

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-51124-D1
Issued to: JAMES JONES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

717

JAMES JONES

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

On 24 September, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-51124-D1 issued to James Jones upon finding him guilty of misconduct based upon a specification alleging in substance that while as a messman on board the American SS AFRICAN MOON under authority of the document above described, on or about 5 September, 1953, while said vessel was underway in the Chesapeake Bay, he wrongfully cut a fellow crew member, Epifanio Lopez, with a knife.

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 result of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their

opening statements and the Investigating Officer introduced in evidence copies of the report of injury to Lopez, an entry in the Official log Book of the AFRICAN MOON, States of Maryland warrant for Appellant's arrest and the Trial Magistrate's docket entry relating Appellant's conviction on a plea of guilty to the offense of having committed assault upon Lopez on 5 September, 1953, with intent to kill. The Investigating Officer then rested his case and the Examiner ruled that a prima facie case had been made out against Appellant. The Investigating Officer's case was later reopened to permit Lopez to testify when he appeared unexpectedly at the hearing.

Although the Examiner repeatedly informed Appellant of his right to testify, Appellant declined to submit sworn testimony, or any other evidence, in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant, Mariner's No. Z-51124-D1 and all other licenses and documents issued to this Appellant by United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant did not testify at the hearing because of a misunderstanding as to his rights; Appellant acted in justified self-justified self-defense when he anticipated a second attack by Lopez; Appellant's good record in the Merchant Marine and Army for almost 20 years was not considered; the order of revocation is too severe because it deprives Appellant of his livelihood; and the order should be modified or a rehearing granted.

APPEARANCES: Lawrence Wiseman, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 5 September, 1953, Appellant was serving as a messman on board the American SS AFRICAN MOON and acting under authority of his Merchant Mariner's Document No. Z-51124-D1 while the ship was underway in the Chesapeake Bay en route to New York.

At about 1600 on this date, Appellant and messman Lopez engaged in an argument in the saloon pantry and Lopez stabbed Appellant under his right arm with an ice pick. The Purser treated Appellant's wound and he then went to his quarters. About 1630, Appellant went to the saloon pantry and stabbed Lopez in the left side of his chest with a switch-blade knife. The wound was dressed by the Purser and both men were confined under guard until they were taken off the ship, at 2220, in Maryland waters and hospitalized.

Appellant and Lopez were convicted before a Trail Magistrate in Somerset County, Maryland, and both of them were given suspended twelve months sentences on the condition that they depart from Somerset County within twenty-four hours. Appellant was convicted on his plea of guilty to the charge of having committed assault with intent to kill by stabbing Lopez.

There is no record of prior disciplinary action having been taken against Appellant.

OPINION

There is no merit in the several points raised by Appellant in this appeal. Although Appellant did not testify at the hearing, his opening statement and closing argument support the evidence which shows that Appellant returned to the pantry and attacked Lopez after Appellant had been lying in his bunk thinking about how he had been stuck with the ice pick by Lopez. Hence, there is no showing that Appellant acted in self-defense; and the Examiner had fully informed Appellant as to his right to testify in order to overcome the prima facie case against him.

Appellant's personal hardship and his prior clear record will not now be considered as mitigating circumstances, which require that the order be reduced, because of the seriousness of the offense. The record indicates that Appellant committed a premeditated assault upon Lopez with a deadly weapon and with the

intent to kill him. The fact that the attempt was not successful does not persuade me to modify the order of revocation.

ORDER

The order of the Examiner dated at New York, New York, on 24 September, 1953, is AFFIRMED.

Merlin O'Neill
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of December, 1953.

***** END OF DECISION NO. 717 *****

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