

In the Matter of License No. 100801
Issued to: Danny E. WILSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1898

Danny E. WILSON

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

By order dated 29 June 1971, an Administrative Law Judge of the United States Coast Guard at Honolulu, Hawaii revoked Appellant's license and all other seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specifications found proved alleges that being the holder of the captioned document, on or about 2 April 1971, Appellant was convicted of a violation of Section 329-5 of the Hawaii Revised Statutes, as amended, in the First Circuit Court of the State of Hawaii in the City and County of Honolulu, a court of record, for unlawful possession of a narcotic drug.

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 a certified copy of an amended judgement and information from the Circuit Court of the First Circuit, State of Hawaii.

In defense, Appellant offered no evidence.

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

The entire decision was served on 14 July 1971. Appeal was timely filed on 2 August 1971.

FINDINGS OF FACT

On 2 April 1971 the Appellant was convicted of violation of Section 329-25 of the Hawaii Revised Statutes, as amended, in the First Circuit Court of the State of Hawaii in the City and County of Honolulu, a court of record, for unlawful possession of narcotic

drug.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge.

Appellant makes two contentions on appeal. In his words they are as follows:

- (1) THE HEARING OFFICER'S LACK OF DISCRETION IN THE PRESENT CASE IS AN UNCONSTITUTIONAL APPLICATION OF TITLE 46 U.S.C. 239b(b).
- (2) SECTION 137.03-10(a), CODE OF FEDERAL REGULATIONS, CHAPTER I OF TITLE 46, SUBCHAPTER K, MISINTERPRETS THE LEGISLATIVE INTENT AND PURPOSE OF 46 U.S.C. 239b(b).

APPEARANCE: Brook Hart, Public Defender Honolulu, Hawaii, by Richard L. Rost, Deputy Public Defender.

OPINION

I

Appellant's first contention is that the procedure which resulted in the revocation of his license was an unconstitutional application of 46 U.S.C. 239b(b) in that he was denied due process of law when the Administrative Law Judge was required by regulation to revoke his seaman's documents after a finding of a conviction of a narcotic drug law. He asserts that the right to hold seaman's documents is a property right of which he cannot be deprived without the due process protections of the Fifth Amendment of the United States Constitution. Since in the present proceeding the Appellant was provided with all of the essential requirements including a full hearing with notice and with the right to confront his accusers, as are discussed in Parker v. Lester, 227 F. 2d 708 (Ninth Cir., 1955); and In Re Merchant Mariners Documents, 91 F. Supp. 426 (N.D. Cal., 1949), cited by Appellant, I need not be detained with the question of the application of the Fifth Amendment to these proceedings.

Appellant argues that there is no rational connection between the agency's sanction and the conduct for which the sanction was imposed and, therefore, that the revocation required by 46 C.F.R. 137.03-10(a) improperly prejudices the matter without regard to the facts of the particular case. In making this argument, the Appellant has misconstrued the conduct for which the sanction of revocation was imposed. Here the conduct is the conviction of a

narcotic drug law, not the growing of marijuana plants. That there is a rational connection between conviction of a narcotic drug law and the revocation of a seaman's document has been thoroughly discussed in earlier decisions of mine and requires no further elaboration here. See: Decision on appeal No. 954. This argument also overlooks the fact that it was Congress which prescribed the sanction to be imposed. It is sufficient for due process that Appellant was provided notice of the charges against him and had the opportunity of a full hearing to determine whether the facts as alleged were true. Parker v. Lester, supra.

II

Secondly, Appellant contends that 46 C.F.R. 137.03-10(a) misrepresents the legislative intent and purpose of 46 U.S.C. 239b. He argues that the word "may" in the statute authorizes discretion as to the appropriate order to be issued after it has been determined at the hearing that there had been a conviction. This contention has been raised on a numerous previous occasions wherein I held, as I do now, that the only discretion allowed by the statute is whether or not to bring an appropriate case to a hearing. When a conviction is the basis of the proceedings, the Administrative Law Judge may only find that there was not conviction within the meaning of the statute and dismiss or find that there was a conviction and order revocation of the documents in question.

Appellant's remaining arguments assert that administrative regulations which do not provide for a hearing, prejudge the result of the case without regard to the facts, or fail to carry out the purposes of the legislative act are invalid and constitutionally flawed. As was pointed out in part I of this opinion, the Appellant in this case was provided with a full hearing to determine whether the facts alleged in the charge, namely, whether or not he had been convicted of a narcotic drug law, were true. Once the fact of conviction has been established, the legislative act requires revocation of the documents involved.

ORDER

The order of the Administrative Law Judge dated at Honolulu, Hawaii on 29 June 1971, is AFFIRMED.

C. R. Bender
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 27th day of November 1972.

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