

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 006 52 9499-01 AND LICENSE 003424
Issued to: JAMES P. HICKEY

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2377

JAMES P. HICKEY

This appeal has been taken in accordance with 46 U.S.C. 7702(b) and 46 CFR 5.30-1.

By order dated 9 May 1984, an Administrative Law Judge of the United States Coast Guard at Portland, Maine revoked Appellant's seaman's document and license upon finding him guilty of the charge of "conviction for a dangerous drug law violation." The specification found proved alleges that being the holder of the documents above captioned, on or about 23 March 1984, Appellant was convicted in the United States District Court for the District of Maine for conspiring to import large quantities of marijuana into the United States.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence 2 exhibits.

In defense, Appellant offered in evidence 6 exhibits 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 by plea. He then entered an order revoking the merchant mariner's license and document issued to Appellant.

The entire decision was served on 14 May 1984, Appeal was timely filed on 31 May 1984, and perfected on 9 July 1984.

FINDINGS OF FACT

Appellant held a license as Chief Engineer, Steam and Motor Vessels, any horsepower.

On 23 March 1984, he was convicted in the United States District Court for the District of Maine for conspiring to import

large quantities of marijuana into the United States. The conviction was the result of a guilty plea pursuant to a plea bargain agreement with the U.S. Attorney's Office. The agreement was entered into following an indictment against Appellant on 25 August 1983. Under the terms of the agreement, Appellant was to cooperate with the U.S. Attorney's Office. All charges against Appellant's wife and all charges against Appellant, except Count VII of the indictment, were to be dismissed.

The Court to which Appellant pleaded guilty stated that the conspiracy existed from about January of 1981 to about June of 1982. Appellant's role was to provide his house in Carrabassett, Maine as a stash house for marijuana. In return, he was to receive \$5,000. On or about 13 July 1981, a substantial amount of marijuana was transported to and stored at Appellant's house.

The other counts of the indictment, although dismissed, were received in evidence. They allege the following additional activities. Sometime in May 1980 one of the other conspirators asked Appellant if he knew of any houses for rent and Appellant offered to rent his own house as a marijuana stash. During June or July of 1980 approximately 14,500 pounds of marijuana from Columbia was transferred from a fishing vessel to two sailing vessels off the coast of Antigua. The sailing vessels brought the marijuana to Maine. About 6,000 pounds of marijuana were off-loaded from one the vessels into two motor homes. In early August 1980, one of the motor homes containing a substantial quantity of marijuana went to Appellant's house. The rest of the marijuana went to other locations.

Appellant was not personally involved in handling the marijuana or operating the vessels which brought it into the United States. His cooperation with the U.S. Attorney's Office contributed to the successful prosecution and conviction of the members of the conspiracy.

Appellant testified that since pleading guilty at trial he has offered his services to the various maritime academies to lecture the midshipmen about the pitfalls and temptations of importing drugs. Appellant graduated from Maine Maritime Academy in 1973. He advanced very rapidly and was sailing as chief engineer before he was 30 years old.

In the Decision and Order the Administrative Law Judge stated that "the circumstances highlighted in mitigation should be brought to the attention of higher authority ... and ... the facts and circumstances surrounding Mr. Hickey's Conviction should be examined if a later request for administrative clemency is lodged."

BASES OF APPEAL

Appellant does not assert that the presiding Administrative Law Judge erred. Rather, he asks:

1. That the Commandant exercise his discretion to not revoke Appellant's license and document;
2. That, in the alternative, he be allowed to apply for a new license under 46 CFR 5.13 immediately.

APPEARANCE: Peter v. Rubin, Esq., Bernstein, Shur, Sawyer and Nelson, Portland, Maine.

OPINION

I

Appellant first asks that, as a matter of discretion, his license and document not be revoked. This request is denied.

The circumstance of this case is such that revocation is the proper sanction. Appellant participated in a major drug smuggling operation for an extended period of time. Even though he did not actually handle the drugs or sail the vessels which brought the drugs into the United States, he played a major role in the conspiracy. He provided a house where large quantities of illicit drugs were stored and received substantial sums of money in return.

The purpose of 46 USC 7704 and its predecessor, 46 USC 239b is to remove drug traffickers from the merchant marine. See Commandant v. Fifer, NTSB Order No. EM 111 (1984) and Commandant v. Hodgman, NTSB Order No. EM-103 (1984). Revocation, in this case, is consistent with that purpose.

In addition, the statutory basis for my exercise of discretion in cases involving conviction for a drug offense has changed. 46 USC 239b stated that the Coast Guard "may" revoke a license or document following conviction. The current statute, 46 USC 7704 states that the Coast Guard "shall" revoke. This is a substantial change. I no longer have an affirmative statutory duty to weigh the circumstances of the offense resulting in each conviction and decide whether or not revocation is appropriate. The statute requires revocation.

This change in the statutory requirement for exercise of discretion does not, however, remove my power and duty to supervise these proceedings to ensure that charges are brought in accordance with Coast Guard policy. See Appeal Decisions 2348 (MANLEY) and 2168 (COOPER).

Administrative Law Judges must still spread upon the record the circumstances surrounding the offenses resulting in drug convictions, the investigating officer's reasons for bringing charges in the case, and relevant evidence which a respondent may wish to present as required by Appeal Decisions 2355 (RHULE); 2348 (MANLEY); 2338 (FIFER), aff'd NTSB Order EM-111; 2303 (HODGMAN), aff'd NTSB Order EM-103.

II

In the alternative, Appellant asks that the time limits for issuance of a new license and merchant mariner's document pursuant to 46 CFR 5.13 be waived. This is not appropriate under the facts of this case.

I have granted such relief only in very unusual cases. See FIFER and HODGMAN. These cases involved an extended time period during which the appellant had shown a marked change in life style and substantial rehabilitation. (FIFER - over 5 years following arrest; HODGMAN - over 5 years following conviction.) In the absence of a marked change in life style and an adequate opportunity for observation I have not waived the waiting period. See Appeal Decisions 2355 (RHULE); 2354 (DITMARS); and 2330 (STRUDWICK).

Here Appellant has not shown a clear change in life style over a sufficient period of time. His criminal activity and conviction are relatively recent. He has produced evidence that he is generally well thought of in the community and his employers state he is professionally competent as a mariner. However, Appellant first repudiated his criminal activity when he agreed to work with the U.S. Attorney's Office after his indictment in August 1983. While it may evidence a since change of attitude, I note that additional counts of the indictment were dismissed and Appellant received a greatly reduced sentence in return for his cooperation. Appellant testified that since his conviction in March 1984, he has made his services available to warn others of the hazards of smuggling. This is commendable and will, I hope, continue.

Appellant held a license as chief engineer of steam or motor vessels of any horsepower. As such he would be the senior officer in the engine department of a major seagoing vessel and exercise extensive authority. One who wishes to hold a license following conviction for a serious narcotics offense must make an especially strong showing that he is rehabilitated. See FIFER and STRUDWICK. This he has not done. The strength of the showing properly increases in proportion to the authority conferred by the license.

For the above reasons, the time limits in 46 CFR 5.13 will not be waived.

CONCLUSION

Appellant's license and merchant mariner's documents were properly revoked as required by statute. He must demonstrate that he is indeed rehabilitated for the period in 46 CFR 5.13 before applying for a new license.

ORDER

The order of the Administrative Law Judge dated at Portland, Maine on 9 May 1984, is AFFIRMED.

J. S. GRACEY
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 7th day of Feb. 1985.