

In the Matter of Certificate No. E-1513
Issued to: SHON FOOK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

324

SHON FOOK

This case comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1 on appeal from an order entered 1 February, 1949, by an Examiner of the United States Coast Guard at New York revoking Certificate of Service No. E-1513 and all other certificates of service or documents issued to Shon Fook by the United States Coast Guard or other competent issuing authority, upon finding Appellant guilty of misconduct for that while serving as pantryman on board the American SS EXCHESTER under authority of his duly issued certificate of service, he did on or about 8 February, 1947, while said vessel was in a domestic port unlawfully have in his possession nine ounces 195 grains of crude opium.

At the hearing, Appellant was represented by counsel and the services of a competent interpreter were enlisted to translate questions propounded to and the answers made by Appellant. Counsel for Appellant entered a plea of "guilty" "with explanation" and the Appellant then voluntarily testified in his own behalf, assisted by his counsel and the interpreter. There was introduced through the Investigating Officer a letter from the Probation Officer of the United States District Court for the District of New Jersey soliciting assistance that Appellant might resume employment in the

merchant marine.

The order of revocation mentioned above was entered at the close of the hearing. This appeal followed but counsel has announced his willingness to submit the case on the record prepared before the Examiner.

The following points were submitted on behalf of Appellant at the hearing:

- (a) Appellant was tried in the District Court for New Jersey during 1947 and testified that he had found the opium in a garbage can while cleaning up the pantry; that he did not know what to do with it because the Master and the Chief Officer were ashore and he was apprehended by the Customs Officer and not permitted to explain its presence on his person;
- (b) The jury which tried Appellant in the criminal case reluctantly returned a verdict of "guilty" because of the charge given by the court; and the case was submitted to the Probation Officer whose report indicated Appellant's conduct had been exemplary up to the time he was sentenced by the court;
- (c) Appellant had worked for the Grace Lines for fifteen years and had an excellent record;
- (d) Appellant had supported his family and had never been in trouble before this occasion;
- (e) In imposing sentence, the court had suggested that Appellant's seaman's papers should be returned to him so he could pay the fine of \$500 which was assessed and to be paid within the period of three years from the date sentence was announced;
- (f) The court granted clemency and no further violations of the rules of the maritime service will occur;
- (g) Appellant has been deprived of his papers for two years

and has been hindered in earning a livelihood.

Based upon the record before me, I make the following:

FINDINGS OF FACT

At about 1:30 p.m. on that day, Appellant was cleaning the pantry, and about to empty a slop can, when he discovered within that can four small packages wrapped in white oil paper, which later proved to be 9 ounces 195 grains of crude opium. These packages were with "rubbish" or wet garbage, and had an offensive odor which Appellant could not identify, except that it was not "a garbage smell;" he came to the conclusion "it was some kind of poison," but he did not know what kind. One of the packages was dirty on the outside because the can was wet. After finding the packages, Appellant laid them on the table; finished cleaning the pantry and then sought the Captain and Chief Officer, but learned they were ashore (the incident occurring on Saturday); at that time no customs officer was aboard the ship, so Appellant decided to take the packages ashore for delivery to the customs officer.

He donned appropriate clothing, and with the packages in his rear trousers pockets (two packages in each pocket) was at the gangway when a port patrol officer approached him, ostensibly to conduct a search of Appellant's person. When accosted, Appellant said to the officer, "Don't search me, go in the room. I have something to tell you." The officer refused to permit Appellant to talk, and his search discovered the packages in Appellant's pockets.

No other opium was discovered when Appellant's quarters were searched. It does not appear that Appellant tendered the packages to the officer when he knew or had good reason to believe he would be searched; and no statement appears in this record indicating the character of information he would have communicated to the officer in some less public place. Because preparation for the evening meal should be started about 3 o'clock, Appellant intended to leave the packages with the customs officer and return to the vessel.

Following his arrest on this occasion, Appellant was indicated by a federal Grand Jury in New Jersey and convicted of importing narcotics in violation of Title 21 United States Code 174. The

court imposed a sentence of incarceration for three years and fined Appellant \$500; but stayed action on the imprisonment sentence, putting Appellant on probation for three years during which time he would be permitted to pay the fine imposed. The court was lenient apparently because of Appellant's past good record; that Appellant is not an addict, and was some question concerning ownership of the opium. A letter dated 5 January, 1948, by a Probation Officer of the United States District Court for the District of New Jersey, offered on Appellant's behalf, reads in part:

"As Mr. Norton has already indicated to you, the Honorable Thomas F. Meaney at the time of the imposition of this sentence, "requested the U.S. Probation Office to try to assist this man in resuming employment in the Merchant Marine. I believe the Judge's suggestion in this respect was based upon the belief that Fook is not an addict and also because there might have been some question concerning the ownership of the narcotics. It appears that Fook may have been trying to 'cover up' for his friends in this matter.

