

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Wivis Jules LORMAND 437825234

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2459

Wivis Jules LORMAND

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

By order dated 13 November 1985, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's license and Merchant Mariner's Document upon finding proved the charge of conviction for narcotic drug law violation. The specification found proved alleges that, being the holder of the captioned license and document, on or about 27 June 1983, Appellant was convicted by the 16th Judicial District Court of St. Martin's Parish, Louisiana for attempted possession of marijuana, barbiturates, and cocaine with intent to distribute, in violation of the Revised Statutes of Louisiana.

The hearing was held at New Orleans, Louisiana, on 5 and 13 November 1985.

Appellant appeared at the hearing without counsel and admitted that he had been convicted as set forth in the specification in issue. Appellant appears to have entered an answer of admit to the charge as required by 46 CFR 5.527(a).

The Investigating Officer introduced in evidence three exhibits.

Appellant introduced no exhibits into evidence and called no witnesses. Appellant testified in his own behalf.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been found proved, and entered a written order revoking all licenses

and/or documents issued to Appellant.

The complete Decision and Order was dated 19 November 1985 and was served on Appellant on 26 November 1985. Appeal was timely filed and considered perfected on 25 January 1986.

#### FINDINGS OF FACT

At all times relevant, Appellant was the holder of a duly issued Coast Guard License, No. 52134. Appellant is the holder of a Coast Guard Merchant Mariner' Document, No. 437825234, which authorizes him to serve as Ordinary Seaman and Wiper.

On 27 June 1983, Appellant was convicted by the 16th Judicial District Court of St. Martin's Parish, Louisiana for attempted possession of marijuana, barbiturates, and cocaine with intent to distribute, in violation of the Revised Statutes of Louisiana on his plea of "guilty".

On 16 September 1985, Appellant submitted an application for duplicate license at the Marine Inspection Office, New Orleans, Louisiana. In the application, Appellant admitted in questions 20, 21, and 22 that he had used or been addicted to narcotics and had been convicted in a court of attempted possession of marijuana in Arnaudville, Louisiana in March 1982.

#### BASES OF APPEAL

Appellant has filed a notice of appeal without noting any issues or errors in the hearing below. Appellant has not perfected his appeal, but due to Appellant's pro se status, I will review the record in accordance with 46 CFR 5.701(b).

Appearance: Appellant, pro se.

#### OPINION

##### I

Although not raised on appeal, it is appropriate to consider the question of whether Appellant clearly admitted to the charge and specification in his answer. During the providency inquiry, Appellant did admit to the allegations raised in the specification. (Transcript at 12, Lines 16-19). However, Appellant previously stated that the allegation is not correct. (Transcript at 12, Lines 10-14).

The specification alleges that Appellant was convicted of a dangerous drug violation. It does not make any allegation with regard to the underlying drug violations which were before the state court. Having said this, Appellant's statements become clear. Appellant admitted to the conviction, but not to its validity, a matter for the Louisiana appellate courts. (Transcript at 12, 22, and 25). Therefore, the duty of the Administrative Law Judge to reject an improvident plea in accordance with 46 CFR 5.533(b) did not arise in this case. Cf. Appeal Decision 2107 (HARRIS); Appeal Decision 1973 (CRUZ). Further, Appellant admitted in his application to both use of a narcotic and conviction of attempted possession of marijuana. (Transcript at 24). Appellant at the hearing and in his appeal argues his innocence of the charge underlying the state conviction. (Transcript at 12, 22, and 25). Unfortunately, that has no bearing on these proceedings. See Appeal Decision 2120 (McLAUGHLIN); Appeal Decision 2201 (BROADNAX). Substantial and reliable evidence of the conviction, Appellant's admissions, and a lack of factual controversy 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), 46 CFR 5.547(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 (Transcript at 18-19) 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.); Appeal Decision 2428 (NEAT). Revocation is the only sanction available upon a finding of proved of this

charge.

## CONCLUSION

Having reviewed the entire record, 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 and order of the Administrative Law Judge dated 19 November 1985, at New Orleans, Louisiana is AFFIRMED.

J.C. IRWIN  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 19th day of October, 1987.

### 3. HEARING PROCEDURE

.83 Plea

guilty, effect of

### 4. PROOF AND DEFENSES

.16.8 conviction for Drug Law Violation

finality of a prerequisite for revocation  
under 46 USC 7704

### 5. EVIDENCE

.38 Guilty Plea

effect of

.51 Judgment of Conviction

finality of a prerequisite for revocation

under 46 USC 7704

## 9. NARCOTICS

### .28 Conviction

finality of a prerequisite for revocation  
under 46 USC 7704

for drug law violation

### .105 Revocation

ALJ must order, after conviction for drug  
law violation

## 12. ADMINISTRATIVE LAW JUDGES

### .80 Modification of Order

revocation mandatory under 46 USC 7704  
after conviction for drug law  
violation

### .90 Revocation

ALJ must order, after conviction for drug  
law violation

## 13. APPEAL AND REVIEW

### .30 Clemency

revocation mandatory under 46 USC 7704  
after conviction for drug law  
violation

## CITATIONS

Appeal Decisions Cited: 1973 (CRUZ), 2107 (HARRIS), 2120 (McLAUGHLIN), 2201 (BROADNAX), 2268 (HANKINS), 2376 (FRANK), 2428 (NEAT).

NTSB Cases Cited: Commandant v. Cain, NTSB Order EM-125

(1985)

Federal Cases Cited: None.

Statutes Cited: 46 U.S.C. 7702, 46 USC 7704

Regulations Cited: 46 CFR 5.527(a), 46 CFR 5.527(c), 46 CFR 5.533(b), 46 CFR 5.547(c), 46 CFR 5.701, 46 CFR 5.701(b).

\*\*\*\*\* END OF DECISION NO. 2459 \*\*\*\*\*