

In the Matter of Merchant Mariner's Document No. Z-56506-D3 and all
other Seaman Documents
Issued to: JOVINO RIVERA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1482

JOVINO RIVERA

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 12 August 1964, an Examiner of the United States Coast Guard at San Francisco, California 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 14 July 1955, Appellant was convicted by the United States District Court for the Southern District of Texas, Galveston Division, a court of record, for violation (on two Counts) of a narcotic drug law of the United States (26 U. S. Code 4742(a): unlawful transfer of marijuana).

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of a Final Judgment and Sentence which shows that Appellant was convicted as alleged after a trial by jury during which he was represented by counsel; and that Appellant was sentenced to serve five years concurrently with a sentence he was then serving in a State prison. Appellant stated that he served the entire five years in prison.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved by plea.

On appeal, Appellant states that he has new evidence of his innocence with respect to the incident which transpired more than nine years ago.

OPINION

With respect to the issue of new evidence to prove his innocence, Appellant's recourse is to the court which convicted him since the revocation of his document is based solely on the fact

that he was convicted for violation of a narcotic drug law. Consequently, the order of revocation may not be rescinded unless Appellant "submits a specific court order to the effect that his conviction has been unconditionally set aside for all purposes." Title 46 CFR 137.20-90(b).

Since it has been over nine years since the conviction, official notice is taken of the fact that Appellant only made two voyages on United States merchant vessels since his release from prison. One was a coastwise voyage in 1962 for 23 days and the other was a coastwise voyage in 1963-64 for 60 days. This explains why it has been difficult to locate and charge Appellant although the Coast Guard has known of this conviction since 1955.

ORDER

The order of the Examiner dated at San Francisco, California, on 12 August 1964, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of November, 1964.

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