

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1040003-D1

Issued to: Robert Michaels

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1523

Robert Michaels

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 23 June 1965 at Seattle, Washington, an Examiner of the United States Coast Guard, after conducting a hearing at Portland, Oregon, revoked Appellant's document upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The charge was proved by evidence that, on 16 September 1964, Appellant was convicted by the Circuit Court of the State of Oregon for the County of Multnomah, a court of record, for violating a narcotic drug law of the State of Oregon (illegal sale of marijuana).

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification at the beginnings of the hearing on 17 July 1964. The Investigating Officer introduced evidence of an indictment against Appellant for the unlawful sale of marijuana, and a jury verdict finding Appellant guilty as charged in the indictment. The Investigating Officer then rested. Counsel for Appellant moved to dismiss the charges on the ground that there was no evidence of a conviction since the court had not yet rendered judgement in the case. The Examiner agreed that the proceedings were premature but denied the motion and adjourned the hearing until after the court acted.

The hearing was reconvened on 27 November 1964. The Investigatin Officer introduced in evidence, over objection, the Judgment and Probation Order of the court. This states that, on 16 September 1964, Appellant appeared with counsel, was convicted on his plea of not guilty and jury verdict of guilty of the offense of illegal sale of narcotics, and was placed on probation for a period of five years. Since Appellant was not present at the hearing on 27 November, the Examiner granted counsel's motion for a continuance to permit Appellant to be present at the hearing to submit his defense.

When the hearing was again convened on 18 June 1965, Appellant was present but no evidence was offered for the defense.

On 23 June, the Examiner rendered his decision finding Appellant guilty and entered the order revoking his document.

On appeal, it is argued that evidence of a guilty verdict by a jury is not sufficient to show a conviction; and it was error for the Examiner to permit the Investigating Officer to reopen his case on 27 November 1964 and introduce in evidence the judgment of the court.

APPEARANCE: Cate, Jaureguy, Hardy, Buttler and Mc Ewen of Portland, Oregon by claud A. Ingram, Jr., Esquire, of Counsel

OPINION

The specification alleges that Appellant was convicted on 7 July 1964, the date on which the jury verdict was filed. For the purpose of these proceedings, the conviction occurs when the judgment of the court is entered. Commandant's Appeal Decisions Nos. 954, 1145 and 1377. Therefore, proof of the charge in this case is based on the Judgment and Probation Order of 16 September 1964.

Although judgment had not been entered when the hearing was commenced on 17 July 1964, it is my opinion that it was not error, prejudicial to Appellant, for the Examiner to adjourn the hearing until 27 November 1964 and then allow the Investing Officer to introduce in evidence the court judgment. Any error in this respect was certainly harmless because, as pointed out by the Examiner, the result would have been the same if Appellant had been charged again. Therefore, the contentions raised on appeal do not persuade me to alter the action taken by the Examiner.

ORDER

The order of the Examiner dated at Seattle, Washington, on 23 June 1965, is AFFIRMED.

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

Signed at Washington, D. C., this 25th day of October 1965.

INDEX

NARCOTICS STATUTE

applied
conviction, date of
hearing pre-dating judgment
jury verdict insufficient