

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-569577-D4
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Alex ARCHIE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1919

Alex ARCHIE

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 3 March 1972, an Administrative Law Judge of the United States Coast Guard at Long Beach, California revoked Appellant's seaman's documents upon findings him guilty of the charge of "charge of "conviction for a narcotic drug law violation." The specification found proved alleges that while the holder of U.S. Merchant Mariner's Document above described, on or about 23 December 1969, Appellant was convicted by the Superior Court, in and for the County of Los Angeles, State of California, a court of record, for violation of a Narcotic Drug Law, to wit: Violation of Section 11530 of the Health and Safety Code of the State of California; to wit: possession of marijuana.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence certified copies of court records from the Superior Court of Los Angeles County, California.

In defense, Appellant offered in evidence certified copies of the arrest report and the preliminary hearing transcript from the above court and his own testimony.

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 served a written order on Appellant revoking all documents issued to him.

The entire decision order was served on 13 March 1972. Appeal was timely filed on 24 March 1972. A brief in support of appeal was filed on 14 July 1972.

FINDINGS OF FACT

On 20 May 1970 the Appellant, Alex Archie, was the holder of Merchant Mariner's Document Z-569577-D4 which was last issued to him at Los Angeles, California on 23 August 1971 and authorized him to serve ordinary seaman, wiper, and messman-food handler.

On 23 December 1969 the District Attorney for the County of Los Angeles, State of California, filed an Information in the Superior Court of the State of California for the County of Los Angeles accusing Appellant of the crime of violation of Section 11530, Health and Safety Code of the States of California, a felony. It was alleged that the Appellant did, on or about the 2nd day of December 1969 at and in the County of Los Angeles, State of California, willfully, unlawfully and feloniously have possession of a narcotic, to wit, marijuana. On or about 20 May 1970, the Appellant was convicted of a violation of the Health and Safety Code of the State of California, Section 115300, in the Superior Court in and for the County of Los Angeles, a court of record, for unlawful possession of marijuana.

BASES OF APPEAL

The appeal taken from the order of the Administrative Law Judge contends that the controlling statute, 46 U.S.C. 239b, is unconstitutional. Appellant raises several arguments based on the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

APPEARANCE: Legal Aid Foundation of Los Angeles, by Robert E. Mundy, Esq.

OPINION

I

Before turning to the contentions raised by Appellant, I believe a few comments are in order concerning the discrepancy appearing in the record between the date alleged as the date of Appellant's conviction by the State court and the date found proved and, also, concerning the stipulation entered into that Appellant was in fact convicted of a narcotic drug law. The date alleged in the specification for Appellant's conviction was 23 December 1969; however, the date found by the Administrative Law Judge was 20 May 1970. Since all parties were aware that the dates concerned a single conviction and the issue was actually litigated, I find no prejudicial error.

The other point to which I direct my attention is the matter

of the stipulation that Appellant was in fact convicted by a court of record of a narcotic drug law violation. The colloquy among the Administrative Law Judge, Counsel, Appellant, and Investigating Officer (R. 28-30) concerning the stipulation evidences that evidences that there was apparently some misunderstanding among the parties as to all of the relevant dates and the facts appearing from I.O. exhibits 1A, 1B, 1C, and 1D. Indeed, had the case rested solely upon these court documents, I would find it difficult to hold that was substantial evidence to support the findings. Whenever a stipulation of fact is offered and relied upon, the essential facts should be reduced to writing or, at the very least cogently summarized before the stipulation is accepted. In this case, since Appellant was asked directly if he understood that he was admitting that he was convicted on 20 May 1970 and since he was represented by counsel, I hold that the stipulation together with the documentary evidence constitutes substantial evidence of a reliable and probative character that Appellant was convicted of a narcotic drug law on 20 May 1970.

II

Appellant's several specific contentions each raises an issue of the constitutionality of the statutory authority upon which the present action is premised, namely, 46 U.S.C. 239b. It is urged that the Fifth and Fourteenth Amendments are violated in that the statute does not provide for discretion of the hearing officer to enter an order other than revocation or to decide that marijuana is not a narcotic, that the statute is an overly broad invasion of private conduct unjustified by any danger to health and safety of society, that it discriminates against a particular segment of society for their choice of intoxicant, and that it denies equal protection since suspension of documents is allowed for similar types of conduct under 46 U.S.C. 239, but not under 239b.

Due process demands that the law or rule making body not enact laws which are arbitrary, unreasonable or capricious and that a person must be afforded an opportunity to be fairly heard in every case. Congress is not prohibited from enacting laws which treat different groups of people differently. The essence of due process is that Congress is prohibited from enactments that shock the sense of fair play. Galvan v. Press, 347 U.S. 522 (1954). It does not shock the sense of fair play that a person who has been convicted of a violation of a narcotic drug law in a court of competent jurisdiction may be prohibited from serving on ships in the United States merchant service. History has shown a reasonable nexus between the safety of life at sea and the use of narcotic drugs. Neither are persons deprived of procedural due process in actions pursuant to Section 239b, since each is afforded adequate notice of the charge and is protected by a full evidentiary hearing with the

right to call witnesses and to cross-examine those presented by the government.

In any event, Appellant is in the wrong forum in which to urge the unconstitutionality of a Federal statute. It is not within the competence of this agency to pass upon the constitutionality of an act which it is called upon to administer. See Decision on Appeal Nos. 1832 and 1382.

III

Appellant's remaining contentions are that the conviction by the California court is invalid because of alleged violations of the Fourth Amendment's prohibitions against unreasonable searches and seizures and that the revocation of his document is a cruel unusual punishment in violation of the Eighth Amendment to the Constitution.

The decision to be made on the first contention was within the province of the trial court or an appeals court and cannot be collaterally raised in these proceedings. The only question to be determined is whether Appellant has been finally convicted by a Federal or State court of record of a narcotic drug law violation. 46 CFR 137.20-110(c).

The latter contention is also without merit as these proceedings are not criminal in nature and no "punishment" as such is involved.

ORDER

The order of the Administrative Law Judge dated at Los Angeles, California, on 3 March 1972, is AFFIRMED.

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

Signed at Washington, D.C., this 5th day of April 1973.

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