

IN THE MATTER OF MERCHANT MARINER'S DOCUMENTS NO. Z-1099524 AND ALL
Issued to: Moses Hill ROBERTSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1587
Moses Hill ROBERTSON

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 19 May 1966, an Examiner of the United States Coast Guard at Galveston, Texas, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that while as a holder of a merchant mariner's document above described, on or about 22 April 1966, Appellant was convicted in the United States District Court for the Southern District of Texas, Houston Division, for violation of a narcotic drug law of the United States, to wit: acquiring marihuana without having paid the transfer tax, in violation of 26 U.S.C. 4744(a) (1).

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

A certified copy of the judgment of conviction alleged in the specification was introduced into evidence.

In defense, Appellant offered no evidence.

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

The entire written decision was served on 20 May 1966. Appeal was timely filed on 7 June 1966.

FINDINGS OF FACT

On 26 April 1966, Appellant was the holder of U. S. Merchant Mariner's Document No. Z-1099524. Having pleaded guilty to a violation of 26 U.S.C. 4744(a) (1), acquiring marihuana without paying the transfer tax, in the U. S. District Court for the Southern District of Texas, Houston Division, on 22 April 1966, Appellant was adjudged guilty and sentenced, on 26 April 1966, to five years imprisonment. Execution of sentence was suspended on five years' probation.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Three bases of appeal are urged. The first alleged that Appellant had retained an attorney to represent him at his hearing, that he had advised the Examiner of this and that the attorney could not be present on the day of the hearing, but that Examiner had disregarded his request for a continuance, thus denying Appellant the right to counsel, and due process of law.

Secondly, it is contended that violation of 26 U.S.C. 4744(a) (1) is not a narcotic drug law violation, but a mere failure to pay a tax.

Lastly it is urged that since Appellant's probation officer is willing to let him resume the occupation of merchant seaman his document should be restored to him.

APPEARANCE: Crawford, Harris, Martin & Carmona, of Galveston, Texas, by George D. Martin, Esquire.

OPINION

I

As to Appellant's first point, the record of hearing shows that the Examiner advised him of his right to have counsel "who may be anyone you desire, a lawyer, union patrolman, agent or friend." He said also, "you, of course, may represent yourself. Do you understand your rights as I have just told them to you?" Appellant replied, "Yes."

The Examiner then said, "And are you ready to proceed with the hearing?" and Appellant again replied, "Yes." (R-1).

(The record shows also that Appellant had been advised of his right to counsel by the Investigating Officer the day before when charges were served. R-3)

Since Appellant appeared without counsel on 19 May 1966, implicit in the Examiner's advice that he could have a lawyer is an invitation to continuance.

The fact is that Appellant did not mention a lawyer. He did not ask for a continuance. He affirmatively expressed on the record his willingness to proceed.

He cannot be heard now to make a contrary assertion in a bald statement not even in the form of an affidavit.

II

26 U.S.C. 4744 is a narcotic drug control law of the United States and is within the meaning of 46 U.S.C. a and b. Appeal Decision 1445.

III

While Appellant's probation officer may well wish to see him gainfully employed, consideration of safety at sea dictates that it shall not be as a documented merchant seaman.

IV

I note that the judgment of conviction in Appellant's case was entered on 26 April 1966. The variance from the specification is not fatal.

CONCLUSION

I conclude that there is no reason to disturb the findings or order of the Examiner.

ORDER

The order of the Examiner dated at Galveston, Texas, on 19 May 1966, is **AFFIRMED**.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of September, 1966.

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Counsel

right to, not denied

Right to counsel

held not denied

Examiner

held not to deny right to counsel.

Marihuana Tax Act

held a narcotic drug law

Marihuana Tax Act held