

In the Matter of Certificate of Service No. E-39077
Issued to: FELIX CABRERA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

506

FELIX CABRERA

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 5 June, 1950, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. E-39077 issued to Felix Cabrera upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Baker on board the American SS SANTA MARGARITA, under authority of the document above described, on or about 2 September, 1948, and continuously thereafter until about 1 September, 1949, he wrongfully conspired with certain persons to import a quantity of cocaine and to receive, possess, conceal and facilitate the transportation of a quantity of cocaine after it had been illegally imported into the United States.

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. Appellant was represented by an attorney of his own selection, and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel made their opening statements and the Investigating Officer introduced in evidence an extract from the pertinent shipping articles and certified copies of Appellant's indictment and judgment of conviction in the Federal court. He then rested his case.

In defense, Appellant offered in evidence, in mitigation as to Appellant's participation in the conspiracy, the testimony of three detectives with the Narcotics Bureau of the New York Police Department. He also testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Certificate of Service No. E-39077 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 conviction in the Federal court was not res judicata as to the question of misconduct as raised by the charges in the specification; the finding of misconduct was not justified by all the facts adduced; and the order of revocation is unduly excessive and severe since the circumstances as revealed by the record show that Appellant is a person who can be trusted to refrain from any further infractions of law.

APPEARANCES: Nicholas Atlas, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On a voyage extending between 15 September, 1948 and 26 October, 1948, Appellant was serving as Chief Baker on board the American SS SANTA MARGARITA and acting under authority of his Certificate of Service No. E-39077.

On 26 October, 1948, Appellant agreed with one of his shipmates to receive, while ashore, a small package which was to be sent to Appellant by the aforementioned shipmate. It was agreed that Appellant would deliver the package and receive in return certain monetary compensation in the amount of several hundred dollars. In accordance with this plan, Appellant received the package from a longshoreman on the following day. Although he suspected that the package contained "dope," Appellant proceeded to attempt the delivery to another party but was apprehended by detectives of the New York Police Department. The package contained forty-six ounces of cocaine. For this act, Appellant was charged with possessing a narcotic drug and on 12 January, 1949, he was convicted in the Court of Special Sessions of the City of New York. On 15 November, 1949, Appellant was given a suspended sentence of one year for this crime.

On 4 January, 1949, while released under bond pending the outcome of the above action, Appellant assisted two of his shipmates on the above voyage in obtaining credit in Callao, Peru, for the purpose of purchasing cocaine in that port for importation into the United States.

In November, 1949, Appellant was arraigned on an indictment in the District Court of the United States for the Southern District of New York charging a violation of Title 18 U.S.C. 371 in that he and others did, on or about 2 September, 1948, and continuously thereafter up to 1 September, 1949, conspire to import cocaine and to receive, possess, conceal and facilitate the transportation of cocaine after said cocaine had been imported into the United States, all in violation of Title 21 U.S.C. 173 and 174. On 5 April, 1950, Appellant was convicted on his plea of "guilty"; imposition of sentence was suspended; and three years' probation was imposed subject to the standing probation order of the court.

There is no record of any prior action having been taken against Appellant's documents during approximately thirty years at sea. Appellant is 47 years of age, married, and has a wife and two dependent children.

OPINION

That the judgment of conviction by a Federal court is *res judicata* of the issues decided by that judgment is beyond questioning. Title 46 Code of Federal Regulations 137.15-5 which has the force and effect of law states that where the same acts form the basis of the Federal charges and the charges in proceedings under Title 46 United States Code 239, the Federal court judgment of conviction is conclusive in the latter proceedings.

The Examiner repeatedly stated throughout the hearing that the evidence submitted by the person charged would be received for whatever value it might have in mitigation but that the conclusiveness of the District Court conviction could not be impeached. Appellant's counsel stated that the purpose of testimony was not to attack the court conviction but to bring out Appellant's trivial implication in the conspiracy. In view of the seriousness of the crime which Appellant was found guilty of it can hardly be said that his acts were not sufficient to constitute misconduct within the purview of Title 46 U.S.C. 239.

I have attempted in my past decisions to state as forcefully as possible the policy of the Coast Guard with respect to any complicity with narcotics - whether it be use, possession, or vicarious guilt of any kind. It is felt that the only suitable order which can be imposed in such cases is that of revocation of the seaman's documents in order to remove the dangers of narcotics from aboard American merchant marine vessels. The assistance which Appellant rendered in rounding up the other conspirators after his apprehension is commendable; but it is beyond the scope of the statutory duty imposed upon the Coast Guard by Title 46 U.S.C. 239 to rehabilitate, or to attempt to verify claimed rehabilitation, by permitting seamen to continue to ship on American merchant ships after their association with narcotics has become known. The affirmative duty imposed by the statute is to uphold the order of revocation in order to protect the lives of thousands of other seamen and the property of shipowners.

ORDER

The order of the Examiner dated 5 June, 1950, should be, and it is, *AFFIRMED*.

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

Dated at Washington, D.C., this 24th day of July, 1951.

***** END OF DECISION NO. 506 *****

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