

IN THE MATTER OF LICENSE NO. 90440
MERCHANT MARINER'S DOCUMENT Z-435-72-9455
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: George N. STOCKSTILL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1954

George N. STOCKSTILL

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 29 June 1972, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman's documents upon finding him guilty of "conviction for a narcotic drug law violation." The specification found proved alleges that on or about 28 October 1970, Appellant was convicted by the 16th Judicial District Court of the State of Louisiana, a Court of Record, for violation of the narcotics drug laws of the State of Louisiana.

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 excerpts from the record of the 16th Judicial Court of Louisiana and evidence of a pardon granted Appellant by the Governor of Louisiana.

In defense, Appellant offered in evidence his own testimony, seven letters attesting to his good conduct, and testimony of two friends, his father and his wife.

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

The entire decision was served on 18 July 1972. Appeal was timely filed on 18 July 1972.

FINDINGS OF FACT

On 28 October 1970 Appellant was convicted of possession of marihuana in a Court of Record of the State of Louisiana. On 27

March 1972 the Governor of Louisiana, John J. McKeithen, granted Appellant a full pardon.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Because of the disposition to be made of the case the bases of appeal are not spelled out.

APPEARANCE: Appellant, by C. J. Schrader, Jr., Esq.

OPINION

This is a case of first impression and involves a unique set of circumstances in which the Appellant was convicted by a Louisiana Court of Record for possession of marihuana and subsequently granted a full pardon by the Governor of Louisiana prior to the institution of administrative proceedings against his license and documents based on the conviction.

46 U.S.C. §239b provides for the revocation of a seaman's documents upon proof of a conviction for violation of the narcotics drug law of a State. The regulations promulgated in conjunction with Section 239b, 46 CFR §137.03-10, reiterate this provision, but also provide that a revocation order made pursuant thereto will be rescinded by the Commandant upon submission of "satisfactory evidence that the court conviction on which the revocation is based has been set aside for all purposes" Section 137.20-190(b) defines "satisfactory evidence" as a specific court order to the effect that his conviction has been "unconditionally set aside for all purposes." Thus, the regulations appear to provide for rescission of the revocation only where there is a court order setting aside the conviction for all purposes.

A strict reading of this provision would require a finding that a full pardon which sets aside the conviction for all purposes is not grounds for rescinding the revocation. However, the key language in these regulatory provisions is that the conviction has been "unconditionally set aside for all purposes." Where the state law provides that a full pardon has this effect, then it appears that such action falls within the intent of the regulations, even though not specifically covered.

The Louisiana Constitution, Article 5 section 10 vests full power in the Governor to grant pardons. In the instant case the record reflects that the Governor granted Appellant a full pardon on 27 March 1972, almost a month before this action against Appellant's license and documents was commenced. Louisiana case law states that a full pardon ". . . removes the disability and

reinstates the right of citizenship. The offender is restored to all of his civil and political rights . . . The pardon releases the offense, and obliterates it in legal contemplation." Collins v. Lewis, 111 La. 693, 35 So. 816. Thus, there can be no doubt that Appellant's pardon unconditionally sets aside his conviction for all purposes.

CONCLUSION

A full pardon, which under State law unconditionally sets aside a conviction for all purposes, falls within the intent of sections 137.03-10 and 137.20-190 and provides a basis for rescission of an order of revocation issued under 46 U.S.C. §239b.

In the future, where the Investigating Officer finds that a full pardon has been granted prior to the institution of proceedings under Section 239b, he should exercise that discretion allowed under 239b and 137.03-1-(a) and decline to bring an action.. should there be a doubt as to whether the effect of the pardon is to unconditionally set aside the conviction for all purposes, the Investigating Officer should bring the case to a hearing and the Administrative Law Judge should receive evidence and make a finding on that point in his decision.

In addition it is concluded that court convictions which are set aside by either court order or pardon subsequent to the service of the Administrative Law Judge's Decision and Order against a license or seaman's documents are not affected by this decision. For those instances the appeal procedures of the revocation set forth in 46 CFR §137.20-190 are applicable.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 22 June 1972 is VACATED and the case DISMISSED.

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

Signed at Washington, D. C., this 27th day of June 1973.

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