

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1281076
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Albert M. TORREGANO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1873

Albert M. TORREGANO

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 22 September 1969, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck utility on board SS CRISTOBAL under authority of the document above captioned, on or about 28 June 1969, Appellant assaulted and battered another crewmember, one William O. Thomas, with a dangerous weapon, to wit, a hammer, when the vessel was at Cristobal, C.Z.

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 the testimony of several witnesses, court records, and voyage records of CRISTOBAL.

In defense, Appellant offered in evidence his own testimony and that of several other witnesses.

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

The entire decision was served on 29 September 1969. Appeal was timely filed on 16 October 1969 and perfected on 9 March 1970.

FINDINGS OF FACT

On 28 June 1969, Appellant was serving as a deck utility on board SS CRISTOBAL and acting under authority of his document while

the ship was in the port of Cristobal, C.Z.

At about 0755 on that date, when William O. Thomas, a utility man, was sleeping on the mooring line stowage box at the after end of the vessel. Appellant struck him on the head with a hammer. At about 1430 on that date, Appellant was convicted after a plea of guilty in the Magistrate's Court at Cristobal of assaulting and battering Thomas with a hammer.

At 1500 on that date, when the master of CRISTOBAL read his log entry to Appellant, Appellant's reply was to the effect that the trouble had begun earlier ashore, and that he had wakened Thomas before hitting him with the hammer.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The grounds for appeal so overlap and repeat that they cannot be stated and dealt with seriatim.

Where necessary, the assertions of grounds have been grouped together for convenience of responsive opinion.

APPEARANCE: Bernard s. Dolber, Esq., New Orleans, La.

OPINION

I

The evidence is clear and uncontroverted that Appellant was convicted, upon his plea of guilty, of wrongfully using force and violence upon the person of William Orville Thomas by striking him about the head and arms with a hammer while on the promenade deck of SS CRISTOBAL, at Cristobal, C.Z., in the Magistrate's Court.

If there were no other evidence in the record, I would necessarily have to find that the Examiner's findings were based upon substantial evidence. I need not consider the status of Canal Zone Magistrate's courts. I hold here that a judgment of any court of a jurisdiction within the United States, its territories and possessions, including Puerto Rico and the Canal Zone, is prima facie evidence of the facts related therein a proceeding brought under R.S. 4450 (46 U.S.C. 239).

This holding in no way affects the conclusiveness of judgments of conviction in U.S. District Courts when the subject matter of the court action is the same as the matter of the proceeding under R.S. 4450, and is, of course, not relevant to proceedings under the Act of July 15, 1954, 68 Stat. 484, 46 U.S.C. 239a-b.

II

Apart from the conviction in the Canal Zone Magistrate's Court, there is also in this record an entry in the official log of CRISTOBAL, made in substantial compliance with the governing statutes, which recites that Appellant assaulted and battered William O. Thomas with a hammer. This entry is prima facie evidence of the facts recited therein. (46 CFR 137.20-107) and is, a fortiori, substantial evidence such as to sustain the Examiner's finding.

Appellant asserts that the record of conviction in the Canal Zone court was illegally introduced into evidence in this case because Appellant's "at the Cristobal, Canal Zone hearing was not represented by counsel as is required by the laws of the United States" nor did he make a positive waiver of such right, there being no showing of such action from the document admitted. Appellant cites, generally, the Federal Rules of Criminal Procedure.

I know of no law of the United States which requires that a defendant in a criminal case be represented by counsel, and I find nothing in the Canal Zone Code that makes such a requirement. The Federal Rules of Criminal Procedure, or their face, do not apply to other than District Courts of the United States. The Magistrate's Court "of the Town and Subdivision of Cristobal" which heard the action captioned "Government of the Canal Zone vs Albert Mitchell Torregano" is not such a court.

Neither do I find in the Canal Zone Code a requirement that a judgment of Magistrate's Court recite that a defendant who appeared without counsel waived his right to counsel.

The complaint-judgment documents are in order, and neither is "on its face irregular," as Appellant alleges.

