

In the Matter of Certificate of Service No. E-384218
Issued to: OSWALD BARBOSA DeSOUZA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

353

OSWALD BARBOSA DeSOUZA

This appeal comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 19 May, 1949, Appellant was tried before an Examiner of the United States Coast Guard at Boston, Massachusetts, on a charge of misconduct supported by two specifications. The first specification alleges that while Appellant was serving as utility man on board the American SS COLBY VICTORY, under authority of Certificate of Service No. E-384218, he unlawfully had in his possession, on or about 15 December, 1945, approximately four ounces of marijuana. The second specification alleges that while Appellant was serving as messman on board the American SS ANCON, under authority of Certificate of Service No. E-384218, he unlawfully had in his possession, on or about 28 April, 1948, approximately one hundred and five grains of marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own choice and he pleaded "guilty" to the specifications and charge. The Examiner found the specifications "proved by plea" and the charge "proved." He thereupon entered an order revoking Appellant's Certificate of Service No. E-384218 and all other valid certificates of service or licenses which have been issued to him.

The appeal is simply a plea for clemency stating that Appellant is a seaman and that he cannot obtain employment without his documents.

FINDINGS OF FACT

On or about 15 December, 1945, Appellant was serving as a member of the crew in the capacity of utilityman on board the American SS COLBY VICTORY, under authority of Certificate of Service No. E-384218, while the ship was at the port of New York City. On this date, Appellant was apprehended by Customs Agents after they had discovered that Appellant had approximately four ounces of marijuana in his possession.

On 21 February, 1946, Appellant was convicted in the District Court of the United States for the Southern District of New York of the offense of unlawful possession of marijuana. He received a suspended sentence and was placed

on probation for a period of one year.

On or about 28 April, 1948, Appellant was serving as a member of the crew in the capacity of messman on board the American SS ANCON, under authority of Certificate of Service No. E-384218, while the ship was at the port of New York City. On this date, Appellant was again apprehended by Customs Agents after it was disclosed that he had in his possession approximately one hundred and five grains of marijuana. Appellant was convicted, on 2 June, 1948, in the District Court of the United States for the Southern District of New York, of the offense of unlawful possession of marijuana. He was sentenced to three months imprisonment for this offense.

The acts forming the bases of the charges in the Federal court indictments are the same as those acts involved in this proceeding under Title 46 United States Code section 239.

OPINION

It has been repeatedly stated that the offense of possession, use, sale or any association with narcotics cannot and will not be tolerated among men who are privileged to sail as crew members on board American merchant marine vessels by virtue of the documents, licenses or certificates of service issued to them by the United States Coast Guard. This is certainly one of the most serious offenses which could be committed in view of the great danger to the safety of the crew and the ship to which such an offender is attached. In order to protect the property and lives of others and to properly perform its duty in this respect, it is essential that the Coast Guard revoke all documents, licenses and certificates of those persons who have abused the privileges extended to them by engaging in any narcotics offense.

In the present case, the Appellant pleaded "guilty" to two offenses of the above nature and there was nothing presented in Appellant's behalf which could be considered as mitigating circumstances. The Appellant's inability to obtain employment elsewhere does not justify allowing him to retain his certificate of service and thereby imperil the lives of many for the convenience of one person. Hence, there can be no favorable action taken on the appeal.

CONCLUSION AND ORDER

The order of the Examiner dated 19 May, 1949, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 15th day of July, 1949.