

In the Matter of Merchant Mariner's Document No. Z-519032
Issued to: ELLIOTT PATRICK BOISDORE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

512

ELLIOTT PATRICK BOISDORE

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 16 May, 1951, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-519032 issued to Elliott Patrick Boisdore upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS BUCKEYE STATE under authority of the document above described, on or about 23 March, 1950, while said vessel was in a foreign port, he unlawfully had in his possession a certain narcotic; to wit, marijuana.

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 counsel of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified extract from the shipping articles, a certified copy of an entry from the official

log book, and a duly authenticated copy of a Consular report dated 27 April, 1950. The Investigating Officer then rested his case.

In defense, Appellant's counsel presented an opening statement before Appellant testified under oath in his own behalf. He stated that he had been arrested, together with 65 other merchant seamen, while drinking beer with his roommates at the Enlisted Men's Club at the Navy Base, Yokosuka, Japan. Appellant testified that his roommates had marijuana and began throwing it around to get rid of it when the raid occurred; but he flatly denied having had any marijuana in his possession or ever having used any narcotics. Appellant admitted having been convicted by the Provost Court for having marijuana in his possession but added that his roommate had testified that Appellant did not have marijuana in his possession. He stated that the four-year sentence imposed in May, 1950, was reduced to one year and suspended due to lack of evidence after he had served six months. Appellant was sent back to the United States upon his release. At the suggestion of the Examiner and Investigating Officer, a documentary exhibit was put in evidence to substantiate this latter point. Appellant then rested his case.

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 Merchant Mariner's Document No. Z-519032 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

In his notice of appeal, Appellant sets forth the following grounds:

- (1) He was charged with the possession of marijuana which was supposed to have been found in clothing that belonged to him but had never been locked up;
- (2) He shared a room with three other shipmates which made it possible for anyone having a dislike for him to have put it there;
- (3) After serving one-eighth of his sentence, the reviewing authorities ordered his release immediately;
- (4) He had no witnesses as his ship had sailed for U. S.

ports, therefore all he had was testimony of one roommate to admit that it was his habit to have narcotics in the room which Appellant also occupied;

- (5) He has been sailing since 1944 and has no prior record with the Coast Guard or with any other law offices;
- (6) He never used any kind of narcotics or had any dealings with them;
- (7) The Examiner used the "papers" as evidence of the trial but did not recognize the reviewing authorities' action.

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

FINDINGS OF FACT

On 23 March, 1950, Appellant was a messman in the service of the American SS BUCKEYE STATE and acting under authority of his Merchant Mariner's Document No. Z-519032 while said vessel was in the port of Yokosuka, Japan.

On this date, Appellant and other merchant seamen, including at least two of Appellant's roommates, were taken into custody by the U. S. Marine Corps Police during a raid of the Enlisted Men's Club at the Navy Base in Yokosuka. Appellant and his roommates from the BUCKEYE STATE were detained by the Provost Marshal, U. S. Fleet Activities, Yokosuka, Japan, charged with possession of narcotics on 23 March, 1950, and confined pending completion of an investigation. A subsequent search by the Marine Police disclosed two packages of a substance, stated to be marijuana, aboard the BUCKEYE STATE in the quarters of Appellant and his two roommates who were detained.

Appellant was convicted by the Provost Court at Yokosuka, Japan, in May, 1950, for having marijuana in his possession.

OPINION

The Examiner considered evidence which was not in the record in arriving at his findings and conclusions. In the Consular report, dated 13 April, 1951, reference is made to Appellant's conviction by the Provost Court at Yokosuka but this Consular

report was not offered or received in evidence during the hearing. Even so, it would be insufficient in itself to establish the conviction. Its unreliable nature is apparent from the incorrect statement that Appellant "was tried on March 23, 1950." That is the date on which he was arrested. Sentence was imposed on 26 May, 1950 (See Person Charged Exhibit A). Certified copies of the Provost Court proceedings would be evidence of a much more probative nature. As a result, a prima facie case was not made out against Appellant.

The sole evidence in the record of the court conviction, which is given conclusive weight by the Examiner, is the Appellant's testimony and his exhibit. This is considered to be insufficient evidence of the conviction upon which to completely disregard, without comment, Appellant's denial that he had marijuana in his possession. Of related significance is the fact that a Provost Court is not a "Federal court" within the meaning of 46 C.F.R. 137.15-5; so that a conviction by it is not conclusive in these proceedings. A Provost Court is a military tribunal which is not part of the established Federal Civil Judicial system.

CONCLUSION AND ORDER

The official record does not contain substantial, reliable or probative evidence to support the allegations contained in the specification. The Examiner considered evidence which was not in the record; and he failed to evaluate Appellant's testimony and make findings as to his credibility. Since Appellant did not testify in my presence, I would be unable to properly perform the latter function even if the record were otherwise satisfactory.

For these reasons, the order of the Examiner dated 16 May, 1951, is REVERSED, and the case is REMANDED for the taking of further evidence and the making of additional findings not inconsistent herewith.

REVERSED and REMANDED

A.C. Richmond

Rear Admiral, United States Coast Guard

Acting Commandant

Dated at Washington, D. C., this 10th day of December, 1951.

***** END OF DECISION NO. 512 *****

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