

In the Matter of Merchant Mariner's Document No. Z-368412-D1 and
all other Seaman Documents

Issued to: FREDERICK JOEL SHERRIER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1004

FREDERICK JOEL SHERRIER

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

By order dated 17 September 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction of a narcotic drug law violation." The specification alleges that, on or about 9 August 1957, Appellant was convicted by the United States District Court for the Southern District of New York, a court of record, for violation of the narcotic drug laws of the United States, to wit: 26 U.S.C. 4744(a), 7237(a).

Appellant appeared at the hearing without counsel, entered a plea of guilty to the charge and specification, and made an unsworn statement concerning the circumstances which led to his conviction as alleged. No evidence was introduced by the Investigating Officer.

At the conclusion of the hearing, the Examiner announced the decision in which he concluded that the charge and specification had been proved by plea. An order was entered revoking all documents issued to Appellant.

The decision was served by letter dated 18 September and appeal was filed on 7 October 1957.

FINDINGS OF FACT

On 9 August 1957, Appellant appeared with counsel before the United States District Court for the Southern District of New York, a court of record, and entered a plea of "guilty" to the charge of possession of marijuana, on or about 20 June 1957, without having paid the transfer tax. This was in violation of 26 U.S.C. 4744(a). Appellant was convicted and given a suspended sentence. The maximum sentence for the first violation of this statute is imprisonment for ten years and a fine of \$20,000. 26 U.S.C.

7237(a).

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that he was given a small amount of marijuana by a stranger in a bar in New York City to cure Appellant's asthma; Appellant did not use the marijuana but put it in his locker on the SS CONSTITUTION where it was found by Customs Agents the next day. Appellant was released on bail pending his trial and conviction.

Revocation of Appellant's document is a cruel and unusual punishment in view of Appellant's prior clear record ashore and for fourteen years at sea. Since Appellant did not use the drug and this is his first offense of any kind, he respectfully prays for appropriate clemency.

APPEARANCE ON APPEAL: Henry D. Dorfman, Esquire, of New York City, of Counsel.

OPINION

The proceeding was conducted under 46 U.S.C. 239 a-b (Public Law 500, 83d Congress, 68 Stat. 484) which provides for the revocation of a seaman's document after he has been found guilty of having been convicted, in a court of record, for violation of the narcotic drug laws of the United States, the District of Columbia, or any State or Territory of the United States. Revocation is the only order provided for by the statute after a seaman has been found guilty of such a conviction.

Appellant's conviction was based on 26 U.S.C. 4744(a) which pertains to marijuana and this substance is specifically included within the definition of "narcotic drug" contained in 46 U.S.C. 239a. Congress enacted this severe mandatory requirement of revocation because of the serious threats to shipboard safety and discipline created by seamen convicted of marijuana and other narcotics offenses. In view of the wording of 46 U.S.C. 239b, the order of revocation must be sustained regardless of factors which might be considered in mitigation in other types of cases.

ORDER

The order of the Examiner dated at New York, New York, on 17 September 1957, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard

Acting Commandant

Dated at Washington, D. C., this 20th day of January, 1958.