

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT No. (REDACTED)
ISSUED TO: Gregory James Hodgman

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2303

Gregory James Hodgman

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

By order dated 3 February 1983, an Administrative Law Judge of the United States Coast Guard at Miami, Florida revoked Appellant's seaman's document upon finding proved the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that being the holder of the document above captioned, on or about "20 May 1977 [Appellant was] convicted of conspiracy to violate Section 841(a)(I) of Title 21, United States Code (by the United States District Court for the Southern District of Georgia) in that [he] did knowingly and intentionally possess with intent to distribute a quantity of marijuana."

The hearing was held at Miami, Florida on 8 December 1982.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

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

In defense, Appellant offered in evidence his own testimony, the testimony of one additional witness and five exhibits.

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

The Decision and Order revoking Appellant's seaman's document was served on 7 February 1983. Notice of appeal was timely filed on 9 February 1983 and perfected on 5 April 1983.

FINDINGS OF FACT

On 20 May 1977 Appellant pleaded "guilty" to, and was convicted of, conspiracy to violate Section 841(a)(1) of Title 21, United States Code in the United States District Court for the Southern District of Georgia in that he did knowingly and intentionally possess with intent to distribute a quantity of marijuana. 21 U.S.C. 841(a)(1) prohibits distribution of and possession with intent to distribute controlled substances. Following his conviction Appellant was sentenced to one year and one day in prison to be followed by a special parole term of two years. He was released from prison early on 7 March 1978. He was also released early from parole.

The record contains only limited information regarding the circumstances leading to the conviction. The conspiracy lasted from 27 December 1976 or before until 8 January 1977 or beyond and included at least 18 persons in addition Appellant. It involved the possession of 16,470 lbs of marijuana with intent to distribute. In furtherance of the conspiracy Appellant and three others departed Blackpoint in Camden County, Georgia in a rubber raft with a small motor.

The day following his release from prison, on 8 March 1978, Appellant resumed employment with Belcher Towing Company. He was continually so employed from his release. Appellant has been an exemplary employee and has advanced with the company from ordinary seaman to chief engineer. He has received several commendations from his employer for his work and for involvement in community affairs.

The Probation Office for the United States District Court knew of Appellant's employment in a seagoing capacity. His parole officer trusted Appellant on his honor and allowed him to travel in conjunction with his job for periods exceeding twenty days during his reporting period. On 24 January 1980 Appellant received a "Certificate of Early Termination" of parole in which the U.S. Parole Commission expressed the opinion that Appellant would not again engage in conduct that would violate any criminal law. On 25 March 1981 Appellant was awarded a "Certificate of Restoration of

Civil Rights" by the State of Florida, Office of Executive Clemency.

The Coast Guard had been aware since 1979 that Appellant was the holder of a Coast Guard document and had been convicted of a marijuana offense. On 27 August 1979 Appellant's counsel met with CWO Hoffman, USCG at the Marine Safety Office, Miami, Florida and discussed Appellant's conviction, his employment with Belcher, and his desire to sit for a license as tugboat operator. The Coast Guard took no action at that time. On 12 October 1982 Appellant applied for a certificate as a tankerman Grade B which he received on 13 October. Shortly thereafter this action for revocation of his document commenced.

BASES OF APPEAL

This appeal is taken from the order imposed by the Administrative Law Judge. It is contended that:

I. The Administrative Law Judge erred in finding that he had no discretion to do the following:

1. dismiss the charge for laches;
2. dismiss the charge for failure of the Investigating Officer to follow the criteria in the Coast Guard Marine Safety Manual in deciding whether to prefer charges;

II. Conviction of a marijuana offense alone is insufficient grounds for revocation of Appellant's document under 46 U.S.C. 239b.

III. The sanction of revocation is not appropriate in this case.

OPINION

I

In his first basis for appeal Appellant asserts that the Administrative Law Judge erred by finding that he lacked discretion in three respects. These contentions are contrary to the applicable regulations and are, therefore, without merit.

