

In the Matter of Certificate of Service No. E-308980
Issued to: DIEGO CASTILLO GARCIA (Z-190803)

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DIEGO CASTILLO GARCIA

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 14 January, 1949, an Examiner of the United States Coast Guard entered an order revoking Certificate of Service No. E-308980, upon finding him guilty of the charge of misconduct supported by a specification alleging possession of narcotics contrary to law, while employed as a messman on the SS CAPE ANN on 3 June, 1947, in New York, New York.

The Examiner, upon receiving an equivocal answer to his request for information as to how the Appellant pleaded to "the fact that on 3 June, 1947, you had in your possession certain narcotics while the SS CAPE ANN was in the harbor of New York," entered a plea of "guilty" to the charge and specification with the reservation "but, if when I hear your explanation and I find any reason to change it, I'll change it to not guilty if your reason or explanation is adequate." After the Investigating Officer had presented, in narrative form, a resume of the investigation made into this case, the Appellant took the stand in his own behalf and explained the circumstances under which he came into possession of the narcotics. No other witnesses appeared for either the Government or the Appellant. A certified copy of Judgment entered against the Appellant by the District Court of the United States for the Southern District of New York on 19 June, 1947, for unlawful possession of marihuana was appended to the record, which leads me to assume that this certified copy was submitted to the Examiner by the Investigating Officer at the time he gave his narrative account of the circumstances of the case. After receiving this evidence, the Examiner found both the charge and specification "proved" and entered the order of revocation.

From that order, this appeal has been taken and it is urged:

1. That the plea of guilty was suggested to the Appellant by the Coast Guard;
2. That the Appellant did not understand the nature of the plea of guilty;
3. That the Appellant's lack of knowledge of the English language and failure to have an interpreter led to his plea of guilty;

4. That due to the lack of knowledge of the English language the Appellant should have been afforded full opportunity to secure counsel; and,
5. That the revocation proceedings deprive the Appellant of a right to earn his livelihood without due process of law.

OPINION

At the outset I feel constrained to reaffirm the position which I have taken consistently in the past, that persons addicted to, or trafficking in, narcotics are undesirable seamen aboard vessels of the United States and that when properly prepared charges, alleging either or both such offenses are proven in accordance with the laws of the United States against the holder of a license or certificate issued to merchant seamen by the Coast Guard, such holder need expect no clemency from me on appeal. However, under our concept of justice, the person accused is presumed innocent until proven guilty. In order to maintain this presumption under our administrative proceedings, it is basic that the person accused be given full and clear opportunity to apprehend all of the implications of a plea of "guilty." The Examiner must carefully avoid any suggestion to the person accused as to how he should plead and in case of doubt or answer foreign to the purpose, he should direct that he trial proceed as if the accused has pleaded "not guilty." The same safeguards should be taken to insure that the accused understands fully his right to counsel and to impress upon him that his cause would probably be better served if he retained counsel. In the instant case, the Examiner, upon receiving an equivocal answer to his inquiry as to how the Appellant pleaded, not to the actual charge and specification, but to a paraphrasing of that charge and specification, entered a plea of guilty on behalf of the Appellant. This action on the part of the Examiner removed a right which the Appellant may have had to be confronted by his accusers, to cross-examine them and to introduce evidence on his own behalf. As a result the Investigating Officer was able, without objection, to introduce into the record a narrative recitation of the results of his investigation, which recitation represented the whole of the Government's case. With respect to the Appellant's averment that he was not afforded the opportunity to employ counsel, I find that the record shows that the Examiner did not ask the Appellant if he had counsel, or desired counsel. I find that he asked the Appellant if he wanted to act as his own counsel and upon receiving an equivocal reply, dismissed the question of counsel with the words "You'll explain your own case?".

CONCLUSION AND ORDER

I am of the opinion that the record of the hearing establishes serious doubt as to whether the Examiner afforded the Appellant full opportunity to secure counsel and as to whether the Examiner fully explained to the Appellant all of the legal implications of a plea of guilty.

For these reasons, the order of the Examiner dated 14 January, 1949, is REVERSED, and the case is REMANDED for further proceedings not inconsistent herewith.

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

Dated at Washington, D. C., this 11th day of April, 1949.