

In the Matter of Merchant Mariner's Document No. Z-457489 and all  
other Seaman Documents  
Issued to: Warren R. Wheeler

DECISION OF THE COMMANDANT

1389

Warren R. Wheeler

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 8 January 1963, an Examiner of the United States Coast Guard at Portland, Oregon, 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 18 September 1962, Appellant was convicted by the United States District Court for the Northern District of California, Southern Division, a court of record, for a violation of 26 U. S. Code 4724, a narcotic drug law of the United States (possession of heroin on or about 18 October 1960).

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

The Investigating Officer introduced in evidence a certified copy of a Judgement and Order of Probation showing that appellant was convicted as alleged while represented by counsel (other than his present representative) and after entering a plea of guilty before the court. appellant was placed on probation for a period of three years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that on many occasions prior to, subsequent to, and at the time of the act for which Appellant was convicted, he has worked for the Customs authorities in numerous narcotics cases although without a specific agreement with Customs in this case and some others. Appellant pleaded guilty in court to a technical violation with the assurance of the United States Attorney that no further action would be taken. Otherwise, Appellant would have pleaded not guilty and he would never have been convicted.

The Examiner erroneously stated that he had no discretion to

enter any order other than revocation. The regulation, making it mandatory for an examiner to revoke a seaman's documents after proof of a narcotics conviction (46 CFR 137.03-10(a), is of no effect since it imposes a more severe rule than the statutory authority which states that the Secretary of the Treasury "may" take action to revoke. Saul v. Saul, 104 F.2d 245, 247; Stearns v. United States, 87 f. Supp. 596.

APPEARANCE: Alton John Bassett, Esquire, of Portland, Oregon,  
of Counsel.

#### OPINION

As indicated at the beginning of this decision, the specific charge in this case should have been "conviction for a narcotic drug law violation" rather than "misconduct". Proceedings under 46 U.S. Code 239b are based on the fact of a narcotics conviction alone and not the underlying facts on which the conviction rests.

Since 46 U.S. Code 239b does not provide for any order other than revocation after proper proof of conviction, the discretion to be exercised has been interpreted to apply with respect to whether action should be taken under this statute; and this decision is not a function of the Examiner who is required to order revocation after it has been determined that action is to be initiated by charging the seaman. Commandant's Appeal Decision No. 1382.

I do not think that the exercise of the permissive authority to institute proceedings in this case was arbitrary action which constituted an abuse of the discretion granted by the statute. The Coast Guard has consistently taken the position that seamen who have been associated with narcotics in any manner are a serious threat to the safety of life and property at sea. The conclusive evidence is that Appellant was convicted by a United States District Court as a result of having heroin in his possession and the determination of the U. S. Attorney's office to prosecute. This conviction is the factor which is predominant over such problematical matters as whether Appellant was assisting Customs at the time of the act for which he was convicted (Appellant admits he had no agreement with Customs at the time) and whether Appellant would have been convicted if he had pleaded not guilty. The conviction definitely establishes Appellant's association with narcotics. The claimed technical nature of the violation and assurances by the U. S. Attorney that the conviction would end the matter make it all the more apparent that Appellant's proper recourse is to the court on whose conviction this action of revocation is based.

#### ORDER

The order of the Examiner dated at Portland, Oregon, on 8 January 1963, is AFFIRMED.

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

Signed at Washington, D. c., this 29th day of April 1963.