

In the Matter of Merchant Mariner's Document No. Z-584683-D1
Issued to: RAFAEL FERREIRA, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

416

RAFAEL FERREIRA, JR.

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec 137.11-1.

On 2 December, 1949, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document Z-584683-D1 issued to Rafael Ferreira, Jr. upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as bell-boy on the SS AMERICA, under authority of the document above described, on or about 14 November, 1949, he wrongfully had in his possession a quantity of narcotic drugs, to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification.

Thereupon, the Investigating Officer stated the circumstances attending Appellant's apprehension with marijuana on his person.

Appellant admitted the accuracy of the statement made by the Investigating Officer.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea and entered an order suspending Appellant's Merchant Mariner's Document No. Z-584683-D1, for eighteen months. The first six months of said suspension shall be outright to commence when a Temporary Certificate is surrendered. The remaining twelve months shall not be effective if no charge under R.S. 4450 is proved against Appellant for acts committed within one year of the date of expiration of the effective suspension

From that order, this appeal has been taken, and it is urged:

- (1) Appellant's possession of marijuana was not wrongful;
- (2) Appellant was not represented by counsel at the hearing;
- (3) The Examiner should not have accepted the plea of "guilty" in view of the facts;
- (4) The punishment is excessive because: (a) of Appellant's youth; (b) his marital status; (c) his expectancy as a father; (d) his past unblemished record; (e) the hardship to be borne by his family.

APPEARANCES: Herman E. Cooper, Esq. (Samuel Leigh, Of Counsel),
New York City, New York.

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

FINDINGS OF FACT

On 14 November, 1949, Appellant was serving as bell-boy on the SS AMERICA - then in New York Harbor. On that date, he was apprehended by a port patrol officer of Customs and found to have one marijuana cigarette in his coat lapel pocket. Scrapings, which later proved to be marijuana, were also found in his right coat pocket.

Appellant explains his possession of marijuana by the fact that in LeHavre, France, he was given two cigarettes by a Frenchman

when Appellant was somewhat under the influence of alcohol. He smoked only one cigarette and forgot to throw the other away. The Federal authorities did not prosecute because of the small quantity involved.

OPINION

Nothing has been presented on this appeal which justifies my modification of the Examiner's order - especially in view of the long established policy of the Coast Guard that persons dealing or having to do with narcotics or drugs are unsafe and undesirable as merchant seamen, - and should have their marine documents revoked.

Hardships to be borne by innocent persons should be considered by offenders before offenses are committed. The plea was properly accepted by the Examiner.

ORDER

The Order of the Examiner dated 2 December, 1949, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant.

Dated at Washington, D. C., this *2nd* day of *February*, 1950.

***** END OF DECISION NO. 416 *****

[Top](#)