"Any assistance you are able to render this man, will be greatly appreciated."

In his testimony before the Examiner, Appellant denied that he had bought the opium for some other person; that he had brought the opium from a foreign land into the United States; that he knew the opium was on the ship before he found it in the garbage can.

This Appellant has enjoyed an excellent reputation as a merchant seaman with Grace Lines for fifteen years; he has supported his wife and children, and has no record of prior association with narcotic or drug traffic. He has been going to sea for thirty years, and has held merchant mariner's documents since 1937.

OPINION

I am not favorably impressed by Appellant's explanation for the presence of opium on his person when apprehended. I appreciate the linguistic handicap under which Appellant labored on the date of his apprehension as well as when before the Examiner, but on the latter occasion he was represented by counsel who had represented

Appellant before the Federal Court, and who fully understood the language employed, and by virtue of his legal training was cognizant of the effect, and possible results from the plea of "guilty with an explanation." That "explanation" leaves much to be desired.

Usually a person who discovers an offensive smelling substance with which he is not acquainted will do one of two things: either leave it alone where it was found, or get rid of it without delay. This Appellant did neither; but instead retrieved the packages from a wet garbage can containing refuse from the dining table and the sink; then dressed in "shore" clothes, and placed the packages in trousers pockets where they would not be conspicuous.

When approached by the port patrol officer, whose authority to search, Appellant readily recognized, instead of immediately producing and tendering the discovered packages, he requested the officer to "go in the room" because Appellant had "something to tell him." This course of conduct is not that customarily followed by an innocent person whose primary intention and desire is to deliver a substance which he cannot identify to another whose knowledge may be superior to his own. If he sincerely wished to deliver the packages to a customs officer, he had full opportunity to do so without suggesting that some privacy attend his communication of information respecting four packages which he had "found" in a garbage can, and then carried in two pockets of his trousers.

It is probably true that Appellant did not secrete the packages on his person, but it is equally true that he did not carry them exposed for ready transfer to the patrol officer who accosted him. In my opinion, no part of the story told by Appellant matches with every-day experience of normal persons under similar circumstances. The Examiner saw and heard Appellant; and was in better position to evaluate the testimony given by Appellant. However, from my study of the cold record, I find nothing to indicate error in the Examiner's ruling.

The Record reflects that Appellant (or his counsel) entered "guilty" pleas at four places. At p. 2

"Mr. Lifland (counsel for Appellant): I would like to make a

plea of guilty with an explanation."

At this point, it was considered necessary to call an interpreter who could translate the proceedings in English and Chinese. When the interpreter arrived (p. 3), Appellant, himself, pleaded "guilty" twice, and admitted guilt in answer to another question; but wished to make an explanation. I have no doubt he was fully aware of the possible effect of his plea.

Careful consideration has been given the seven points submitted in Appellant's behalf and reproduced at page two hereof, but I find nothing in points (a) through (d) to require my comment.

The action by the Federal court in suspending the sentence of imprisonment and placing Appellant on probation; the observation by the judge that Appellant's seaman's papers should be returned to him does call for comment.

I have the greatest respect for members of the Federal judiciary, and will defer to any legal order emanating therefrom. The recommendation of the District Judge in this case has received studied consideration, but I esteem it to be my duty to protect, as far as possible the many merchant seamen whose lives and property may be exposed to risk by the presence of one man who is involved in some phase of traffic in drugs or narcotics.

Such a person, in my opinion, is a potential hazard and menace to his shipmates, the shipowner and other persons who may innocently cross his path. The course which I have pursued in a number of similar cases is not dedicated to the punishment of one seaman because he has violated a federal drug or narcotic statute, but is designed to protect as far as is possible countless other seamen and non-seamen from any of the evils which flow from that traffic.

As stated, many such cases have come before me, and while I realize the offending individuals before Coast Guard Examiners have been truly penitent with a firm purpose to transgress no more, I adhere to the view, so frequently announced, that offenders in this type of case are undesirable as seamen in the American merchant marine. That clemency has been extended an offender in a criminal

case does not lessen the over-all responsibility of the Coast Guard to protect American seamen from perils and hazards in excess of those perils normally present in their vocation.

The hardship imposed upon Appellant (point (g)) does not justify my intervention in this case.

CONCLUSION AND ORDER

I find nothing in this Record, or the appeal, warranting any change in the Order of the Examiner dated 1 February, 1949, and said Order is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 31st day of May, 1949.

***** END OF DECISION NO. 324 *****

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