UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 153515
Issued to: William F. RHULE

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2355

William F. RHULE

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 17 March 1982, and Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's license upon finding him guilty of conviction for a narcotic drug law violation. The specification found proved alleges that Appellant, while holder of the captioned license, was convicted on 10 August 1981 of possession of narcotics, to wit, cannabis, by the Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida.

The hearing was held in Miami, Florida on 12 March 1982. At the hearing, Appellant represented himself and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence two documents.

In defense, Appellant introduced various items of documentary evidence and made an unsworn statement in mitigation.

After the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order revoking all licenses and documents issued to Appellant.

The entire decision was served on 22 March 1982. Appeal was timely filed and perfected on 29 March 1982.

FINDINGS OF FACT

On 13 December 1980, Appellant was taken into custody following the Coast Guard boarding of a vessel off Dania Beach, Florida. On board the vessel were both the Appellant and over two hundred pounds of marijuana. On 10 August 1981, Appellant pleaded" nolo contendere" to charge of possession of cannabis in the Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida.

Under a procedure authorized by section 948.01(3) of the Florida Statutes, the court accepted Appellant's plea, withheld adjudication of guilt and imposition of sentence, and placed Appellant on probation for one year. The probation period was shortened and the proceedings against Appellant terminated on 4 March 1982.

Appellant was the holder of a duly issued Coast Guard license, Number 153515.

BASES OF APPEAL

This appeal was taken from the order imposed by the Administrative Law Judge. Appellant contends that the proceeding under section 948.01(03) of the Florida Statutes does not constitute a conviction, as required by 46 U.S.C. 239b and 46 CFR 5.03-10(a), to serve as a basis for revocation of his Coast Guard Operator's License.

APPEARANCE: Gordon G. Cooper, Esq., Ft. Lauderdale, Florida.

OPINION

This appeal raises a difficult but recurring question regarding the interrelationship of federal and state law in the enforcement of 46 U.S.C.239b.*See*, *e.g.*, Appeal Decisions No.2301 (SIEMS) and 2285 (PAQUIN). Under 46 U.S.C. 239b, the Commandant has discretionary authority to revoke the documents of a seaman who has been convicted of a narcotic drug offense. The existence of a final conviction is an essential predicate to the exercise of authority under section 239b. The question of whether a proceeding in state court constitutes a "conviction" for purposes of the federal statute is determined by the effect of that proceeding under the state law.

Appellant was arrested while in possession of over two hundred pounds of marijuana. He was permitted to enter a plea of "nolo contendere" to possession of cannabis under section 948.01(3) of the Florida Statutes, which provides:

> If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold and adjudication of guilt, and in either case stay and withhold the imposition of sentence upon such defendant, and shall place him upon probation....

The Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida, accepted Appellant's plea, withheld adjudication of guilt, and placed him upon one year's probation. At the time the Coast Guard ordered his license revoked, Appellant had completed his term of probation and the state criminal proceedings had been terminated.

The first issue raised by this appeal is whether entry and acceptance of the plea constitutes a conviction under Florida law even thought there was no formal adjudication of guilt. The second is whether the termination of the proceeding following completion of probation affects the ability of the Coast Guard to revoke Appellant's license under 46 U.S.C. 239b. I conclude, as set forth in detail below, that:

1. The proceeding does constitute a conviction for purposes of the Administration of 46 U.S.C. 239b;

2. The subsequent termination of the proceedings against Appellant at the conclusion of the probation period does not affect the revocation of Appellant's license by the Coast Guard under the standards established in 46 CFR 5.03-10(b); and,

3. Revocation is appropriate under the circumstances of this case.

I

Appellant argues that he was not "convicted" of a narcotic drug offense because the court did not enter a judgement against him. I conclude, however, that Appellant did suffer a valid conviction and that the jurisdictional requirement of 46 U.S.C. 239b was satisfied. This conclusion is supported by an analysis of both the nature and effect of the section 948.01(3) proceeding under Florida law.

In *State v. Gazda*, 257 So. 2d 242 (Fla.1971), the Supreme Court of Florida held that "the term 'conviction' means determination of guilt by verdict of the jury or by plea of guilty and does not require adjudication by the court." *Id*. at 243-44. In *State v. Maxwell*, 336 So. 2d 658 (Fla. App.1976), the court construed the reasoning of *Gazda* to include entry of a plea of nolo contendere. The court held that once the offense has been judicially established, whether by guilty plea, nolo plea, or jury verdict, the decision to withhold adjudication and place the defendant on probation is treated as a conviction. *Id*. at 659-60.

In a proceeding under section 948.01(3), the court after accepting a plea places the defendant on probation, even though it does not enter a formal adjudication of guilt. The court could not place an individual on probation unless it considered him to be guilty of a crime. *Dickerson v. New Banner Institute, Inc.*, 103 S. Ct. 986,992 (1983). Under Florida law, the acceptance of the plea and imposition of probation is a final determination of guilt on the merits, *see Maxwell*, 336 So. 2d at 659;

Singletary v. State, 290 So. 2d 116,118 n.4(Fla. App. 1974), and is considered a final judgement for purposes of appeal. *Delaney v. State*, 190 So. 2d 578 (Fla. 1966). *See* Fla. R. Crim. Pro.3.172.

