

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-100286 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Donato RODRIGUEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD
1594

Donato RODRIGUEZ

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

By order dated 29 April 1966, an Examiner of the United States Coast Guard at Houston, 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 a holder of MMD Z-1000286 Appellant was, on or about 23 November 1959, convicted of a violation of a narcotic drug law of the State of Texas in Criminal District Court No. 5 of Harris County, Texas.

Appellant was served with charges, as stated above, at San Francisco, on 3 March 1966 and hearing was opened that date. It appears that Appellant moved for a change of venue to Houston, Texas, so that he could procure counsel of his choice. The motion was granted. Hearing was reconvened in Houston on 18 March 1966, and postponed until 28 April 1966, at which time Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and specification.

Appellant testified in his own behalf, and offered evidence of good conduct since his conviction.

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 4 May 1966. Appeal was timely filed on 31 May 1966, and perfected on 15 June 1966.

FINDINGS OF FACT

On 23 November 1959, Appellant was convicted in Criminal District Court No. 5 of Harris County, Texas, of a violation of a narcotic drug law of the State of Texas. Sentenced to two to five years imprisonment, he was released after three years and six days.

Appellant immediately upon release went to work ashore. After

fourteen months in the same job, he returned to seagoing as a livelihood. His work and record since release from the penitentiary have been creditable.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant's plea of guilty to the criminal indictment was improvident and improperly induced by his counsel. Therefore, his conviction was improper. It is also urged that strong evidence of rehabilitation justifies reversal of the Examiner.

OPINION

The judgment of the District Court of Harris County, Texas, may not be attacked in proceedings under 46 U.S.C. 239 b. The statute deals with convictions in federal and State Courts without distinction. A judgment of State court is therefore conclusive under the statute. 46 CFR 137.20-110 (c).

II

Rehabilitation is not a defense when there has been a conviction for possession of narcotics, and the Examiner, after a finding of conviction, must enter an order of revocation. However, the evidence of rehabilitation may be considered on Appeal.

CONCLUSION

I conclude that the proof of rehabilitation offered by Appellant is, in this case, of sufficient cogency and for a sufficient period of time to warrant vacating the order of revocation.

ORDER

The findings of the Examiner made at Houston, Texas, on 28 April 1966 are AFFIRMED. For good cause shown, the order of the Examiner is VACATED. No order against Appellant's merchant mariner's document exists. In any future action against Appellant's document the record, at the appropriate point, will reflect that the charge was PROVED, and the the order was ENTERED, but VACATED.

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

Signed at Washington, D. C., this 13th day of December 1966.

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conclusive under 46 U.S.C. 239 b