

In the Matter of Merchant Mariner's Document No. Z-209666
Issued to: GEORGE E. HARRIS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

708

GEORGE E. HARRIS

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 2 July, 1953, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked Merchant Mariner's Document No. Z-209666 issued to George E. Harris upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the USNS ANACOSTIA under authority of the document above described, on or about 19 January, 1953, while said vessel was at sea, he wrongfully had in his possession a narcotic substance; 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. After being advised of his right to be represented by counsel of his own selection, Appellant replied in the affirmative when asked if he wished to represent himself. Appellant entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and introduced in evidence certified copies of two entries from the Official Logbook of the ANACOSTIA, and certified copies of the Complaint, Indictment and Judgment against Appellant in the United States District Court for the Southern District of California, Southern Division.

Appellant then made a statement in which he admitted that the Master had found marijuana in Appellant's locker; but he also stated that he did not know that the substance was marijuana and that he would not have had it in his possession ?? he had known if was marijuana.

Immediately after this statement by Appellant, the Examiner announced his findings and concluded that the charge had been proved by plea to the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-209666 and all other licenses, certificates of service and documents issued to Appellant.

Among numerous other points raised in this appeal it is contended that Appellant disclaimed knowledge of the nature of the substance which was later determined to be marijuana; and that Appellant believed the substance to be smoking tobacco.

APPEARANCES: Mr. Vincent F. Kilborn of Mobile, Alabama, by
Wallace L. Johnson, of Counsel.

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

FINDINGS OF FACT

On 19 January, 1953, Appellant was serving as a messman on board the USNS ANACOSTIA and acting under authority of his Merchant Mariner's Document No. Z-209666 while the ship was at sea.

During an inspection of the ship on this date, the Master found, in Appellant's locker, a jar containing an "appreciable quantity" (Exhibit D) of a substance which the Master thought was marijuana. Appellant stated that he did not know what the substance was but thought that it was tobacco. Subsequent analysis

disclosed that it was marijuana.

On 23 January, 1953, Appellant was taken into custody by the U.S. Customs authorities at San Diego, California. On 11 February, 1953, an indictment containing two counts was filed against Appellant in the U.S. District Court for the Southern District of California, Southern Division. Count One alleged that "on or about January 22, 1953, in Diego County, California, defendant George Edward Harris did knowingly and fraudulently import and bring into the United States of America certain merchandise, that is to say, approximately two ounces, net weight, of marijuana, in bulk, contrary to law" (18 U.S.C. 545). Count two alleged that "on or about January 22, 1953, in San Diego County, California, defendant George Edward Harris did knowingly receive, conceal, and facilitate the transportation and concealment, after importation, of certain merchandise, namely; approximately two ounces, net weight, of marijuana, in bulk, which said merchandise, as the defendant then and theretofore had been imported and brought into the United States contrary to law" (18 U.S.C. 545).

On 19 March, 1953, Appellant appeared without counsel and he was convicted on his plea of "guilty" to Count Two of the Indictment. Count One was dismissed on motion of the U.S. Attorney. The imposition of sentence was suspended as Appellant was placed on probation for five years and fined \$100. The record does not disclose any additional facts concerning the conviction under Count Two or why Count One was dismissed.

OPINION

Although Appellant entered a plea of "guilty" to the charge and specification before the Examiner, Appellant then made a statement which was inconsistent with his plea when he stated he did not have knowledge that the substance in his possession was marijuana. Consequently, the Examiner should have rejected Appellant's plea of "guilty" and entered a plea of "not guilty" in accordance with 46 C.F.R. 137.09-45. Appellant should then have been permitted to testify and to submit other evidence in his own behalf; and it would have been necessary for the Examiner to include in his decision a finding of fact as to the credibility of Appellant's statements in which he denied having knowledge that the substance found in his possession by the Master was marijuana.

This defect was not cured by the evidence that Appellant had been convicted in a Federal court of an offense involving marijuana. Title 46 C.F.R. 137.15-5 states that a judgment of conviction by a Federal court is res judicata of the issues decided by that judgment; and the Federal court judgment of conviction is conclusive, in these proceedings, when the acts forming the basis of the charges in the Federal court are the same as the acts involved in these proceedings. No such similarity of the factual bases is apparent in this case because the log entry shows that the Master of the ship found the marijuana in Appellant's possession on 19 January, 1953, while the ship was still at sea; but the Federal court convicted Appellant of having had unlawful dealings with marijuana on or about 22 January, 1953, after the marijuana had been imported into the United States. Appellant could not have been convicted of aid "after importation" on the basis of the marijuana which was taken into the Master's custody before the ship arrived in the United States and three days before the date alleged in the indictment. Therefore, the Federal court judgement of conviction was not conclusive in this proceeding wherein the specification alleges wrongful possession on or about 19 January, 1953.

Although the log entry was sufficient to make out a prima facie case since it complies with all the statutory requirements, Appellant should have been given the opportunity to prove the possession not to have been wrongful to the satisfaction of the Examiner.

ORDER

The Order of the Examiner dated at Mobile, Alabama, on 2 July, 1953, is reversed and remanded with instructions to conduct further proceedings not inconsistent with this decision.

REVERSED and REMANDED.

Merlin O. Neill

Dated at Washington, D.C., this Third day of November, 1953.

***** END OF DECISION NO. 708 *****

[Top](#)