

In the Matter of Merchant Mariner's Document No. Z-471173-D1 and all other Seaman Documents

Issued to: JAMES WILLIAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1142

JAMES WILLIAMS

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

By order dated 16 March 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while in the service of the United States SS UNITED STATES as a pantry man and acting under authority of the document above described, on or about 7 February 1957, Appellant did wrongfully assault Henry Meyer with a dangerous weapon, to wit, a knife, inflicting bodily injury while ashore in New York City.

At the beginning of 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. Although advised of his right to be represented by counsel of his own choice, appellant elected to waive that right and act as his own counsel. He entered a plea of guilty to the charge and specification.

The Investigating Officer made his opening statement and introduced no evidence in view of Appellant's guilty plea.

In mitigation and extenuation Appellant offered an oral unsworn statement made by Mr. Robert B. Duncan, New York State Division of Parole.

At the conclusion of the hearing, the oral argument of the Investigating Officer was heard and both parties were given an opportunity to submit proposed findings and conclusions. Appellant did not desire to make an argument. The Examiner, on 16 March 1959, 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.

FINDINGS OF FACT

On 7 February 1957, Appellant was serving as Tourist Class Third Pantry Man on board the United States SS UNITED STATES and acting under authority of his Merchant Mariner's Document No.

Z-471173-D1 while the ship was in port of New York, New York. While serving as above, on 7 February 1957, Appellant did assault and batter Henry Meyer with a dangerous weapon, to wit, a knife, inflicting bodily injury at New York, New York. Appellant was convicted in court of felonious assault in the second degree and was sentenced to a term of one year, three months to two years, six months.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended:

I. That there was no jurisdiction for the Coast Guard to take action in this case.

II. That the constitutional rights of the person charged were not properly given him, in that the Hearing Examiner himself, permitted a probation officer to become counsel in a matter wherein the said probation officer had no knowledge, experience and so completely mislead the person charged that he was not even permitted to make a statement in his behalf explanatory of the charges against him.

Appearance on Appeal: Irving Zwerling, Esquire, of New York, New York, of Counsel.

OPINION

I. There is nothing to support Appellant's contention that the Coast Guard was without jurisdiction in this case. Regardless of the fact that this incident occurred ashore, Appellant was in the service of the ship and, therefore, acting under the authority of his document.

II. Appellant's contention with respect to denial of rights is not supported. It is clear on the face of the record that Appellant was fully advised concerning his right to counsel and that although Appellant understood his rights in this respect, he stated that he desired to represent himself (R.2). The probation officer, Mr. Duncan, did not act as counsel for Appellant but simply made a statement in his behalf at Appellant's request (R.6). Appellant was asked if he wished to make any closing argument and he replied in the negative (R.II). Hence, there is no basis for claiming that Appellant was misled by the probation officer who Appellant understood was not representing him at the hearing.

CONCLUSION

There are no irregularities apparent in this hearing that warrant reversal or modification of the Examiner's order.

ORDER

The order of the Examiner dated at New York, New York on 16 March 1959 is AFFIRMED.

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

Dated at Washington, D. C., this 16th day of February, 1960.