

U.S. Coast Guard 2350, 1984 WL 564463 (CGCDA)

U.S. Coast Guard

UNITED STATES OF AMERICA UNITED STATES COAST GUARD

v.

LICENSE NO. 153 375

Issued to: Stephen M. Hinchcliffe

**2350**

May 9, 1984

DECISION OF THE COMMANDANT ON APPEAL UNITED STATES COAST GUARD

Stephen M. Hinchcliffe

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

By order dated 28 April 1983, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida revoked Appellant's license upon finding proved the charge of "conviction for a narcotic drug law violation." The specification found proved alleged that Appellant, while holder of the above captioned license, was convicted on 11 January 1983 by the United States District Court for the District of Maryland of conspiracy to import marijuana.

The hearing was held at Key West, Florida, on 28 April 1983.

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

The Investigating Officer introduced into evidence a certified copy of the Judgment of the Court, a copy of the Indictment, and an Affidavit of Service of the charge sheet.

In defense, Appellant offered in evidence his own testimony, the testimony of two additional witnesses, and several documents.

At the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved by plea.

The Decision and Order revoking Appellant's license was served on 14 May 1983. Notice of Appeal was timely filed on 24 May 1983 and perfected on 1 August 1983.

FINDINGS OF FACT

On 11 January 1983 Appellant pleaded guilty to, and was convicted of, conspiracy to import marijuana under 21 U.S.C. 963, in the United States District Court for the District of Maryland. Following his conviction, Appellant was sentenced to five years imprisonment. The court required that he be confined in jail-type or treatment institution for ten days, and suspended execution of the remainder of the sentence. Appellant's confinement was at a Salvation Army Halfway House. Appellant was placed on probation for four years three hundred and fifty-five days, and was fine \$1000.

The offense for which Appellant was convicted occurred in December of 1977. Appellant served as a crew member on a vessel being used to smuggle six thousand pounds of marijuana into the United States. At the time of the offense, Appellant did not possess a Coast Guard license. Since the commission of the offense, Appellant has been employed aboard a variety of vessels. He obtained his license and now owns a yacht brokerage and chartering business in Key West, Florida. He has married and has one daughter. The information against him and the conviction in 1983 were the result of a continuing investigation into the conspiracy to import marijuana.

From the record, it appears that the Appellant has developed strong family ties and has acquired an excellent reputation in his community. One witness appeared at the hearing and unhesitatingly testified to Appellant's good character. Several letters from members of the community were admitted into evidence and tend to establish that he is rehabilitated.

Appellant's probation officer testified at the hearing. He stated that Appellant's only involvement in the conspiracy was his service as a member of the crew. He also testified that Appellant has fully admitted his guilt and has cooperated with the government by providing information that has resulted in the conviction of individuals who actually planned and directed the conspiracy. He noted that Appellant has no other criminal record, and recommended that in light of the nature of Appellant's participation in the offense, his post-conviction cooperation, and rehabilitation, Appellant be permitted to retain his license.

BASES OF APPEAL

This appeal is taken from the order imposed by the Administrative Law Judge. The sole basis is a request for leniency under the principles enunciated in Appeal Decision No. 2303 (HODGMAN).

OPINION

Appellant argues that, under the principles enunciated in Appeal Decision No. 2303 (HODGMAN), he should be permitted an immediate application to the Clemency Board for a new license under 46 CFR 5.13. I agree.

Over six years have passed since Appellant committed the offense for which he was convicted. The record shows significant evidence of rehabilitation during this period. I note as well at the time Appellant committed the offense, he did not

possess a Coast Guard license. In HODGMAN I stated that:

I am cognizant of both the need to eliminate the opportunity for smuggling for those inclined to traffic in drugs and the need to allow those who are truly rehabilitated to return to a productive role in society as soon as possible. I believe these needs can best be balanced by using the procedures set forth in 46 CFR 5.13 to determine whether Appellant should hold a Merchant Mariner's document. This will insure a thorough inquiry into his qualifications to hold a document.

I believe the reasoning in HODGMAN applies here. Therefore, although, although I will affirm the order of the Administrative Law Judge, I will permit Appellant to apply for a new license under 46 CFR 5.13 immediately.

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. However, under the particular circumstances of this case, Appellant will be allowed to apply for a new license under 46 CFR 5.13 immediately.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida on 28 April 1983 is AFFIRMED. Appellant may apply for a new license under 46 CFR 5.13 immediately.

J.S. GRACEY

Admiral, U.S. Coast Guard

Commandant

Signed at Washington, D.C., this 9th day of May 1984.

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