

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)
Issued to: RANDALL P. NORSWORTHY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2009

RANDALL P. NORSWORTHY

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 March 1974, an Administrative Law Judge of the United States Coast Guard at Toledo, Ohio, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that while holding the document above captioned, on or about 6 December 1973, Appellant was convicted by the County Court, Door County Wisconsin, a court of record, for violation of narcotic drug laws of the State of Wisconsin.

At the hearing Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

In mitigation, Appellant stated that he had been in a bar and had run out of cigarettes and that a woman gave him a pack of cigarettes containing two marijuana cigarettes.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant revoking all documents, issued to Appellant.

The entire decision and order was served on 6 April 1974. Appeal was timely filed on 15 April 1974.

FINDINGS OF FACT

On or about 6 December 1973, Appellant, being the holder of the above captioned document, was convicted by the County Court, Door County, Wisconsin, a court of record, of violation of a narcotic drug law of the State of Wisconsin.

BASES OF APPEAL

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

- (1) the Judge erred in finding that applicable Coast Guard regulations require an order of revocation;
- (2) 46 U.S.C. 239b is unconstitutional in conclusively presuming that conviction for possession of marijuana renders Appellant permanently unfit to hold a seaman's document;
- (3) The Coast Guard application of 46 U.S.C. 239b is unconstitutional in its creation of two classes, narcotics users and addicts as opposed to those convicted of narcotics violations, the former being permitted to retain documents upon satisfactory evidence of cure; and
- (4) Permanent revocation of Appellant's document upon the conviction involved constitutes an unconstitutional denial of his rights to privacy and freedom of expression.

APPEARANCE: Green & Lackey, Toledo, Ohio

OPINION

I

Appellant contends that the Judge incorrectly interpreted 46 CFR 137.20-165, the table of average orders. Suffice it to note that the Judge acted pursuant to 46 CFR 137.03-10, which requires revocation upon a guilty plea in a case of this nature.

II

While administrative proceedings do not present a proper forum for constitutional challenges to duly enacted statutes, I note with respect to Appellant's second basis for appeal that neither the statute nor the implementing regulations presume permanent unfitness to hold a seaman's document. 46 CFR 137 clearly provides for the issuance of a new document after three years should the

Commandant determine that the applicant no longer poses a threat to life and property at sea.

III

With respect to his third basis for appeal, Appellant manifests a similar confusion as to the contents of the implementing regulations. Contrary to his assertions, 46 CFR 137.03-4 and 137.03-10 merely distinguish between those found guilty of experimental use, possession or association with marijuana which the Administrative Law Judge finds will not recur and those convicted of narcotics violations. The former class involves minor offenses without conviction by a court of record and is subject only to the standard of proof set forth in 46 CFR 137.20-195(b). The latter class involves convictions by a court of record subject to proof beyond a reasonable doubt. Certainly this presents a rational basis for the classification, which serves the compelling interest of safety of life and property at sea.

Furthermore, it is noted that the class governed by 46 CFR 137.03-4 is established pursuant to 46 U.S.C. 239(g), whereas the class governed by 46 CFR 137.03-10 is established pursuant to 46 U.S.C.239b. Thus, the classification is legislatively established and not subject to attack in administrative proceedings.

IV

Appellant's final ground for appeal is based upon *Roe v. Wade*, 410 U.S. 113 (1973), in which the Supreme Court affirmed the limited right to abortion on the basis of the so-called constitutionally protected right of privacy. Apparently Appellant contends that use or possession of marijuana is, like abortion, to some extent beyond legitimate governmental interest. This is essentially an attack on 46 U.S.C. 239b and beyond the scope of these administrative proceedings. I note, however, that no authority has been cited extending the *Roe v. Wade* rationale to the marijuana area. I note further that there is no reasonable relationship between possession of marijuana and freedom of expression.

ORDER

The order of the Administrative Law Judge dated at Toledo, Ohio, on March 1974, is AFFIRMED.

E. L. PERRY
VICE ADMIRAL, U. S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D. C., this 20th day of Sept. 1974.

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