

In the Matter of Merchant Mariner's Document No. Z-863238-D1
Issued to: Frank Hicks, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1362

Frank Hicks, Jr.

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

By order dated 21 March 1962, an Examiner of the United States Coast Guard at Galveston, Texas 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 20 April 1955, Appellant was convicted, on his plea of guilty, by the District Court of Galveston County, Texas, a court of record, for violation of a narcotic drug law of the State of Texas (possession of narcotics).

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced documentary evidence showing that Appellant was convicted as alleged while represented by counsel before the court. Appellant was sentenced to two to five years imprisonment. Appellant stated that he has been going to sea steadily since he was released in 1958. The Examiner concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

On appeal, it is urged that Congress did not intend to take away the right of a seaman to earn his living at his chosen occupation by the mere conviction for the violation of one narcotic law; this is evident from the fact that the statute states the Secretary "may" take action to revoke a seaman's documents after a narcotics conviction by certain courts; revocation is a cruel and inhuman punishment for Appellant because his record is good except for this one conviction

APPEARANCE: Baker, Callahan and Brady of Galveston, Texas,
by Jack W. Callahan, Esquire, of Counsel.

OPINION

The order of revocation is based solely on the fact of Appellant's conviction and is the only order permitted after proof of such a conviction by a court of record. Commandant's Appeal Decisions Nos. 1255, 1296; 46 CFR 137.04-10. This interpretation is based on the fact that the statute (46 U.S.C. 239b(b)) provides for no order other than 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. Commandant's Appeal Decision No. 1274. Other factors, such as deprivation of livelihood and a prior clear record, are not material to the outcome in the face of the conviction on which the revocation is based.

However, Appellant may apply for a new document at this time without assurance that the application will be acted on favorably.

ORDER

The order of the Examiner dated at Galveston, Texas, on 21 March 1962, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 16th day of January 1963.