An analysis of the *effect* of a section 948.01(3) proceeding under Florida law demonstrates that it is considered a conviction. This proceeding is considered a prior conviction under the Florida habitual offender statute if the second offense is committed during the period of probation. Fla. Stat. 775.084(1)(b)(4)(2). It is admissible for impeachment as a prior conviction if raised during the period of probation. *Barber v. State*, 413 So. 2d 482 (Fla. App.1982). *Cf*. *United States v. Georgalis*, 631 F.2d 1199, 1203 n.3 (5th Cir. 1980) (inadmissible for impeachment after probation has expired). Moveover, it is clear that a plea followed by the withholding of adjudication can and does serve as the basis for administrative revocation of a state professional license, similar to the Federal license at issue in this case. *See* Fla. Stat. 475.25(1)(g)(real estate); Fla. Stat. 458.331 (medicine); Fla. Stat. 465.016 (pharmacy); Fla. Stat. 471.033(engineering); Integration Rule of the Florida Bar 11.07(law).

Thus, when Appellant entered his plea of nolo contendere and the court accepted that plea and placed him on probation, he was "convicted" for all purposes under Florida law. Accordingly, a proceeding under section 948.01(3) of the Florida Statutes satisfies the jurisdictional predicate for revocation of Appellant's license under 46 U.S.C. 239b.

II

At the time the Coast Guard ordered revocation of his license, Appellant had completed the term of his probation and the state proceedings against him had been terminated. Nonetheless, the termination of the proceedings following a valid conviction does not affect a revocation order issued pursuant to 46 U.S.C. 239b. 46 CFR 5.03-10.

The only prerequisite to the imposition of a revocation order by the Coast Guard under 46 U.S.C.239b is that a conviction be

final. The determination of the finality of a conviction and the effect of subsequent court action on a revocation order under 46 U.S.C. 239b are governed by 46 CFR 5.03-10, which provides:

> (a) ...A conviction becomes final when no issue of law or fact determinative of the seaman's guilt remains to be decided by the trial court.
>
> (b) ...An order of revocation will not be rescinded as the result of the operation of any law providing for the subsequent conditional setting aside or modification of the court conviction, in the nature of the granting of clemency or other relief, after the court conviction has become final.
>
> (c) After the conviction has become final within the meaning of paragraph (a) of this section, the conditional setting aside or modification of the conviction will not act as a bar to the subsequent revocation of a seaman's document under Title 46, U.S. Code, section 239b.

Thus, a conviction is final so long as no court invalidates it for some error of law or fact in the proceeding that made the original determination of guilt. A conviction's finality is not affected by subsequent action under state law that serves merely to terminate or mitigate the impact of a conviction on a defendant's enjoyment of civil rights. 46 CFR 5.03-10(b).

As noted above, the proceeding under Fla. Stat. 438.01(3) is a final determination of the guilt of the accused and constitutes a conviction. *State v. Gazda*, 257 So.2d 242 (Fla. 1971);*Delaney v. State*, 190 So.2d 578 (Fla. 1966); *Singletary v. State*, 290 So. 2d 116 (Fla. App.1974). The purpose of the proceeding is rehabilitative: to avoid the continuing stigma of a criminal record where the prospects for rehabilitation are good. *United States v. Hartsfield*, 387 F. Supp. 16,17 (M.D.Fla. 1975);*Holland v. Florida Real Estate Commission*, 352 So. 2d 914, 916 (Fla. App.1977). Termination affects only the *record* of conviction, but does not affect the underlying finding of guilt. Section 943.058 of the Florida Statutes, which provides for the expunction or sealing of criminal records, demonstrates that the *fact* of conviction still has continuing validity. An

individual must still admit the fact of his conviction, even after sealing or expungement of the record, if that individual applies for employment as a law enforcement officer, applies for admission to the Bar, or is a defendant in a criminal prosecution, even though the conviction cannot be used for enhanced sentencing under the habitual offender statute. Fla. Stat. 943.058(6)(b). It is thus clear that a termination of the proceedings under section 948.01(3) does not impugn the validity of the underlying conviction.

Because the termination of the proceedings in this case does not affect the validity of the conviction, but merely serves to restore the civil disabilities that would otherwise flow from it, the termination does not undermine the conviction's finality for purposes of 46 U.S.C. 239b. 46 CFR 5.03-10. *See* Fla. Stat. 943.058. Appellant suffered a final conviction for violation of a narcotic drug offense, and the Administrative Law Judge correctly ordered revocation of his license pursuant to 46 CFR 5.03-10(a).

III

Under 46 U.S.C. 239b, I had discretion to revoke or not to revoke a license or document following a narcotic drug conviction. In this case, Appellant was arrested aboard a vessel while in possession of over two hundred pounds of marijuana. This is an especially serious offense, and falls squarely within Congress' concern in enacting 46 U.S.C. 239b. Individuals engaged in trafficking in such substantial quantities of narcotics pose a substantial threat to the safety of a vessel. It is true that the state has released the Appellant from probation and terminated the proceedings against him. This action shows that the state considered its penal interests vindicated and is some evidence of Appellant's rehabilitation. The action of the state is not, however, conclusive.

I believe that revocation is appropriate here. As required by Appeal Decision No.2303 (HODGMAN), the Administrative Law Judge spread upon the record the reasons that the Investigating Officer exercised his discretion to bring charges. The record also contains evidence in mitigation offered by the Appellant. In light of the seriousness of the offense, the evidence in mitigation does

not justify a modification of the order of the Administrative Law Judge at this time, and I conclude that Appellant should not be allowed to have a license until recommended by a board in accordance with 46 CFR 5.13-1.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations. The Administrative Law Judge properly revoked Appellant's license as he was required to do. Revocation is appropriate in this case.

ORDER

The order of the Administrative Law Judge dated at Miami, Florida, on 17 March 1982 is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C. this 5th day of June 1984.

***** END OF DECISION NO. 2355 *****

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