

In the Matter of Merchant Mariner's Document No. Z-593010
Issued to: FRANCISCO G. ROSA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FRANCISCO G. ROSA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 27 February, 1952, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-593010 issued to Francisco G. Rosa upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS SANTA MARGARITA under authority of the document above described, on or about 12 December, 1951, while said vessel was in the port of Lima, Peru, he wrongfully had in his possession a quantity of narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented at the hearing by nonprofessional counsel of his own selection, a Mr. James Gallego of New York City. Appellant entered a plea of "guilty" to the charge and specification proffered against him. He persisted in his plea of "guilty" after the Examiner explained to him the full significance of such a plea.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant made a statement, in mitigation, on behalf of Appellant. The Investigating Officer then introduced in evidence a sworn statement taken from Appellant by the American Vice Consul at Lima, Peru, on 29 December, 1951. In this statement, Appellant admitted having been apprehended as he was leaving the ship on 12 December, 1951, with a marijuana cigarette on his person; that additional marijuana which he had purchased in Colon, Panama, was found with his gear aboard ship; and that he had smoked marijuana while at sea during the past year. The Investigating Officer also offered in evidence an entry from the official log book of the ship stating that Appellant had been taken in custody by local authorities for carrying marijuana and, therefore, he failed to return to the ship on 12 December, 1951.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-593010 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

It appears that after his document had been revoked by the Examiner, Appellant obtained the services of an attorney and an appeal has been taken in which it is urged that:

1. Appellant was imprisoned and then released because there was no evidence that the cigarette contained marijuana. Annexed is the original of a certificate under the seal of the Director of the Central Prison for Males in Lima, Peru, attesting to the fact that guilt was not proven and it was found that the charge was baseless.
2. No marijuana cigarettes were found on Appellant's person or in his fore-castle aboard ship. Appellant does not use or traffic in marijuana. There is no record of any prior disciplinary action having been taken against Appellant during his twelve years at sea.

3. Appellant mistakenly followed the advice of seamen who told Appellant that he would receive only a short suspension of his document if he pleaded "guilty" but that he would lose his document if he contested the charge. Therefore, it is requested that the hearing be reopened.

APPEARANCES: Henry K. Chapman, Esquire, of New York City, of Counsel.

Based upon my examination of the record submitted, I hereby make the following:

FINDINGS OF FACT

On 12 December, 1951, Appellant was serving as messman on board the American

The significance of this statement is not clear but it is well established by the other factors mentioned that Appellant was apprehended with marijuana in his possession and that he spent at least seventeen days in the Lima jail. He was given a fair hearing during which he had ample opportunity to submit evidence of his innocence. In the face of his sworn statement to the Vice Consul which he now states was not the truth, I am not persuaded by his present claim that he was misled by the poor advice of his fellow seamen.

In view of the irregular nature of this appeal and Appellant's plea of "guilty," there is no necessity to consider whether Appellant's statement to the Vice Consul conforms with evidentiary rules pertaining to the admissibility of evidence.

ORDER

The order of the Examiner dated 27 February, 1952, should be, and it is, AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard

Acting Commandant

Dated at Washington, D. C., this 2nd day of July, 1952.

***** END OF DECISION NO. 569 *****

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