

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 185060
Issued to: William S. Strudwick

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2318

William S. Strudwick

This appeal has been taken in accordance with 46 CFR 5.30-15.

By order dated 9 February 1983, and Administrative Law Judge of the United States Coast Guard at Miami, Florida revoked Appellant's mariner's license upon finding proved the charge of "conviction for a narcotic drug law violation." Also on 9 February 1983 Appellant filed a Notice of Appeal from the order of the Administrative Law Judge and a request for a temporary license. The Administrative Law Judge denied the request by his order of 15 February 1983. Decision on Appeal 2311 (STRUDWICK) of 17 May 1983 VACATED the Administrative Law Judge's order of 15 February 1983 and REMANDED the request for a temporary license for a new decision. By his order of 24 May 1983 the Administrative Law Judge again denied Appellant's request for a temporary license.

BASIS OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge of 24 May 1983 denying a temporary license. Appellant urges that the denial was based on an erroneous interpretation of 46 CFR 5.30-15(b) and 46 CFR 5.03-5(b) prohibiting the issuance of temporary licenses and documents in cases involving those offenses listed in 46 CFR 5.03-5(b) as being deemed to affect the safety of life and property at sea.

OPINION

The Administrative Law Judge's interpretation of the regulations is not correct insofar as he concludes that temporary licenses or documents may not be issued following a finding that one of the offenses listed in 46 CFR 5.03-5(b) has been proved. Since the hearing transcript has now been forwarded to me I can take action on the merits of the request for a temporary license under 46 CFR 5.30-15(a).

I

The fact that an offense is among those listed in 46 CFR

5.03-5 does not automatically preclude the issuance of a temporary license pending appeal. The nature of the offense is only one of many circumstances which may bear upon whether the service of a particular person on board a vessel is compatible with the requirements for safety of life and property at sea under 46 CFR 5.30-15(b)(1). In the past temporary licenses and documents have occasionally been issued following such offenses where the evidence showed that the particular individual would not be a threat to shipboard safety in spite of the serious nature of his offense.

II

The circumstances of this case, however, are such that a temporary license should not be issued. Examination of the record shows that Appellant participated in a scheme to bring a large quantity of illegal drugs into the United States by boat in return for \$20,000. He had become involved when approached by strangers looking for a boat and crew for the crime and from his own testimony it appears that he readily accepted the offer. He acted as a crew member of one of the boats bringing a larger quantity of cannabis ashore.

Appellant, having served his sentence in prison, now works out of a Marina as operator or mate aboard chartered boats as the opportunity presents itself. At the time of the hearing he was working fairly regularly aboard one boat which usually makes several trips per week. He was also working aboard other boats as needed to fill his time. On the day that the charges were served he was working aboard a commercial fishing boat and not serving under authority of his license because the charter business was poor.

Appellant's evidenced also shows that his work as a mariner is his only employment. In addition to himself, he supports his fiancée and her two children. I note that at least at the time of the hearing and while Appellant was in prison she was also working.

At the hearing Appellant placed in evidence two letters. The first was from his probation officer stating that his probation has been satisfactory with the exception of his failure to pay his fine for financial reasons. The second was from the Miami Springs Senior High Adult Education Center stating that he has been taking reading classes.

The record does not convince me that Appellant has been rehabilitated and would no longer be a hazard should he return to sea. The crime for which he was convicted, as stated in 46 CFR 5.03-5, is a hazard to the safety of life and property at sea. This is one of the criteria for issuance of a temporary license under 46 CFR 5.30-15(b). I particularly note the lack of any

apparent change in Appellant's character, the lack of any stable employment and the lack of any involvement with persons in the community who can vouch for his present good character.

I note that Appellant has no record of prior offenses with the Coast Guard, the other criteria under 46 CFR 5.30-15(b). However, this does not outweigh the hazard Appellant presents to safety as discussed above.

CONCLUSION

The order of the Administrative Law Judge denying Appellant's request for a temporary license was based on an incorrect interpretation of the regulations. An analysis of the circumstances of this case, however, convinces me that Appellant should not be issued a temporary license.

ORDER

The order of the Administrative Law Judge denying Appellant's request for a temporary license dated at Jacksonville, Florida on 24 May 1983 is VACATED. Appellant's request for a temporary license is DENIED.

J.S. GRACEY
Admiral, U.S. Coast Guard
COMMANDANT

Signed at Washington, D.C., this 31st day of August 1983.