

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 102647  
Issued to: Marshall G. STEWART

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2089

Marshall G. STEWART

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 5.30-1.

By order dated 10 March 1976, an Administrative Law Judge of the United States Coast Guard at Washington, North Carolina revoked Appellant's seaman documents upon finding him guilty of "conviction for a narcotic drug violation." The specification found proved alleges that while being the holder of the above captioned document, on or about 15 December 1975 Appellant was convicted of a violation of North Carolina General Statue 90-95(a'(3)) in the Superior Court of New Hanover County, State of North Carolina, for violation of a narcotic drug law.

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

The Investigating Officer introduced in evidence a copy of the Judgement of conviction for a narcotic drug law violation entered in Cause No. 75-CR-14629 in the General Court of Justice, Superior Court Division, County of New Hanover, North Carolina, dated December 15, 1975.

In defense, Appellant offered nothing in evidence.

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 entered an order revoking all documents, issued to Appellant.

The entire decision and order was served on 10 March 1976. Appeal was timely filed on 22 June 1976.

#### *FINDINGS OF FACT*

On 15 December 1975, Appellant was the holder of License No. 102647 issued to him by the United States Coast Guard. He was convicted on 15 December 1975 of a violation of North Carolina General Statute 90-95(a(3)) in the Superior Court of New Hanover County, State of North Carolina, a court of record, as defined by 46 CFR 5.03-15, for violation of a narcotic violation of a narcotic drug law, for possession of marijuana.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administration Law Judge. Appellant contends that revocation is inappropriate and requests that the decision be reversed and remanded based on the following grounds:

- (1) Appellant was denied his right to a legal counsel as guaranteed by the 5th and 14th Amendments to the United States Constitution.
- (2) The Administration Law Judge misapplied the law, relying on 46 CFR 5.03-10 rather than 46 CFR 5.03-4.
- (3) Appellant was not permitted to present evidence in his defense concerning his good character and attacking his conviction in the court of record.
- (4) The Judge was prejudicial in failing to question the Investigating Officer regarding potentially misleading

information given by him to the Appellant.

APPEARANCE: A.A. Canoutas, Wilmington, North Carolina.

### OPINION

#### I.

Appellant contends he was denied the opportunity to procure an attorney in violation of his Fifth and Fourteenth Amendment Rights. Initially it should be noted that a constitutionally guaranteed right to counsel arises only in criminal cases and not in connected with Administrative proceedings. Secondly, Appellant was fully informed of his right to obtain counsel. In a similar case where the Appellant also failed to retain counsel, it was held, "[w]hile the person charged has a right to be represented by counsel of his choice, the responsibility of the government in this regard is fully exercised when the person charged has been duly informed of that right and given reasonable opportunity to procure such representation." *Goodwin* (2008) The Investigating Officer advised Appellant of his right to counsel when he was served with the charge. (TR 15) However, Appellant appeared at the Hearing without counsel and with only a friend accompanying him. The Administrative Law Judge also informed Appellant of his right to counsel and a lengthy discussion ensued. (TR 2) Initially Appellant indicated some confusion concerning the nature of the hearing and at one point did request the Judge to "Let me bring my lawyer into it." (TR 11) Subsequently the Judge indicated that he would be willing to grant a continuance to enable the Appellant to speak with an attorney. (TR 13) However, at this point Appellant changed his mind, replying to the Judge, " I can't change that I was guilty in court; that's record; it's already there sir." The hearing then proceeded without further discussion on the point. Based on the foregoing it is clear that Appellant's right to counsel was fully explained to him. There was no denial of his right to representation when by his own volition Appellant chose not to obtain counsel.

#### II

Appellant contends that the Administrative Law Judge

misapplied the law in stating that revocation of his license was mandatory rather than discretionary. To the contrary, under 46 CFR 5.03-10, when conviction by a court of record has been proven or a plea of guilty has been entered the Administrative Law Judge, "*shall* enter an order revoking the seaman's licenses, certificates and documents." (emphasis added) Appellant confuses 46 CFR 5.03-10 with 46 CFR 5.03-4. The latter section does permit discretion in revoking a seaman's license but is limited to cases where the Coast Guard initiated the administrative action and not in cases, such as the present one, where a criminal conviction has been entered by a court of record. The Administrative Law Judge had no discretion to order other than revocation of Appellant's license. This result and the applicable law were fully and accurately explained to Appellant during the hearing.

### III.

Appellant requests that the case be remanded in order for him to offer as evidence, affidavits attesting to his good character. Appellant also attacks his conviction in the court of record, contending that it should have been "thrown out of court." Both issues are without merit.

Preliminarily it should be noted that at the hearing Appellant was twice asked if he had further evidence to offer. (TR 16 and 18) It is open to conjecture why Appellant did not take these opportunities to present the affidavits which, purportedly, he had with him. However, his failure to do so was not prejudicial, since under 46 CFR 5.03-10 proof of good character is immaterial to a revocation of a seaman's license. Consequently a remand would be inappropriate in this situation.

Appellant's collateral attack on his criminal conviction in a court of record of the State of North Carolina can not be raised in these administrative proceedings. If Appellant wishes to contest the conviction he is in the wrong forum. Proof of Appellant's conviction entered as Exhibit 1, established the necessary element for revocation of his license as required by 46 U.S.C. 239b. Should the conviction by the court of record be set aside, Appellant could then request that the order of revocation be rescinded. 46 CFR 5.03-10(b)

IV.

Appellant contends that the Administrative Law Judge erred in failing to pursue questioning which may have disclosed misleading information supplied by the Investigating Officer to Appellant. From this, it is inferred that the Judge was prejudiced and that the hearing was less than fair and impartial. However, closer examination of the record reveals that the Administrative Law Judge on his own initiative, inquired, "[y]ou weren't advised by anyone connected with the Coast Guard that you might keep your license, were you?" (TR 11) Appellant foreclosed this line of inquiry himself, by responding that he has not been so advised, but that personally he had hoped to be able to reapply for the license. (TR 12) There is no indication in the record of any prejudice against the Appellant, rather the Judge evinced a great deal of sympathy for Appellant's position. (TR 13)

*CONCLUSION*

Proof of Appellant's plea of guilty and subsequent conviction by a court of record were established by reliable and probative evidence. Accordingly revocation of his license was proper. However, the record implies that Appellant desires administrative clemency. Based on Appellant's prior Coast Guard and police record before me, I am inclined to permit consideration for administrative clemency as soon as he makes application in accordance with 46 CFR 5.13.

*ORDER*

The order of the Administrative Law Judge dated at Wilmington, North Carolina, on 10 March 1976, is AFFIRMED. In addition Appellant may apply for administrative clemency prior to the three year time limitation provided for in 46 CFR 5.13-1(a).

E. L. Perry  
Vice Admiral U. S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 3rd day of Jan., 1977.

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