

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

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Complainant

vs.

ALVIN B. ZELLARS

Respondent.

Docket Number CG S&R 05-0474
CG Case No. 2468188

DECISION AND ORDER

Issued: March 15, 2006

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

Appearances:

For Complainant

LT Meridena Coffman
PO William T. Dorsey
Sector Charleston
196 Tradd Street
Charleston, SC 29401-1899

For Respondent

Alvin B. Zellars, Pro Se

I.
PROCEDURAL BACKGROUND

This case began on August 22, 2005 when the Coast Guard filed a Complaint against Alvin B. Zellars seeking revocation of his Merchant Mariner's Document. That Complaint alleged that he was convicted of violating a law of the State of South Carolina. The Complaint reads, in pertinent part, as follows:

FACTUAL ALLEGATIONS – Conviction for a Dangerous Drug Law Violation

The Coast Guard alleges that:

1. within the last 10 years, the Respondent was convicted of violating a dangerous drug law of the State of South Carolina.

Mr. Zellars did not file an Answer to the Complaint within the 20 day period set out at 33 CFR 20.307. On September 16, 2005 the Coast Guard requested certification of the record from the Coast Guard ALJ Docketing Center (probably in preparation for a Motion for Default) but the Respondent submitted his Answer a few days later on September 19, 2006. In that Answer he denied all the Factual and Jurisdictional Allegations. See also Mr. Zellar's testimony at the hearing. (Transcript, hereinafter Tr., 9, 17).

On September 30, 2005 the case was assigned to the Undersigned and, subsequently, a Scheduling Order was issued setting the matter for hearing at Charleston, SC on February 1, 2006.¹ On January 19, 2006 the Investigating Officer served the required list of exhibits and witnesses. Mr. Zellars did not submit a similar document.

The hearing commenced as scheduled and the Coast Guard offered five exhibits which were received into evidence without objection. They are identified in Attachment A to this Decision and Order. The Coast Guard did not sponsor any witnesses.

¹ The time of the hearing was changed from 9:30 AM to 1:00 PM by Order dated January 27, 2006.

The Respondent testified on his own behalf and admitted that he entered a plea of No Contest to the South Carolina Indictment involving “possession with intent to distribute cocaine” but he stated that the drugs involved were not his and that he “took the charge” for his nephew. (Tr. 25-26). Mr. Zellars did not sponsor any other witnesses and he did not introduce any exhibits.

At the conclusion of the hearing I held that the Judgment of the South Carolina Court of General Sessions accepting Mr. Zellars’s plea of No Contest in Case Number 004856 was binding on this forum and the Judgment could not be set aside despite Respondent’s attempt to explain his innocence. Further, since the Judgment involved a felony and the charge “possession with intent to distribute cocaine,” the provisions of 46 USC 7704 authorizing the revocation rather than the suspension of Mr. Zellars’s Merchant Mariner’s Document, was appropriate. (Tr. 62-65). I announced that the Coast Guard had proved its case by substantial evidence of a reliable and probative nature and that Mr. Zellars’s Merchant Mariner’s Document was **REVOKED.**

II. FINDINGS OF FACT

1. At all relevant times mentioned herein and specifically on or about February 26, 2003 Mr. Zellars was the holder of a Merchant Mariner’s Document issued by the United States Coast Guard. That document was issued on July 26, 2002. (Tr. 23, 38; Exhibit IO-3).

2. On June 9, 2002 Mr. Zellars was arrested in Charleston, South Carolina and charged with felony possession with intent to distribute cocaine in violation of South Carolina Statute 44-53-370. The case was heard on February 26, 2003 and Mr. Zellars, represented by counsel, entered a plea of NO CONTEST. The Court of General Sessions, State of South Carolina

sentenced Mr. Zellars to five years in prison minus credit for 146 days in jail. (Exhibits IO 1 and 2).

3. Mr. Zellars served one year and six months in prison.
4. In addition, Mr. Zellars was convicted of Strong Arm Robbery (a felony) on March 13, 1996.

III. DISCUSSION

The statutory authority relied upon here is 46 USC 7704(b) Conviction for a Dangerous Drug Law Violation. The applicable Coast Guard regulation is 46 CFR 5.35. That rule requires in part, that where the proceeding is based exclusively on 46 USC 7704, as here, the Complaint will allege “conviction for a dangerous drug law violation.” Jurisdiction is to be established by alleging the elements required by 46 USC 7704 and the approximate time and place of the offense.

