

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 204854
Issued to: Thomas Erich BABER

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2435

Thomas Erich BABER

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.701.

By order dated 22 January 1985, an Administrative Law Judge of the United States Coast Guard at Miami, Florida, revoked Appellant's license upon finding proved the charge of conviction for a narcotic drug law violation. The specification found proved alleges that, being the holder of the captioned document, on or about 12 August 1983, Appellant was convicted by the Circuit Court of Broward County, Florida for possession of cocaine, in violation of F.S. 893.03(2)(a)(4) and F.S. 893.13(1)(e).

The hearing was held at Miami, Florida, on 22 January 1985.

Appellant appeared at the hearing without counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence five exhibits.

Appellant introduced in evidence one exhibit and his own testimony.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved, and entered a written order revoking all licenses and/or documents issued to Appellant.

The complete Decision and Order was dated 5 March 1985 and was served on 11 March 1985. Appeal was timely filed and perfected on 11 February 1985.

FINDINGS OF FACT

At all times relevant, Appellant was the holder of a duly issued Coast Guard license. On or about 12 August 1983, Appellant was convicted, on his plea of "nolo contendere," in the Circuit Court of Broward County, Florida, for the wrongful possession of

cocaine on 4 June 1983. An Order Withholding Adjudication of Guilt was entered, and Appellant was placed on probation for a period of eighteen months. The probation period was subsequently shortened, and appellant was discharged from probation on 9 December 1983.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant argues that he became involved in the drug offense in "a very marginal way," in that his only intent in possessing the drug was to stop another individual from using it. He states that the loss of his Coast Guard license would effectively put him out of business. He urges that the sanction of revocation is disproportionate to the offense, and requests that, if the revocation order is upheld, he be permitted to apply immediately for a new license.

Appearance: Appellant, pro se.

OPINION

I

Although not raised on appeal, it is appropriate to consider the question of whether Appellant was "convicted" within the meaning of 46 USC 7704(b) which provides, in pertinent part:

If it is shown at a hearing under this chapter that a holder of a license . . ., within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license . . . shall be revoked.

The question of whether the Florida proceeding constitutes a conviction was addressed in Appeal Decision 2355 (RHULE), a case with facts very similar to those here, where the Commandant analyzed the effect of the Florida proceeding under state law, and determined that "when Appellant entered his plea of nolo contendere and the court accepted that plea and placed him on probation, he was 'convicted' for all purposes under Florida law. Accordingly a proceeding under [the applicable Florida statute] satisfies the jurisdictional predicate for revocation of Appellant's license under 46 USC 239b." [current version at 46 USC 7704(b).] See also 46 CFR 5.547(c).

Further, Appellant pleaded guilty to the charge and specification here. Such a plea eliminates any factual controversy and is sufficient to support a finding of "proved" by the Administrative Law Judge. Appeal Decision 2268 (HANKINS). See

Appeal Decisions 2362 (ARNOLD) and 2376 (FRANK). See also 46 CFR 5.527(c).

II

Appellant argues that the sanction of revocation is disproportionate to the offense, and that the loss of his license would effectively put him out of business. However, as the Administrative Law Judge explained to Appellant at the hearing (Record at 5, 11; Decision and Order at 5) and as noted above, 46 USC 7704 requires revocation upon proof of conviction of a dangerous drug law violation. Evidence of the intent of Congress in enacting this provision of 46 USC 7704 is found in the Report of the House Committee on Merchant Marine and Fisheries which accompanies the bill, S.46:

Section 7704 requires the Secretary to revoke the license, certificate, or document of any individual who has been convicted of a dangerous drug law within 10 years H.R. Rep. No. 338, 98th cong., 1st Sess. 177 (1983). (Emphasis added.)

See also Commandant v. Cain, NTSB Order EM-125 (1985). (Statute unequivocally requires revocation and does not contemplate discretionary exceptions.).

III

Appellant requests that, if the revocation order is upheld, he be permitted to apply immediately for a new license.

Coast Guard regulations provide that an individual whose license is revoked as the result of conviction for a dangerous drug law violation may, three years after compliance with the revocation order, apply for the issuance of a new license. 46 CFR 5.901(a). Under certain circumstances, the three-year waiting period may be waived. 46 CFR 5.901(b). However, the suspension and revocation appeal process is not an appropriate forum for granting or denying requests for such waivers. More appropriately, these requests should be made via the Coast Guard Clemency Review Board, according to the provisions of 46 CFR 5.905. See Appeal Decision 2428 (NEAT).

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the

requirements of applicable regulations.

ORDER

The decision of the Administrative Law Judge dated at Jacksonville, Florida, on 5 March 1985, is AFFIRMED.

J. C. IRWIN
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C. this 14th day of October, 1986.