

In the Matter of License No. 28233
Issued to: CROCKETT D. SMITH

DECISION AND ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

577

CROCKETT D. SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 1 May, 1951, an Examiner of the United States Coast Guard at New York City revoked Appellant's license based upon a charge that he had engaged in an act of sexual perversion with another member of the crew on 13 April, 1947, while Appellant was serving under authority of his license as Second Mate on board the American SS FORT CHARLOTTE.

Appellant was not represented by counsel at the hearing and he entered a plea of "not guilty." Proof of the specification rests upon two ex parte statements and a deposition which were introduced in evidence by the Investigating Officer. The deposition, which was taken in October, 1950, is not entirely consistent with the more probative of the two ex parte statements which were made the day after the alleged incident occurred in 1947. Some depositions requested by the parties were not obtained because the intended deponents could not be located.

In this appeal from the Examiner's order of revocation, Appellant has submitted numerous assignments of error which it will not be necessary to enumerate in detail or discuss at length. The following comments will clarify the significance of the latter statement as well as indicate why it would not be appropriate for me to make the usual findings of fact in this case.

I take official notice of the fact that the Coast Guard Examiner who presided at this hearing also conducted the hearing and rendered the order of revocation against the documents of the seaman with whom Appellant is alleged to have participated in this act of sexual perversion. In the former decision, the Examiner found that the Appellant herein had committed the specific act with which he is charged in the present proceedings. And it was brought out at the present hearing that this other seaman's documents had previously been revoked as a result of the same incident which is alleged in the specification against Appellant. Under these circumstances, I think it is questionable that Appellant could have been afforded a perfectly fair hearing before the same Examiner - unless the evidence against Appellant in this hearing very conclusively established his guilt.

It is also noted that the decision in the companion case mentioned above was rendered on

7 June, 1949 - almost two years before the decision in this case. Although there is no statute of limitations applicable to these proceedings, it stands to reason that the difficulty of obtaining the testimony of witnesses, or their depositions, increases as the period of time since the time of the alleged offense becomes longer and longer. The present hearing was commenced more than three years after the date of the act alleged in the specification.

This considerable lapse of time has apparently deprived Appellant of the use of two depositions which he requested. Although there is doubt as to the value this evidence would have in his defense, this delay appears upon its face to have been prejudicial to Appellant's cause and it cannot be attributed to him.

It is also true that the quality of the evidence available to the Investigating Officer was affected by this delay; and that the evidence presented at the hearing was not adequate because of the prejudice caused Appellant both by the delay in preferring charges against him and his appearance before the same Examiner who had conducted the companion case. Stronger evidence than ordinarily would be required is needed due to these circumstances.

Despite the repulsive and disgusting nature of the offense alleged, I am not able to sustain the order of revocation upon the present state of the record.

ORDER

For these reasons, the order of the Examiner dated 1 May, 1951, at New York, New York, is REVERSED and the charge is DISMISSED.

REVERSED AND DISMISSED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of July, 1952.