In support of this argument Appellant gives me three citations, without further comment:

- (1) F.R.Cr.P. 11;
- (2) McCarthy v United States (1969) 394 U.S. 459; and
- (3) Halliday v United States (1969), 37 Law Week 3419.

The Federal Rules of Criminal Procedure, as I have pointed out, do not apply to the Canal Zone Court in which Appellant was convicted, and, of course, they have no governing application to

proceedings under R.S. 4450 and 46 CFR 137.

The McCarthy decision holds that Rule 11 must be strictly construed when a plea of guilty is entered in a District Court, and that the sentencing judge must by direct dealing with the person entering a guilty plea satisfy himself of the sufficiency of the facts admitted to support a guilty plea. The decision does not make Rule 11 applicable to the Canal Zone Court in question.

Halliday v United States adds nothing to the argument. It is merely an order denying a petition for a writ of certiorari on the grounds that the holding in the McCarthy case is not retroactive.

IV

Appellant asserts that the Sixth Amendment requires that there must be proof of guilt "beyond a reasonable doubt." That test is inapplicable in an administrative proceeding. In these proceedings the test is whether the Examiner's findings were based on substantial evidence of a reliable and probative nature. Universal Camera Corp. v National Labor Relations Board (1951), 349 U.S. 474.

This rule applies even though the act alleged as misconduct in a proceeding to suspend or revoke a person's seaman's papers might also be an act which could lead to criminal prosecution. Appellant says, "If the attempt is made to disqualify Torregano [to suspend or revoke Appellant's seaman's documents] due to an alleged criminal conviction, such charge must itself be proved by standards pertaining to criminal jurisprudence." Clarification of terms and objectives is required here.

The "attempt" here is not to "disqualify" Appellant because of a criminal conviction. The action is taken because of an act of misconduct, as authorized under R.S. 4450 (46 U.S.C. 239). The act of misconduct need only be proved by substantial evidence. It does not matter that the act might also be criminal in nature; it is not necessary that there have been a criminal proceeding, although if there has been one the fact of conviction constitutes substantial evidence, as I have discussed in "I" above; it does not even matter that there may have been an acquittal in a criminal proceeding involving the same act. The standards of proof are entirely different.

Least there be some improper inference drawn here I point out that different considerations apply to proceedings under 46 U.S.C. 239a-b. Under those sections the question before the examiner is not whether the person committed a proscribed act but rather whether the person stands convicted of having committed an offense. In such proceedings it is not the act that is in issue; it is the

fact of conviction.

V

Appellant also complains that at the time of his "logging" by the master he was not advised that he was not required to make any statement or sign any document "seriously infringing upon his right of self incrimination [sic]."

Whether Appellant's self-incriminatory statement made to the master would be admissible in a criminal court is not for me to decide. The master made his record in accordance with the governing statutes. The evidence was admissible in this proceeding.

VI

Turning to the oral testimony taken at the hearing Appellant urges that, "If his testimony is given equal weight to that of the complainant, he has the right to self-defense. . ."

On this matter, the Examiner chose not to give the same weight to Appellant's testimony as he did to that of the victim. The oral testimony accepted by the Examiner, without arbitrary or capricious determination, was sufficient upon which to base findings of fact.

VII

Appellant's, last point is a mixed bag. He urges first that the record of the Cristobal, C.Z., court "clearly discloses the failure of such tribunal to follow the mandatory safeguards which are provided by law." The record that was present to the Examiner and is presented to me is a properly authenticated judgment of conviction in the Canal Zone court. If Appellant wishes to attack that conviction on the grounds stated he is in the wrong forum.

Once again the question of "proof beyond a reasonable doubt" is raised, but this time it is urged as posed to me, not to the Examiner. It is obvious that if the standard of proof before the Examiner is not "Proof beyond a reasonable doubt" that test has no application to me.

VIII

As an afterthought Appellant urges that even if the charges were properly found proved, the order was excessive. An order of revocation is not excessive in the case of one who without provocation strikes another on the head with a hammer.

ORDER

The order of the Examiner dated at New Orleans, La., on 22
September 1969, is AFFIRMED.

J. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 7th day of April 1972.

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