

In the Matter of Merchant Mariner's Document No. Z-742326
Issued to: FAUSTO A. VICENTE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FAUSTO A. VICENTE

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.

By order dated 25 August 1955, an Examiner of the United States Coast Guard at Long Beach, California, revoked Merchant Mariner's Document No. Z-742326 issued to Fausto A. Vicente upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a waiter on board the American SS PRESIDENT CLEVELAND under authority of the document above described, on or about 18 September 1950, while said vessel was in the port of San Francisco, he wrongfully had in his possession and wrongfully imported into the United States a quantity of narcotics; to wit, heroin and opium.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation or dismissal. Appellant was represented by nonprofessional counsel of his own selection.

The Examiner entered a plea of "not guilty" to the charge and each specification on behalf of Appellant after he made an explanation rather than a plea of "guilty" or "not guilty".

Thereupon, the Investigating Officer made his opening statement and introduced in evidence several documentary exhibits including a certified copy of the Indictment as well as the Judgment and Commitment in the case of United States v. Fausto A. Vicente for concealing, on or about 18 September 1950, narcotic drugs which he knew had been unlawfully imported into the United States in violation of 21 U.S.C. 174.

In defense, the Federal Probation Officer, who acted as counsel for Appellant at the hearing, made a statement on behalf of Appellant. He stated that Appellant had conducted himself outstandingly while under the supervision of the Federal Probation Office since 14 January 1953 and that it was felt Appellant is not

a habitual criminal

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-742326 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

This appeal is a request for clemency on the grounds that Appellant has been adequately punished by removal from the sea for five years; he is completely rehabilitated and fit for sea duty; and he would have been eligible to apply for a document at an earlier date if the order of revocation had been imposed sooner. For these reasons, it is respectfully submitted that the order of revocation should now be reversed because a hearing five years after the date of the offense is too late; the effective date of the order should be changed to the date of the offense; or the effective date of the order should be changed to 14 January 1953, the date of Appellant's release to the federal probation authorities.

APPEARANCES: Messrs. Graham, James and Rolph of Long Beach, California, by James E. Fagan, Esquire, of Counsel.

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

FINDINGS OF FACT

On 18 September 1950, Appellant was serving as a waiter on board the American SS PRESIDENT CLEVELAND and acting under authority of his Merchant Mariner's Document No. Z-742326 while the ship was at San Francisco, California, upon the completion of a foreign voyage.

At approximately 1030 on this date, appellant's belongings were examined by a U. S. Customs Inspector. Eight brown paper bags containing more than fifteen ounces of heroin and six brass tins containing more than seven ounces of smoking opium were found concealed in the false bottom of a cardboard carton which belonged to Appellant. These narcotics were not listed on the ship's manifest and were landed without a customs permit. Appellant was placed under arrest and the narcotics were seized.

On 28 November 1950, Appellant was convicted by the United States District Court for the Northern District of California, Southern Division, for concealing heroin and smoking opium, on 18

September 1950, knowing the same to have been imported into the united States contrary to law. Appellant was sentenced to imprisonment for a period of five years and to pay a fine of \$1,000.

Since Appellant's release from prison on 14 January 1953, he has been under the supervision of the Federal Probation Office at Los Angeles, California, and has consistently discharged his parole obligations in a very satisfactory manner.

OPINION

The Examiner properly revoked Appellant's document since a judgment of conviction by a Federal Court is res judicata of the issues decided by that judgment (46 CFR 137.15-5 (a)) and because the Examiner is required to revoke all licenses, certificates and documents held by seamen whenever they have been found guilty of misconduct by virtue of the possession, use, sale or association with narcotic drugs. 46 CFR 137.03-1.

The order of revocation will not be reversed. The delay in bringing this matter to a hearing was not due to any fault on the part of the Coast Guard.

The order of the Examiner cannot be made retroactive to a time prior to when the decision was served on Appellant. 46 CFR 137.09-80. But in view of the very favorable plea by the Federal Probation Officer on behalf of Appellant, the time since Appellant was released from prison will be taken into consideration in calculating the three year period after which Appellant may apply for the issuance of a new document in accordance with 46 CFR 137.03-30. Hence, Appellant may make such an application on or after 14 January 1956.

ORDER

The order of the Examiner dated at Long Beach, California, on 25 August 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 14th day of December, 1955.