Although the date of the conviction was not set out in the Complaint, it is clear that from the outset the Respondent was advised of and knew that the judgment of the South Carolina Court of General Sessions issued February 26, 2003 was the conviction involved. Indeed, the Respondent candidly admitted that he entered a plea of No Contest to the Indictment and spent one year six months in prison as a result. (Tr. 25-26). His entire defense, as discussed next, was focused on explaining what happened at that trial. (Tr. 30, 58-60). I find that the Respondent knew from the outset of the hearing the exact nature of the charge against him and that the Complaint, as supplemented by the explanations of the charge at the hearing, satisfies the requirements of the Coast Guard procedural regulations.

46 USC 7704(b) states, in pertinent part, that within 10 years of the commencement of this proceeding a Merchant Mariner’s Document may be suspended or revoked if it is proved at a hearing under that part that the mariner was convicted of violating a dangerous drug law of a

state. In this case, the South Carolina Court of General Sessions received Mr. Zellars's plea of No Contest to an Indictment alleging that he had violated South Carolina Statute 44-53-370 which makes it a felony to possess cocaine with intent to distribute. (Exhibit IO 1, 2).

Coast Guard regulations define the word "conviction" in 46 CFR 10.130. (Subchapter B – Merchant Marine Officers and Seaman) in pertinent part as follows:

If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court's conviction, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not negate a conviction unless it is proved to the OCMI that the expungement is based upon a showing that the court's earlier conviction was in error.

It is clear therefore that the Judgment of the court here on February 26, 2003 sentencing Mr. Zellars to five years in prison for the offense possession with intent to distribute cocaine is a conviction under the Coast Guard regulations governing this proceeding.

Mr. Zellars urged at the hearing that the police uncovered cocaine in his mother's car which he was using but that his nephew had actually picked up the cocaine immediately before it was discovered by the authorities. Zellars continued that although the cocaine was not his he decided to take the blame for his young nephew in the hope that the young man would straighten out his life. Mr. Zellars testified that when the presiding judge learned of the nephew's actions she stopped the trial and strongly encouraged Zellars to enter a plea. With his attorney's advice he did so and served the prison sentence ordered.

It is not possible to retry the South Carolina case at this late date to determine the Respondent's guilt or innocence. Indeed, this Judge is bound by the decision of that Court. The only evidence submitted before this form regarding what actually happened in that trial is the self-

serving and unsupported statements of the Respondent. I cannot and will not look behind the decision of the South Carolina Court of General Sessions in regard to Mr. Zellars's conviction here.

As I announced at the conclusion of the hearing, the Coast Guard has proved its case by a preponderance of the evidence.

IV. ORDER

Under the applicable statute (46 USC 7704(b)) the Respondent's Merchant Mariner's Document can be suspended or revoked. Here, Mr. Zellars's plead No Contest to a felony involving possession with intent to distribute cocaine. The Investigating Officer pointed out at the hearing that the Coast Guard Marine Safety Manual (Section E.4.b) prohibits Coast Guard officials from entering into a Settlement Agreement when a mariner is charged with intent to distribute dangerous drugs. Revocation of the Coast Guard credentials is to be sought at a hearing.

Mr. Zellars's offense here is a felony and involves possession with intent to distribute. This is his second felony conviction since he was convicted on March 13, 1996 of Strong Armed Robbery. These considerations support the conclusion that the appropriate sanction is to be issued against Mr. Zellars's document is **REVOCATION**.

Accordingly, it is **HEREBY ORDERED** that Mr. Zellars's Merchant Mariner's Document is **REVOKED**.

**PETER A. FITZPATRICK
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD**

Done and dated March 15, 2006 at
Norfolk, Virginia

ATTACHMENT A - EXHIBIT LIST

Coast Guard Exhibits:

- IO-1. Charleston Criminal System Criminal Disposition Maintenance
- IO-2. State of South Carolina disposition sheet
- IO-3. CG-form 719B, Application for License as an Officer, Staff, or Operator
- IO-4. USCG Marine Safety Manual, Volume V: Investigations, Part C: Maritime Personnel, Chapter 4: Suspension and Revocation
- IO-5. Criminal History Record Response from South Carolina

[REDACTED]