

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-490551"R" AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Woodrow JOHNSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1950

Woodrow JOHNSON

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 28 February 1972, an Administrative Law Judge of the United States Coast Guard at Long Beach, California revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug violation." The specification found proved alleges that on or about 10 January 1972, Appellant was convicted for violation of a narcotic drug law, to wit, importing into the U.S. hashish in violation of 21 U.S.C. 960(a)(1), 952(a).

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence record of conviction by Federal District Court for the Central District of California.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then served a written order on Appellant revoking all documents issued to him.

The entire decision was served on 29 February 1972. Appeal was timely filed on 14 March 1972.

FINDINGS OF FACT

On 10 January 1972 Appellant was convicted by the U.S. District Court, Central District of California, for violation of 21 U.S.C. 960(a)(1) and 952(a), a Federal narcotics drug law.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

(1) the evidence was insufficient to sustain a finding that Appellant was "convicted" by the court involved; and

(2) the revocation of Appellant's documents amounts to an unauthorized usurpation of the Court's powers incident to probationary procedures conferred by Congressional action.

APPEARANCE: Sam Houston Allen, for Appellant.

OPINION

Since Appellant in his brief stated that the two points raised on appeal were interdependent and more conveniently dealt with together, they will be treated in like fashion here. Appellant's argument is that the Federal District Court Judge who heard Appellant's case for violation of a Federal narcotic drug law suspended imposition of sentence and placed Appellant on probation and that by so doing did not convict Appellant within the meaning of 46 U.S.C. 239b(b)(1). Appellant cites numerous cases in support of this proposition, however, a close reading of these cases reveals no factual support for his argument.

The word "conviction" as commonly used in criminal law means finding one guilty of a certain offense. Once there is a conviction, then sentence is imposed and that becomes the *final judgment* of the court. The cases cited by Appellant support the position that there can be no final judgment for the purpose of appeal until sentence is imposed, not that there can be no *conviction* until sentence is imposed. The very statute which authorizes Federal Judges to suspend the imposition of sentence, 18 U.S.C. 3651, states that:

upon entering a *judgment of conviction* of any offense not punishable by death or life imprisonment, any court... may suspend the imposition or execution of sentence....

Thus, clearly imposition of sentence was not made an element of conviction.

The primary case relied upon by Appellant in support of his position, *James v. United States*, 348 F2d 430, is not apposite. The holding there was that: "There can be no valid pronouncement of judgment and sentence unless the defendant and his counsel are before the court." It did not hold that there was no conviction merely because the sentence imposed was void. A conviction is final when there is no issue of law or fact bearing on guilt or innocence left to be resolved by the trial court.

Commandant's Appeal Decisions [834](#) and [1786](#) are dispositive of this case and Appellant has presented no persuasive argument which would require reconsideration of those cases. Appellant was properly "convicted" within the meaning of 46 U.S.C. 239b even though imposition of sentence was suspended.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 28 February 1972, is AFFIRMED.

T. R. Sargent
Vice Admiral, U.S. Coast Guard

Vice Commandant

Signed at Washington, D.C., this 19th day of June 1973.

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