In the Matter of Certificate of Service No. E-452998
Issued to: WILLIAM KASZUBSKI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIAM KASZUBSKI

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

On 7 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" supported by a specification alleging that while Appellant was serving as a night cook and baker on board the American SS ROBIN GRAY, under authority of Certificate of Service No. E-452998, he had in his possession, on or about 21 March, 1949, about 59 grains of marijuana, contrary to law. (26 U.S.C. 2593).

At the hearing, Appellant was fully informed as to the nature of the proceedings, the possible outcomes of the hearing and all the rights to which the person charged is entitled. Appellant voluntarily waived his representation by counsel and entered a plea of "guilty" to the specification and charge. At the conclusion of the hearing, the Examiner found the specification "proved by plea" and the charge "proved." He thereupon entered an order revoking Appellant's Certificate of Service No. E-452998 and all other valid licenses, certificates of service or documents which had been issued to Appellant by the Coast Guard or the predecessor

authority.

In his appeal, which is submitted by an attorney, Appellant contends:

Point 1. The sentence imposed is too severe because it has affected Appellant's ability to obtain work at his trade ashore.

Point 2. Appellant should be given an opportunity to introduce evidence as to his perfect record at sea and his good moral character.

Point 3. Although the hearing record indicates that Appellant needed and was seeking advice, he was not represented by counsel.

Point 4. Appellant has been under a considerable nervous and physical strain during the past two years and he did not fully realize the meaning of his plea of guilty.

Point 5. Appellant was not shown to be guilty since the necessary intent was not established by Appellant's, or other, testimony.

There is no record of any previous disciplinary action having been taken against the Appellant.

FINDINGS OF FACT

On or about 21 March, 1949, Appellant was serving as a member of the crew in the capacity of night cook and baker on board the American SS ROBIN GRAY, under authority of Certificate of Service No. E-452998, while the ship was at Brooklyn, New York. On this date, a search by Customs Officers disclosed a small package in the watch pocket of Appellant's trousers. Subsequent analysis disclosed that this package contained 59 grains of marijuana. No tax had been paid on this marijuana.

Appellant came into possession of this package of marijuana while he was in an African port. He was approached by a native who

was begging cigarettes. Appellant gave him some cigarettes and the native gave Appellant the package of marijuana. Appellant testified that he had put the package in the watch pocket of the trousers he wore ashore and that the trousers had remained hanging in his locker until he put them on the day he was apprehended by the Customs Officers.

OPINION

It is first contended that the "sentence" of the Examiner is excessive. On this point it should be now recognized that orders of Coast Guard Examiners are not "sentences" as the word is customarily accepted. That order merely announces that the administrative body which has issued a document now has found sound reason to rescind, vacate, suspend or revoke that document. The consequences to the licensee or holder of a certificate of service become relatively immaterial insofar as concerns the right of the grantor to withdraw a privilege which was extended upon certain well defined conditions. One such condition was good behavior. When that condition has been violated, the right to hold the document is coincidentally terminated.

I have consistently stated that persons who are apprehended having possession of marijuana or other narcotics or drugs, are undesirable as seamen in the American merchant marine. This is a policy designed not so much for punishment of the individual offenders as for the protection of lives and property within the mandate of Congress addressed to that purpose as revealed in 46 U.S.Code, 239 (R.S. 4450) as amended.

Within this policy the intent of the possessor of marijuana is unimportant on the question of misconduct.

Appellant unlawfully had marijuana in his possession, and without some explanation which satisfied the Examiner of its merit, he was found guilty. The Examiner saw and heard the Appellant testify; if he was not satisfied with the explanation offered by the person charged, I see no reason why I should interfere with the order.

As Point 2, Appellant presents his prior record of good conduct. Due consideration has been given that matter.

Point 3 contends: "The Person charged was not represented by counsel." On this proposition, the Record is replete with references to the opportunities extended Appellant to obtain counsel. (R. 2,3.) His "foolish insistence of proceeding hurriedly" (Brief p. 8) should not affect the determination of his responsibility.

It is my opinion that under the circumstances reflected by this Record, Appellant was accorded full opportunity to find counsel of his own selection; and his deliberate announcement of a determination to go forward with the case neutralizes the argument advanced on appeal. These cases must come to an end sometime, and if a new trial is to be granted every time an aggrieved party finds new counsel, they will become interminable.

Point 4 - "The defendant has been under a considerable nervous and physical strain during the past two years and did not have full realization of the meaning of his plea of guilty."

This statement is entirely outside of the Record. Under the statute my decision "shall be based solely on the testimony received by the said investigation," and I should not consider any matter which was not before the Examiner (46 U.S.C. 239(g)). What intrigues me, on this subject, is how such proof, if offered and received, would exculpate this Appellant on the charge stated. Really, it would appear that if Appellant suffers from the condition described, he is physically and mentally incompetent and for that reason should not be permitted to sail on American vessels. However, as such evidence was not introduced as a part of the Record, it is not necessary for me to pass upon that detail.

Point 5 - "A proper analysis of the Record shows that the defendant was not guilty."

I cannot agree with the conclusion as stated in this proposition. The narrative explaining possession as given by Appellant does not conform to the usual pattern of human conduct. He claims he was given a packet in South Africa which was said to be "another smoke." He placed it on his dresser, without examination, and later placed it in the watch pocket of his trousers, - where he forgot it, until searched by a Customs Officer.

The Examiner, who saw and heard Appellant's explanation, was not favorably impressed; and my opinion is that the explanation of possession which was offered by Appellant is unsatisfactory.

CONCLUSION

I find no reason, on the points presented by this appeal, to disturb the order of the Examiner dated at New York on 7 April, 1949.

ORDER

The order of the Examiner should be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 9th day of September, 1949.

***** END OF DECISION NO. 359 *****

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