

In the Matter of Merchant Mariner's Document No. Z-593440  
Issued to: WILLIAM CAPRE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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WILLIAM CAPRE

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 4 February, 1952, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-593440 issued to William Capre upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Night Steward on board the American SS SANTA CECILIA (and aboard two other vessels as a waiter) under authority of the document above described, on or about 1 January, 1949, and 2 February, 1950, he conspired with Harry Brown, Sam Rosario, Julio Capre and others to wrongfully possess a certain narcotic substance; to wit, cocaine.

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. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. 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 an indictment charging Appellant and others with conspiracy to violate 21 U.S.C. 173-4, the Judgement and Commitment against Appellant in the United States District Court for the Southern District of New York, and extracts from the shipping articles of three different ships.

In defense, Appellant stated that he has never transported, possessed, nor used narcotics; and that his implication in the conspiracy was based solely upon a social visit to a house which was made with his brother in 1949.

At the conclusion of the hearing, having given both parties an opportunity to submit anything additional, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-593440 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 was not represented by counsel nor was he advised of his right to be so represented; that the Examiner was biased in his findings; and that the order is too severe.

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

#### FINDINGS OF FACT

Between 3 March and 30 March, 1949, Appellant was serving as a waiter on board the American SS MARINE PERCH. Between 27 May, 1949, and 18 July, 1949, Appellant was serving as a waiter on the American SS EXCALIBUR. Between 17 January and 28 February, 1950, Appellant was serving as night steward on the American SS SANTA CECILIA. At all times mentioned, Appellant was acting under authority of his Merchant Mariner's Document No. Z-593440.

On 2 February, 1950, an indictment was filed in the United States District Court for the Southern District of New York charging that Appellant and thirty other persons unlawfully conspired to import a quantity of cocaine hydrochloride and to unlawfully and knowingly possess, conceal and facilitate the transportation of cocaine hydrochloride, after it had been unlawfully brought into the United States, from on or about 1 January, 1949, and continuously thereafter up to and including the date of the filing of the indictment in the Southern District of New York. The indictment lists three overt acts, in pursuance of this conspiracy, in which persons other than Appellant participated.

On 5 March, 1951, Appellant appeared with counsel in the U. S. District Court for the Southern District of New York and was "convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, willfully and knowingly conspire to receive, possess, conceal and facilitate the transportation and concealment of a quantity of narcotics after said narcotics had been imported and brought into the United States contrary to law . . . ." Appellant was committed for imprisonment for a period of one year and one day on the same day as the date of conviction.

#### OPINION

Although Appellant was not represented by counsel at the hearing, he was fully advised of his rights in this respect and he definitely stated that he desired to represent himself (R.3). It is also noted that Appellant was represented by counsel at the trial in the U. S. District Court and that the record of Appellant's conviction in the latter court forms the basis for this action against his seaman's document.

This case is somewhat unique in that there is no proof that Appellant ever had possession of cocaine aboard ship or that he conspired with respect to cocaine on board any of the three ships he sailed on during the time covered by the indictment and the specification. But Appellant's conviction in the Federal court definitely establishes that he was a co-conspirator at the same time

he was shipping as a crew member on American vessels. This is sufficient association with narcotics, while acting under the authority of his Merchant Mariner's Document, upon which to impose the order of revocation of his document. This general policy has been repeatedly stated in my numerous decisions involving narcotics cases arising from various other situations.

The primary concern of the Coast Guard is not the welfare of a single ship in each isolated case but to afford overall protection to American Merchant Marine vessels, their crews, passengers and cargo. This objective can only be accomplished by taking remedial action to eliminate undesirable seamen in such instances as the present case when the seaman in question is a potential, if not an actual, danger to the entire shipping industry. Appellant was acting under the authority of his document aboard ship during at least three different periods which are all included within the dates appearing in the indictment upon which he was convicted. Therefore, the order imposed will be sustained.

### ORDER

The Order of the Examiner dated 4 February, 1952, should be, and it is, **AFFIRMED**.

A. C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 2nd day of July, 1952.