

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO Z-556 80 9912  
LICENSE NO 429 353  
Issued to: Alfred M. NORTON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2048

Alfred M. NORTON

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 5.30-1 and 3.

By order dated 4 June 1975, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, revoked Appellant's document and license upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that Appellant, being the holder of the above captioned document and license, was, on or about 4 March 1975, convicted by the United States District Court for the Western District of Washington, a court of record, for possession of hashish in violation of narcotic drug laws of the United States, to wit: the Revised Code of Washington section 69.50.401 (d) and sections 7 and 13 of title 18 of the United States Code.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a copy of the record of Appellant's conviction.

In defense, Appellant offered in evidence a statement in mitigation.

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

The entire decision and order was served on 4 June 1975. A notice of appeal was timely filed on 4 June 1975. On 10 September 1975, a letter was received from Appellant which, in effect, constituted a petition for clemency. However, this letter failed to state any grounds for an appeal and, pursuant to 46 CFR 5.30-3 (b) (1), the appeal was terminated by letter dated 6 October 1975. Appellant, by letter dated 8 November 1975, responded by requesting

reconsideration and by stating specific jurisdictional grounds for his appeal. In consideration of the facts that Appellant is acting without professional counsel and that he has been absent from the United States, his failure to timely file a proper appeal is waived and the letter of 6 October 1975, terminating Appellant's appeal, is withdrawn.

#### FINDINGS OF FACT

On 4 March 1975, Appellant was the holder of the captioned document and license.

On 4 March 1975, Appellant was convicted in the United States District Court for the Western District of Washington, a court of record, for violation of a narcotic drug law, to wit: section 69.50.401 (d) of the Revised Code of Washington and sections 7 and 13 of title 18, United States Code.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that:

- (1) The Coast Guard regulations concerning revocation of merchant mariner documents for possession of marijuana are invalid as an excess of the authority granted to the Coast Guard under Title 46 U.S.C. section 239b
- (2) The Coast Guard regulations requiring mandatory revocation of merchant mariner documents for conviction of a narcotic drug law are unconstitutional as violating the due process and equal protection of the laws guarantees of the United States Constitution, violative of administrative due process, and unconstitutional in that they constitute cruel and inhumane punishment.

APPEARANCE: Pro se.

#### OPINION

##### I

46 U.S.C. 239b mandates that in cases where a seaman has been convicted in a Federal or State court of record for a violation of a narcotic drug law, as defined in 46 U.S.C. 239a, and proof of conviction is submitted at a Coast Guard Hearing, the seaman's documents shall be revoked. The only discretion authorized under Section 239b is in deciding whether or not to bring charges in the first instance. Once the charge of conviction for violation of a

narcotic drug law has been submitted at a hearing and proven, there is no one who can exercise discretion and do less than revoke the seaman's document. This interpretation is borne out by the legislative history of Section 239b. Throughout the hearings held on the bill containing Section 239b and the House and Senate Reports, the only words used when discussing the appropriate order following proof of conviction are "deny" and "revoke". It is readily apparent that "deny" applies to initial issuance of a document to one previously convicted of narcotics offense under Section 239b (a), and that "revoke" applies to taking away the document of one already holding it under Section 239b (b). Congress did not intend to distinguish between different types of convictions; so long as the conviction was for violation of a narcotic drug law, they intended mandatory revocation. See Hearings before the Senate Subcommittee on Interstate and Foreign Commerce on H.R. 8538 held June 16, 1954; House Report No. 1559 of May 5, 1954; and Senate Report No. 1648 of June 28, 1954. See also Decisions on Appeal Nos. 1830, 1957, 1959, 1983, 2009, and 2015.

## II

Appellant contends that the regulations implementing Section 239b are unconstitutional. The Coast Guard's regulations issued pursuant to Section 239b requiring automatic revocation cannot be unconstitutional, for the regulations do no more than is specifically mandated by Section 239b. The constitutionality of Section 239b itself, a statute reflecting the will of Congress, is not an issue appropriately raised at an administrative hearing.

Appellant also alleges that revocation of his document under the circumstances of this case is "cruel and inhuman punishment" violative of his constitutional rights. It is presumed that Appellant means "cruel and unusual punishment" prohibited by the Eighth Amendment. First, the prohibition against "cruel and unusual punishment" is concerned with criminal sanctions and has no place in these administrative proceedings. Second, an order of suspension or revocation under R.S. 4450 (46 U.S.C. 239) or revocation under 46 U.S.C. 239b has never been held by a court since the original enactment of the Administrative Procedure Act to be "punishment", much less a "cruel and unusual punishment".

## CONCLUSION

46 U.S.C. 239b mandates the revocation of a seaman's document by the Administrative Law Judge upon proof of conviction for violation of a narcotics drug law. The statute does not authorize any subsequent reviewing authority to change that revocation order once it is found that the record reflects proper proof of the conviction.

ORDER

The order of the Administrative Law Judge dated 4 June 1975,  
at Long Beach, California, is AFFIRMED.

O. W. SILER  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D. C., this 1st day of March 1976.

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