Appellant first contends that the Administrative Law Judge had discretion to dismiss the charge for laches. In support of this he cites Commandant Decision on Appeal 1514 (*BANKS*) in which an

order of revocation was vacated by the Commandant. The fact that several years had passed was an important consideration in this decision; however, BANKS does not hold that the Examiner had discretion to dismiss the charge for the delay or do other than revoke the document once conviction for a narcotic drug law violation had been proved; it merely recognizes that the Commandant may exercise the statutory discretion under 46 U.S.C. 239b.

The regulations at 46 CFR 5.05-23 set forth the time limits for bringing charges. Since the charge in the case at hand was served within the applicable time limit, the Administrative Law Judge did not err in refusing to dismiss it because of the elapsed time since Appellant's conviction and would have exceeded his discretion had he done so.

The second and third contentions, respectively, are that the Administrative Law Judge should supervise the Investigation Officer's exercise of discretion of whether or not to bring charges and that the Judge has discretion to order a sanction less than revocation.

46 CFR 5.03-10 requires the Judge to enter an order of revocation after proof of conviction for a narcotic drug law violation. It is true that the statute, 46 U.S.C. 23.b, gives the Coast Guard discretion to revoke a document or license; this discretion, however, has not been delegated to the Administrative Law Judge. In accordance with paragraph 71-6-30B(12) of the Coast Guards Marine Safety Manual, COMDTINST M16000.3 the Investigating Officer has discretion to bring charges. I may exercise discretion on appeal as has been done from time to time. See Commandant Decisions on Appeal 1513 (ERDAIDE), 1514 (BANKS), 1594 (RODRIGUEZ), 2036 (SCHMIDT), and 2095 (SCOTT). Even though he has no discretion, it is incumbent on the Administrative Law Judge to spread upon the record the reasons that the Investigation Officer decided to bring charges and evidence related to whether revocation is appropriate under the circumstances so that I can properly exercise the statutory discretion.

II

Appellant urges that conviction for a marijuana offense is not, by itself, sufficient grounds to revoke his document. I do not agree.

46 U.S.C. 239a specifically includes "marijuana" within the meaning of the term "narcotic drug" in 46 U.S.C. 239b. Therefore, conviction for a "marijuana" offense is conviction for a "narcotic drug" law violation and cause to revoke the seaman's document under

46 U.S.C. 239b.

III

Appellant urges that revocation is not appropriate in this case.

Under the statute, 46 U.S.C. 239b, I have discretion to revoke or not to revoke a license or document following a narcotic drug law conviction. In most cases revocation is appropriate. However, in unusual cases, where the circumstances are such that revocation is not appropriate, I have exercised my discretion and vacated the order of the Administrative law Judge. See ERAIDE, BANKS, RODRIGUEZ, SCHMIDT, and SCOTT, *supra*. In other cases I have made provision for early consideration for a new document. See Commandant Decision on Appeal 845 (VICENTE) and 915 (BROWN).

The circumstances in this case are unique. The narcotic drug violation for which Appellant was convicted was especially serious. It involved 8 tons of marijuana and a conspiracy with at least 18 other people. Nevertheless the record contains very strong evidence of rehabilitation over the 5 year period since Appellant's release from prison. 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. Therefore, I have decided to affirm the order of the Administrative Law Judge but exercise my discretion to allow the time since Appellant's release from prison to be counted toward the three year requirement before application for a new document. Consequently, Appellant may apply for a new document 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 seaman's document as he was required to do. However, under the particular circumstances of this case, Appellant will be allowed to apply for a new document under 46 CFR 5.13 immediately.

ORDER

The order of the Administrative Law Judge dated at Miami, Florida on 3 February 1983 is AFFIRMED. Appellant may apply for a new document under 46 CFR 5.13 immediately.

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

Signed at Washington, D.C., this 22nd day of April 1983.

***** END OF DECISION NO. 2303 *****

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