

In the Matter of Merchant Mariner's Document No. Z-381911-D2 and  
all other Licenses, Certificates and Documents

Issued to: JAMES F. DONOVAN, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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JAMES F. DONOVAN, JR.

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 7 September 1955, an Examiner of the United States Coast Guard at Seattle, Washington, revoked Merchant Mariner's Document No. Z-381911-D2 issued to James F. Donovan, Jr. upon finding him guilty of misconduct based upon a specification alleging in substance that while the holder of the document above described, on 11 May 1955, he was convicted in the United States District Court for the Southern District of Texas, Brownsville Division, for violation of Title 18 U.S.C. 545.

OPINION

Except for the fact that this case was conducted under R.S. 4450, as amended (46 U.S.C. 239), this action is the same in every respect as the Rosa case which was conducted under the authority of 46 U.S.C. 710b-c (Public Law 500, 83rd Congress, 68 Stat. 484). The latter case was dismissed in Appeal No. 839 on the jurisdictional ground that conviction for violation of the smuggling statute (18 U.S.C. 545) was not a conviction for violation of a narcotic drug law as required by 46 U.S.C. 710c(b) (1).

Considered in the light of the Rosa case, the case presently under consideration must be dismissed for the same reason. Similarly, the only appropriate action is dismissal in this appeal from an action under 46 U.S.C. 239 due to the fact that there is no proof of the jurisdictional requirement that the person charged must be acting under the authority of his document at the time of the commission of the offense. In addition, the specification does not allege the actual offense but the conviction for the offense.

ORDER

The order of the Examiner dated at Seattle, Washington, on 7

September 1955 is VACATED, SET ASIDE and REVERSED.

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

Dated at Washington, D. C., this 24th day of January, 1956.