

In the Matter of Merchant Mariners Document No. Z-740333 and all other Licenses, Certificates and Documents

Issued to: AUBREY J. HAMILTON

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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AUBREY J. HAMILTON

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 18 May 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-740333 issued to Aubrey J. Hamilton upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as a messman on board the American SS DOROTHY under authority of the document above described, on or about 8 October 1950, while said vessel was in the port of Jobos, Puerto Rico, he wrongfully killed a fellow crew member, one Richard Wilson.

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. Advised of his right to be represented by counsel of his own choice, Appellant elected to act as his own counsel and to have a representative of The Osborne Association, Inc., act in conjunction with him. Appellant entered a plea of "guilty" with an explanation. The Examination changed the plea to one of "not guilty."

Thereupon, the Investigating Officer made his opening statement. He introduced in evidence certified copies of records of an indictment and of a judgement and commitment in the U. S. District Court for the District of Puerto Rico. Proof of Appellant's service aboard the SS DOROTHY on 8 October 1950 was made by stipulation.

In defense, Appellant offered in evidence his sworn testimony and a copy of sentencing proceedings in the U. S. District Court for the District of Puerto Rico.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions,

the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Appellants Merchant Mariner's Document No. Z-740333 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

#### FINDINGS OF FACT

On 8 October 1950, Appellant was serving as a messman on board the American SS DOROTHY and acting under authority of his Merchant Mariner's Document No. Z-740333.

During that night, Appellant and Richard Wilson, another member of the crew, were engaged in a card game in the crew's mess. After an argument Wilson invited Appellant to fight on deck. Appellant first refused but later agreed. Wilson then threw a cup and a pitcher at Appellant and seized a bread knife. Appellant retreated to the galley and obtained a knife similar to Wilson's. Wilson came after Appellant and he cut Wilson's arm. Appellant ran from the crew area toward the officers' quarters, Wilson pursuing. As Appellant was trying to open the door to the officers' saloon, Wilson closed in and Appellant stabbed him.

The Mate then intervened. Appellant refused to surrender the knife to him until Wilson was disarmed. Appellant again ran away and later saw the Mate with Wilson's knife, and Wilson lying on the deck.

Wilson died. Appellant was arrested and taken ashore. He was indicted for first degree murder (18 U.S.C 1111). On 1 June 1951, Appellant, represented by counsel, plead guilty to voluntary manslaughter in the U. S. District Court for the District of Puerto Rico. On sentencing, the Judge took into consideration Appellants good probation report and mitigating factors in the killing. Appellant was ordered confined for two years and four months. Appellant served his sentence prior to these proceedings under R.S. 4450, as amended.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant urges hardship to self and family, and mitigating circumstances as reasons for reducing the order of revocation.

#### OPINION

The judgement of conviction by the U. S. District Court for the District of Puerto Rico is res judicata of the issue as to Appellant's wrongful killing of Richard Wilson. Wrongful killing is an offense for which revocation is the proper remedy under R.S. 4450, as amended. The order of the Examiner will, therefore, be affirmed.

The comments of the District Judge at Appellant's sentencing and the Findings of the Examiner lead me, however, to take especial note of the fact that three years have elapsed since the date of the Examiner's Order. The provisions of 46 CFR 137.03-30 allow for request to be made, in cases such as this, for the issuance of a new document three years after a revocation order. Appellant may submit such application and such evidence as he may think pertinent for consideration. I do not intend to intimate that the application will necessarily receive favorable consideration but only that the opportunity is available for Appellant to offer evidence that might be persuasive.

ORDER

The Order of the Examiner dated at New York, New York, on 18 May 1953, is AFFIRMED.

J. A. Hirshfreed  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 22nd day of May, 1956.