

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-223 68 1138-D1  
Issued to: James Edward WADDY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2141

James Edward WADDY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and 239b, and Title 46 Code of Federal Regulations 5.20-1.

By order dated 31 October 1977, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman's documents upon finding him guilty of misconduct and of the charge of "conviction for a narcotic drug law violation." The specifications of misconduct found proved allege that while serving as a pantryman on board the United States SS PRESIDENT MONROE under authority of the document above captioned, on or about 15 July 1977, Appellant assaulted and battered with his fists one Keichi Kakuda, a waiter aboard the vessel, and on 20 July 1978, disobeyed a lawful order of the chief steward by entering a passenger area of the vessel outside working hours.

The specification under 46 U.S.C. 239b alleged that Appellant had been, on 9 July 1974, convicted in the Municipal Court of Los Angeles County, California, of violation of section 11357 of the Health and Safety Code, involving possession of marijuana.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to each charge and each specification.

The Investigating Officer introduced in evidence voyage records of PRESIDENT MONROE and a record of conviction of Appellant of violation of section 11357 of the Health and Safety Code of California.

In defense, Appellant offered in evidence his own testimony.

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

The entire decision was served on 3 November 1977. Appeal was

timely filed and perfected on 22 December 1977.

#### FINDINGS OF FACT

On 15 and 20 July 1977, Appellant was serving as a pantryman on board the United States SS PRESIDENT MONROE and acting under authority of his document. On 15 July 1977 when Keichi Kakuda, a waiter, was proceeding from the vessel's dining room to the pantry, Appellant, without provocation, struck him in the face. On 20 July 1977, Appellant who had been specifically ordered by the Chief Steward to stay out of passenger areas except in the course of duty, entered and remained in a passageway in two passenger areas without authority.

On 9 July 1974, Appellant was convicted on his plea of guilty of possession of marijuana in violation of section 11357 of the Health and Safety Code of California, a narcotic drug law, in the Municipal Court of Los Angeles County.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that marijuana is a "non-dangerous" drug and that the conviction was not for acts connected with service aboard a vessel, and that the "misconduct" charges were "dropped," with the result that the order of revocation is "unfair."

APPEARANCE: Appellant, pro se.

#### OPINION

I

Appellant appears to have been misled about what happened with the misconduct charges, although the record is quite clear. There was originally a third specification dealing with alleged threats to three members of the crew. This specification was dismissed with prejudice when the Investigating Officer elected not to ask for a delay to obtain the presence of witnesses. The other two specifications were, however, litigated. Appellant himself testified on the merits and the initial decision clearly reflects both the earlier dismissal of the one specification and the findings as to the other two. The record of proceedings likewise reflects that only one specification of misconduct was dismissed.

II

Under 46 U.S.C. 239b, it is not necessary that the conviction of a narcotic drug law violation have been for possession of a "dangerous" drug, nor that the substantive offense for which the conviction was had was related to service aboard a vessel, nor that the person convicted have been the holder of a seaman's certificate at the time of the conviction. It is enough that there was a conviction within the meaning of the statute, as there was here. The holding of a seaman's certificate, obviously, need only be at the time of the hearing (otherwise there would be nothing to proceed against at all), and not at the time of the conviction or at the time of the substantive offense involved in the conviction. Decision on Appeal No. 1688.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 31 October 1977, is AFFIRMED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 9th day of November 1978.

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Narcotic Drug Law Conviction

    Holding certificate at time of, not required

    Not associated with shipboard service