

In the Matter of Merchant Mariner's Document No. Z-207529-D3 and
all other Seaman Documents
Issued to: JOSEPH IRWIN BRIANT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1480

JOSEPH IRWIN BRIANT

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 June 1964, an Examiner of the United States Coast Guard at Galveston, Texas, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that, on 11 January 1955, Appellant was convicted by the Criminal District Court for the Parish of Orleans, State of Louisiana, a court of record, for violation of a narcotic drug law of Louisiana (unlawful possession and control of 15 marijuana cigarettes on 7 March 1954).

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced documentary evidence showing that Appellant entered a plea of guilty to the above violation of Louisiana's Revised Statute 40-962 on 11 January 1955 and was sentenced to ten years at hard labor.

Appellant submitted evidence of his service as a merchant seaman from April 1941 to December 1954, his discharge from prison on 10 December 1962, his service on merchant vessels from January 1963 to May 1964, and various letters as to his good character and conduct. Appellant testified that he has no prior record of offenses while serving as a merchant seaman, and he used marijuana ashore three or four times but never since 1954.

At the end of the hearing, the examiner rendered a written decision in which he concluded that the charge and specification had been proved.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

Point I. The offense for which Appellant was convicted occurred on 7 March 1954, and the statute on which the order of revocation is based was not effective until 15 July 1954. Therefore, as applied in this case, the statute is in violation of the Constitution which prohibits ex post facto laws.

Point II. The Government was guilty of laches since the charges were served on Appellant on 9 June 1964, more than ten years after the offense was committed on 7 March 1954.

Point III. The order of revocation violates not only the letter but the spirit of the law under which this action was taken.

APPEARANCE: Jean E. Hosey, Esquire, of Galveston, Texas, of Counsel

OPINION

I

The application of 46 U.S. Code 239b(b)(1) is not unconstitutional, in violation of the prohibition against ex post facto laws, since the act for which Appellant was convicted was not

an innocent act when committed and the statute (46 U.S. Code 239b) is a reasonable means of promoting safety at sea by restraining narcotic offenders to safeguard the public interest rather than being an additional punishment for the narcotics offense committed by Appellant. This matter is fully discussed in Commandant's Appeal Decision [No. 954](#).

II

The doctrine of laches does not apply to the present situation because there is no evidence that there was an inexcusable delay in commencing this action or that Appellant was prejudiced in preparing his defense. The statute permits action to be taken for as long as ten years after the date of conviction. In this case, it was less than ten years from the time of the conviction until the service of charges, including the almost eight years Appellant spent in prison. There could be no prejudice with respect to obtaining evidence to refute the conviction since Appellant admits that he was convicted as alleged and the order of revocation is based on the fact of conviction alone.

III

The upholding of the Examiner's action is considered to be clearly within the letter and spirit of 46 U.S. Code 239b. The Coast Guard has consistently taken the position that seamen who have been associated with narcotics (including marijuana) constitute a serious threat to the safety of life and property at sea. Appellant was convicted of an offense which was serious enough to result in a sentence of ten years at hard labor. Although he sailed for almost a year and a half after his release from prison before he was located by the Coast Guard and he submitted several letters attesting to his good character, this alone is not conclusive evidence that Appellant is fit to resume his livelihood at sea. Nevertheless, it is appropriate for such evidence of rehabilitation to be thoroughly considered in determining whether or not administrative clemency will be granted when a seaman is granted the privilege of applying for another document at some time after his original one has been revoked. It is not the function of this review on appeal to make this determination.

ORDER

The order of the Examiner dated at Galveston, Texas, on 15 June 1964, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

INDEX

LACHES

not applicable, service after 10 years lapse
prejudice, necessity of showing

NARCOTICS STATUTE

clemency to apply for document
clemency, request for
constitutionality
ex post facto claim, rejected
offense pre-dating statute
rehabilitation claim
time limitation

WAIVERS

three year waiting period, letter concerning

***** END OF DECISION NO. 1480 *****

[Top](#)