officer made his opening statement and introduced in evidence certified copies of entries from the Official Log Books of the respective ships to prove the fifth, sixth and seventh specifications. In connection with the fifth and sixth specifications, there was also received in evidence a report of the U. S. Customs Laboratory at Boston, Massachusetts, and a letter signed by Customs Inspector Joseph T. Goode who had found the marijuana and hashish in Appellant's locker.

In defense, Appellant offered in evidence the testimony of the

third cook on the EXCAMBION who testified that one of Appellant's forecastle mates once showed the third cook a marijuana cigarette. Appellant testified under oath in his own behalf and stated that he had found the seeds and hashish in the bottom of his locker when he came aboard to relieve another seaman on this voyage.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, both parties were given an opportunity to submit proposed findings and conclusions. Thereafter, the Examiner announced his findings and concluded that the charge had been proved by plea to the first, third, fourth and eighth specifications, and proved by proof of the fifth, sixth and seventh specifications. The Examiner then entered the order revoking Appellant's Merchant Mariner's Document No. Z-600675 and all other licenses, certificates of sevice and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

This appeal has been taken from so much of the decision as deals with the fifth and sixth specifications since Appellant admits in substance the allegations contained in the other five specifications which were found proved. With respect to the fifth and sixth specifications, it is urged that Appellant was not represented by counsel at the hearing and he could not adequately defend himself; that Appellant has no previous record of ever dealing in narcotics or ever using narcotics; that Appellant found the narcotics in the locker of a seaman whom Appellant signed articles to relieve for only one voyage and not knowing what the narcotic substances were, he placed them in one of the pockets of a jacket with the intention of turning them over to the proper authorities on the ship; that Appellant spoke to the second cook about it at the time Appellant found the narcotics but he could not locate the second cook to appear at the hearing; that Appellant would have attempted to conceal the narcotics if he had known what it was; that there was no admission by Appellant at the time of seizure and he still denies possession or ownership of these drugs; and that since the amount of narcotics involved here was so infinitesimal as to prohibit the presumption of law in the Federal courts that possession raised the presumption of knowledge, the Examiner should not be permitted to take advantage of any such presumption in these proceedings. Wherefore, the person charged requests the dismissal of the fifth and sixth specifications or a reduction in the severity of the order imposed.

APPEARANCES: Messrs. Buxton and Miller of New York City, of Counsel

Based upon my examination of the record submitted, I hereby make the following findings of fact pertaining to the fifth and sixth specifications. Since Appellant has not appealed from the findings and conclusions with respect to the first, third, seventh and eighth specifications, it is not necessary to make findings of fact in connection with these five specifications.

FINDINGS OF FACT

On 10 January, 1951, Appellant was serving as ordinary seaman on board the American SS EXCAMBION and acting under authority of his Merchant Mariner's Document No. Z-600675 while said vessel was in the port of Boston, Massachusetts.

During a routine search of the vessel, U. S. Customs Inspector Joseph T. Goode discovered nine grains of hashish and 214 grains of viable marijuana seeds in a pocket of a sport jacket which belonged to Appellant and was in his locker. When Appellant realized that the Customs Officers were looking for him, he hid in the smokestack casing where he was finally apprehended. Upon being questioned, Appellant admitted ownership of the hashish and marijuana seeds stating that he had found them on the ship.

The nature and quantities of these substances were established by tests at the U. S. Customs Laboratory in Boston, Massachusetts. The amount of ten dollars was withheld from Appellant's wages to pay the Customs fine for this attempted illegal importation of narcotics but Appellant was not prosecuted by Federal authorities because of the small quantity of narcotics involved.

OPINION

It is my opinion that there is no merit is no merit in any of the numerous contentions urged in this appeal.

Appellant was fully instructed with respect to his right to counsel when he was served with the charge and specifications a

full week before the date of the hearing. And at the commencement of the hearing, the Examiner made it perfectly clear to Appellant that the hearing would be adjourned if Appellant desired counsel. The hearing proceeded only after Appellant reiterated that he desired to act as his own counsel. Consequently, he cannot complain at this late date that by not having counsel his rights were prejudiced in any manner, including his own failure to request as a witness the second cook to whom Appellant allegedly had spoken about the hashish and seeds at the time of their discovery by him. In this connection, it is worth while noting that the only person Appellant mentioned having spoken to about these articles was "one of the fire watch" (R.22). It would be practically impossible to locate this man since Appellant testified he did not even know the man's name after living in the same compartment with him for forty-five days.

Appellant's story is that he found the hashish and marijuana seeds in the bottom of his locker when he was cleaning the locker about five days after the beginning of the voyage on 22 November, 1950. The locker had formerly been used by a seaman whom Appellant relieved for this voyage. Although it is denied on appeal that Appellant knew what the substances were, he clearly admitted in his testimony that he was at least suspicious of the fact that they were some form of narcotics. He further stated that he intended to turn theover to the proper authorities aboard the ship but forgot about it after putting it in a pocket of a sport jacket in his locker. Appellant's admissions, that he was worried about what would happen if he was caught and that he was scared and excited when he realized the Customs officials were looking for him, are adequate evidence from which to infer that Appellant knew the nature of these articles.

But in addition to this, the Examiner stated that "the person charged tells an incredible story." I accept this finding by the Examiner as to the Appellant's credibility. The Examiner added that " * * * flight certainly bespoke a guilty conscience * * *. I am satisfied that he knew indeed they were a narcotic contraband substance."

It is also claimed that Appellant's failure to conceal the hashish and seeds indicates that he did not know what they were. It is sufficient to state that if this were a good defense to proof

of knowledge, then seamen who made the most open use and display of narcotics, but said they did not know what it was, would never be able to be prevented from contaminating the American Merchant Marine fleet.

The amount of the narcotic and the prior of the seaman involved have no significance in these cases. The presence of any narcotics aboard ships is such a great threat to the safety of lives and property that the order of revocation will be imposed in all such cases. Simply because Federal authorities sometimes fail to prosecute seamen because of the small quantity of narcotics found in their possession, has not and will not set any precedent insofar as action by the Coast Guard against a seaman's documents is concerned.

ORDER

The order of the Examiner dated 23 October, 1951, should be, and it is, AFFIRMED

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

Dated at Washington, D. C., this 20th day of February, 1952.

***** END OF DECISION NO. 547 *****

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