

In the Matter of Merchant Mariner's Document No. Z-198766
Issued to: Roberta Augusta Burdick

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1361

Roberta Augusta Burdick

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

By order dated 20 June 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while holding Merchant Mariner's document Z-198766 Appellant was convicted of violating the Marijuana Tax Act, (Section 4744 (a)(2), Title 26, USC) by the U. S. District Court for the Southern District of Texas.

At the hearing, Appellant was represented by counsel who, however, withdrew from the case before the hearing was completed. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of the judgment rendered by the District Court and the Shipping Articles of the SS ALICE BROWN which showed that Appellant signed on that vessel in the capacity of Deck Maintenance on 17 November 1961. Although the document was not presented at the

hearing, Appellant stipulated that he had Merchant Mariner's Document Z-198766 on 22 May 1962, the day of the conviction by the District Court.

Appellant testified under oath in his own defense. He stated that when the SS ALICE BROWN was in the port of Brownsville, Texas, he went across the Mexican border, and while in Mexico he became engaged in a dispute with prostitutes as to the correct price for their services. He further stated that when he was returning to the vessel, marijuana was found in the taxicab in which he was riding. When he was brought to trial he said that he was advised by an attorney to plead guilty and was told that such a plea would not affect his seaman's documents.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking Appellant's document.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

It is contended that:

1. Appellant was "wrongfully coerced" into a plea of guilty by his attorney when he was arraigned before the District Court.
2. A John Schutz, who was arrested under the same circumstances, had his document released by the Coast Guard.
3. Appellant was a victim of circumstances in that he happened to be riding in a taxi where marijuana was found.

OPINION

Issues raised in grounds 1 and 2 of this appeal are not within the scope of review by the Commandant. See 46 C.F.R. 137.12-10. Ground 3 is not supported by sufficient evidence to merit a review.

I may mention that under 18 U.S.C.A. 32(d) to correct "manifest injustice" the District Court after sentence may set aside the judgment of conviction and permit the defendant in a criminal case to withdraw his plea of guilty. See in this connection *Lipscomb v. United States*, 226 F. 2d 812 (1955), cert. den. 350 U. S. 971, reh. den. 350 U. S. 1003, *Rosenschweig v. United States*, 144 F.2d 30 (1944) cert. den. 323 U. S. 764.

The burden, however, of setting the conviction aside is on Appellant since the Coast Guard is not precluded from taking action based upon Appellant's conviction. 46 C.F.R. 137.04-15. If the conviction is aside for all purposes, the Examiner's decision revoking Appellant's documents will also be set aside.

ORDER

This order of the Examiner dated at New Orleans, Louisiana on 20 June 1962 is AFFIRMED.

E. J. Roland
Admiral United States Coast Guard
Commandant

Signed at Washington, D. C., this 3rd day of January 1963.

***** END OF DECISION NO. 1361 *****

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