

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z REDACTED
Issued to: Clay Milford Siems

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2301

Clay Milford Siems

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

By order dated 14 April 1981, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman's document upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that Appellant, while the holder of the captioned document, was convicted on 11 December 1980, of conspiracy to deliver a controlled substance, in the Superior Court of the State of Washington for Kitsap County.

The hearing was held at Seattle, Washington on 17 March and 14 April 1981.

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 four documents into evidence including a certified copy of the order of the Superior Court of the State of Washington for Kitsap County which deferred

sentence and granted probation.

Appellant offered nothing in his own defense.

At the end of the hearing, on 14 April 1981, 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 on Appellant revoking all documents issued to Appellant.

The order was served on Appellant in an open hearing on 14 April 1981. The complete decision and order was served on counsel on 30 April 1981. Appeal was timely filed on 20 April 1981 and perfected on 28 July 1981.

FINDINGS OF FACT

On 11 December 1980, Appellant was convicted of conspiracy to deliver cocaine, upon his plea of guilty in the Superior Court of the State of Washington for Kitsap County, a court of record, in violation of the Revised Code of Washington, Sections 69.50.401 and 69.50.407. At that time, Appellant was the holder of a duly issued Merchant Mariner's Documents No. [REDACTED] endorsed for Ordinary Seaman and Oiler. Appellant was served with the charge and notified of the time and place of hearing on 3 February 1981.

At his trial Appellant entered a plea of guilty to a charge of "conspiracy to deliver a controlled substance" and the Kitsap Superior Court Judge deferred the sentencing pursuant to Washington State Statute RCW 9.95.240. Under that statute, a defendant may enter a plea of guilty and receive a deferred sentence, in the discretion of the court, pending certain conditions. Upon the fulfillment of those conditions, defendant may then withdraw his plea of guilty and enter a plea of not guilty. "(T)he court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted."

There is no evidence that the conviction has been set aside or the information or indictment dismissed.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that he did not receive a final conviction within the purview of 46 U.S.C.239b because the state court has not yet pronounced sentence.

APPEARANCE: Moriarty, Mikkelborg, Broz, Wells and Fryer, Seattle, Washington by Shane C. Carew, Esq.

OPINION

Appellant's contention that his conviction is not final for purposes of 46 U.S.C. 239b is without merit.

A conviction is final under the statute as long as no court invalidates it for some error of fact or law in the proceedings which rendered the judgment. A conviction's finality is not drawn into question by subsequent judicial action to terminate or mitigate its impact on a defendant's enjoyment of rights curtailed by the conviction or fact of it. A court order which speaks not to the validity of a conviction, but instead purports to extinguish the civil disabilities that ordinarily flow from it, does not undermine the conviction's finality for purposes of section 239b. See Decision on [Appeal No. 2208 \(ROGERS\)](#), rev'd on other grounds; *Commandant v. Rogers*, NTSB Order EM-85. Thus, the fact that sentencing was deferred does not invalidate the conviction.

Should the conviction later be set aside Appellant may then apply for rescission of the revocation pursuant to 46 CFR 5.20-190.

CONCLUSION

Appellant's conviction is final for the purposes of 46 U.S.C. 239b.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington on April 14, 1981, is AFFIRMED.

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

Signed at Washington, D.C., this 13th day of April 1983.

***** END OF DECISION NO. 2301 *****

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