

In the Matter of Merchant Mariner's Document No. Z-247463-D1 and
all other Licenses, Certificates and Documents
Issued to: REINALDO JACKSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

806

REINALDO JACKSON

This appeal has been taken in accordance with the Act of 15 July 1954 (Public Law 500, 83d Congress, 68 Stat. 484), Coast Guard Notice of 16 October 1954 (19 Federal Register 6678) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 14 December 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-247463-D1 issued to Reinaldo Jackson based upon a specification alleging in substance that, on or about 25 August 1954, he was convicted by the District Court of the United States for the Southern District of New York for violation of the narcotic drug laws of the United States.

At the hearing, the Examiner informed Appellant that the only possible results of the hearing were revocation of Appellant's document or dismissal of the charge and specification. Appellant was given a full explanation of the nature of the proceedings and the rights to which he was entitled. Appellant was represented by an attorney of his own selection and he entered a plea of "guilty" to the specification proffered against him.

Thereupon, the Investigating Officer made his opening statement in which he stated that Appellant had been indicted on two counts involving marijuana; the first count referred to 11 ounces 332 grains of marijuana and the second count to one grain of marijuana; and Appellant was found not guilty on the first count but guilty on the second count.

Counsel for Appellant submitted a statement in mitigation based on the argument that it was discretionary with the Examiner whether to order revocation in view of the wording of the Act of 15 July 1954 which states that: "The Secretary may * * * take action * * * to revoke the seaman's document * *"; and in view of the minute amount of marijuana (one grain) referred to in the conviction upon which this action under the Act of 15 July 1954 is based. Counsel contended that this case is analogous to the Commandant's decisions under R.S. 4450, as amended (46 U.S.C. 239),

which reversed the orders of the Examiners because of the minute amounts of marijuana involved, and, therefore, the order should be less than revocation in this case.

After considering briefs submitted by counsel for Appellant and the Investigating Officer, the Examiner announced his decision in which he concluded that the specification was proved by the plea of "guilty." The Examiner entered an order revoking Appellant's Merchant Mariner's Document No. Z-247463-D1 and all other licenses, certificates 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 Public Law 500 was intended to provide authority for the revocation of the documents of seamen, who are not in the service of ships, to the same extent that seamen's documents are revoked in proceedings conducted under R.S. 4450 for narcotics offenses committed by seamen while they are serving on ships; but Public Law 500 was not intended to provide authority to revoke seamen's documents in cases similar to those six cases (Appeal Nos. 745, 746, 748, 759, 761 and 764) conducted under R.S. 4450 where the Commandant reversed the Examiner's orders of revocation because the minute quantities of marijuana involved did not constitute "hazards per se." It is contended that this interpretation is supported by the fact that the above six cases were decided by the Commandant after the passage of Public Law 500; by the use of the permissive, rather than mandatory, wording "may" in Public Law 500; and by the advice of the Investigating Officer to Appellant that there were five possible outcomes to such a hearing as the instant one.

APPEARANCES: Murray A. Miller, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

Appellant was the holder of Merchant Mariner's Document No. Z-247463-D1, on or about 25 August 1954, when he was convicted by the United States District Court for the Southern District of New York, a court of record, for a violation of the narcotic drug laws of the United States.

OPINION

Appellant's plea of "guilty" obviated the necessity to introduce evidence in support of the allegations contained in the specification and no such evidence was introduced at the hearing.

The Investigating Officer's opening statement does not constitute evidence.

The only question in issue is the interpretation to be given to Public Law 500 considered in conjunction with six appeal decisions of the Commandant in which the orders of revocation were reversed.

Since the case under consideration is a proceeding under Public Law 500 and not R.S. 4450, I concur with the Examiner's statement that there were only two possible results of the hearing - revocation of the seaman's document or dismissal of the specification. Public Law 500 provides that the Coast Guard "may" take action to "revoke the seaman's document" if he has been convicted in a court of record of a violation of narcotic drug laws. Since there is no provision in the statute for the imposition of any order other than one of revocation, there cannot be any other type of order imposed if the specification is found proved. Expressio unius est exclusio alterius. As stated in Black on Interpretation of Laws, 2nd Edition, page 221:

"Particularly when a statute gives a new right or a new power, and provides a specific, full, and adequate mode of executing the power or enforcing the right given, the fact that a special mode is prescribed will be regarded as excluding, by implication, the right to resort to any other mode of executing the power or of enforcing the right."

Therefore, the order of revocation was the only possible result in this case; and the Investigating Officer's pre-hearing advice to Appellant was in error on this point, but it is noted that the Examiner properly stated the matter to Appellant before the plea was entered.

In the six cases reversed by the Commandant, the decisions were not limited to stating that the quantities of marijuana involved were so minute as not to present "hazards per se." This was qualified by adding that evidence of such minute quantities was not sufficient to sustain the allegation of "wrongful possession" in the absence of other supporting facts or circumstances. In other words, it was decided that there was no valid contributory evidence that the seamen had knowledge of their possession of marijuana fragments while actually serving under their documents.

There were pleas of "not guilty" entered in all six of the cases conducted under R.S. 4450 and there was no judgment of conviction by a court introduced in evidence in a single one of the six cases. In the case herein under consideration, the plea of "guilty" was an admission that there had been a conviction as

alleged in the specification. Revocation of a seaman's document is mandatory in Public Law 500 proceedings where there has been a conviction in a court of record of a violation of a narcotic law. Similarly, a charge of misconduct under R.S. 4450, which is based upon a specification alleging "wrongful possession" of narcotics by a seaman while acting under the authority of his document, is adequately supported by either a plea of "guilty" or proper proof of conviction regardless of the amount of marijuana or other narcotics upon which the conviction is based. In cases of the latter type, it is considered that the above mentioned requirement of supporting facts or circumstances is complied with by the introduction in evidence of the judgment of conviction which, in turn, would presumably not exist unless the seaman had entered a plea of "guilty" before the court or there was other evidence before the court, in addition to that of the seaman's physical possession of a minute quantity of a narcotic, upon which to base the conclusion that the seaman had knowledge of possession. Thus, the judgment of conviction, by its inherent nature, would constitute the substantial evidence necessary to conclude that the charge and specification were proved.

My conclusions are that there are several distinctions between this case and the six decisions of the Commandant cited by Appellant; that a record of conviction by a court of record would support a specification in a hearing under R.S. 4450 if the same facts formed the bases for both the court and hearing charges; that the quantity of narcotics upon which the court conviction is based is immaterial for the purpose of these proceedings under Public Law 500 or R.S. 4450; and that the order of revocation in this case must be sustained.

ORDER

The order of the Examiner dated on 14 December 1954 at New York, New York, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 13th day of May, 1955.