

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD v.
LICENSE No. 174320
Issued to: Donald J. GURGIOLO

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2381

Donald J. GURGIOLO

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

By order dated 11 June 1984, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's license upon finding him guilty of the charge of conviction for a dangerous drug law violation. The specification found proved alleges that Appellant, while holder of the captioned license, was convicted on 2 September 1982 of conspiracy to possess cocaine with intent to distribute, in violation of 21 U.S.C. 846, in the United States District Court for the Southern District of Florida.

The hearing was held in Miami, Florida on 17 May 1984.

At the hearing, Appellant was represented by two non-attorney representatives and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced into evidence four documents.

In defense, Appellant offered his own testimony, the testimony of two witnesses, and three documents.

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 and served a written order on Appellant.

Appeal was timely filed and perfected on 22 May 1984. The entire decision was served on 14 June 1984. The grounds for appeal are set forth in the notice of appeal. A further brief in support of the appeal was not filed.

FINDINGS OF FACT

On 2 September 1982, Appellant was convicted, on his plea of guilty, of a violation of 21 U.S.C. 846, conspiracy to possess with intent to distribute cocaine, in the United States District Court for the Southern District of Florida. He was sentenced to 42 months' imprisonment, of which he served 20 months.

The following circumstances led to the conviction. An individual who owed him money asked Appellant if he knew of anyone who sold cocaine. The individual stated that he wanted to make a cocaine run to pay his debts, including approximately \$1,400 owed to Appellant. Appellant put the individual in contact with someone who he thought might possess cocaine, and went to the meeting where the cocaine was to change hands. Appellant was arrested at this meeting.

BASES OF APPEAL

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

1. The Administrative Law Judge erred in failing to consider a sanction less than revocation and that revocation is disproportionate to the offense;
2. He should be allowed to apply for a new license under 46 CFR 5.13 immediately.

APPEARANCE: R.L. Stephens, Fort Lauderdale, Florida.

OPINION

I

Appellant argues that the Administrative Law Judge erred in failing to consider a sanction less than revocation, and that revocation is disproportionate to the offense. I do not agree.

Upon finding the charge of conviction for a dangerous drug law violation proved by plea, the Administrative Law Judge has no discretion to issue an order than revocation. 46 U.S.C. 7704, 46 CFR 5.03-10; Appeal Decision No. 2303 (HODGMAN).

Title 46 U.S.C., Section 7704 states that, after conviction for a dangerous drug law violation is proved at a hearing, all licenses and documents of the person charged "shall be revoked." I therefore no longer have a statutory duty to evaluate the circumstances surrounding such convictions and decide whether revocation is appropriate. Cf. Appeal Decision No. 2355 (RHULE). Proof of conviction requires revocation.

Although 46 U.S.C. 7704 establishes revocation as the appropriate sanction, I have a duty to review the exercise of discretion by Investigating Officers to ensure that proceedings are instituted in accordance with Coast Guard policy. See Appeal Decision No. 2168 (COOPER). In this case, the action of the Investigating Officer was fully consistent with Coast Guard policy.

II

Appellant requests that the time limits for issuance of a new license set forth in 46 CFR 5.13 be waived. Waiver of the waiting period is not appropriate in this case.

The use of or trafficking in dangerous drugs by professional seamen are extremely serious matters. The statute mandates that mariner's licenses and documents "shall be revoked" upon proof of conviction for a dangerous drug law violation. I do not take this statutory mandate lightly.

I have on occasion waived the three-year waiting period for application for a new license following revocation. See, e.g., Appeal Decision Nos. 2338 (FIFER) and 2303 (HODGMAN). Such waivers are granted only in exceptional cases, where there is strong evidence of post conviction rehabilitation over a period equivalent to the waiting period under the regulation. See Appeal Decision Nos. 2355 I(RHULE), 2353 (DITMARS), and 2330 (STRUDWICK).

The evidence in this case does not warrant such a waiver. Although Appellant has shown evidence of community support and some effort toward rehabilitation, he has only been out of prison for a few months. In light of the seriousness of the offense and the statutory mandate, I do not find the evidence of rehabilitation over such a short period sufficient to justify a waiver of the time requirement set forth in 46 CFR 5.13.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations. Appellant's license was revoked as required by statute. The time limits set forth in 46 CFR 5.13 should not be waived in this case.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 11 June 1984 is AFFIRMED.

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

Signed at Washington, D.C. this 20th day of February 1985.