

In the Matter of Merchant Mariner's Document No. Z-800395-D1 and all other Seaman Documents

Issued to: EDWARD B. ARMSTRONG

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1274

EDWARD B. ARMSTRONG

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

By order dated 1 June 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that, on or about 16 May 1961, Appellant was convicted, on his plea of guilty by the United States District Court for the Southern District of Texas, Brownsville Division, a court of record, for violation of Title 26 U. S. Code, section 4744 (a)(2) (unlawful transportation or concealment of marijuana), a narcotic drug law of the United States.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced documentary evidence proving the offense alleged. Appellant was represented by counsel before the court. He was sentenced to five years imprisonment but execution of sentence was suspended and Appellant was placed on probation for a period of five years.

Appellant's Probation Officer testified that it is considered to essential for persons on probation to be employed and Appellant is a good risk since he has been going to sea for eighteen years without a prior record. Appellant's wife testified that he was a good husband.

Appellant testified that his conviction was based on a sack of marijuana found under the hood of a rented automobile on the day after he returned from a night in Mexico; Appellant knew nothing about the marijuana until it was located by Customs Officers who stopped him on a highway. Appellant assumes it was planted by Mexicans whose offer to sell marijuana to Appellant had been rejected while he was in Mexico. Appellant claims that he pleaded guilty in court on advice of counsel.

At the end of the hearing, the Examiner concluded that the charge and specification had been proved by plea. The Examiner then entered an order revoking all documents issued to Appellant.

On appeal, it is urged that the purpose of probation is completely defeated when a seaman is deprived of his livelihood by revocation of his document after he has been placed on probation by a Federal Court for the same offense. The question of whether to order revocation should be left to the discretion of the secretary of the Treasury since the statute (46 U.S. Code 239b) states that he "may" take action to revoke a seaman's document after a narcotics conviction by certain courts.

APPEARANCE: George Smill, Esquire, of New Orleans, Louisiana, of Counsel

#### OPINION

The authority of the Secretary of the Treasury under this statute has been delegated to the Commandant of the Coast Guard. Sec. 46 CFR 137.31-5(b) for the Federal Register citation of this delegation. Hence, the determination rests with the Commandant who has previously stated that revocation is the only permissible order after the specification and charge have been proved. Commandant's Appeal Decision No. 1255. This interpretation is based on the on the fact that statute (46 U.S.C. 139b(b)) provides only for revocation after the discretionary function as to whether to take action has been exercised and it has been determined that action is to be taken by charging the seaman who has been convicted.

Other factors, such as deprivation of livelihood, a prior clear record and a claim of innocence, are not material in the face of the conviction, by a court of record, on which the revocation is based. Appellant's recourse in a situation such at this is a plea to the convicting court to reverse the conviction which controls the outcome in this proceeding.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 1 June 1961, is AFFIRMED.

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

Dated at Washington, D.C., this 29th day of November 1961.