

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)
Issued to: Eric Patrick GIBBLE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2121

Eric Patrick GIBBLE

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

By order dated 11 May 1977, an Administrative Law Judge of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as ordinary seaman on board the United States SS ARCO PRESTIGE under authority of the document above captioned, on or about 20 March 1977, Appellant, while the vessel was at sea did wrongfully have in his possession certain narcotics, to wit, marijuana.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and the specification.

The Investigating Officer introduced in evidence the testimony of one witness and seven exhibits.

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

On 11 May 1977 the Judge rendered a written decision in which he concluded that the charge and the specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision and order was served on 14 May 1977.

Appeal was timely filed on 20 May 1977.

FINDINGS OF FACT

On 20 March 1977, Appellant was serving as ordinary seaman on board the United States SS ARCO PRESTIGE and acting under the authority of his merchant mariner's document while the ship was at sea. Appellant occupied a stateroom alone. During a search of Appellant's stateroom in the Appellant's presence, the Master and Chief Mate found approximately 20.3 grams of marijuana, marijuana seeds, and related paraphernalia.

The Appellant was taken into custody by Coast Guard and Narcotic Officials when the SS ARCO PRESTIGE arrived in Corpus Christi, Texas. The marijuana was turned over to Customs Patrol Officers who performed a field test and determined that the matter found in Appellant's stateroom was marijuana.

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) The local drug enforcement authorities declined to prosecute the Appellant for possession of marijuana;
- (3) The Appellant was the victim of circumstances.

APPEARANCE: Freedman, Lorry, Vigderman, Weiner and Sovel, Philadelphia, PA, by Barton A. Pasternak, Esq.

OPINION

I

Appellant contends that the Judge erred in finding that he had no discretion in the sanction to be invoked, under the holding of Commandant's Decision on Appeal 2095 (SCOTT), and 46 CFR 5.03-10. The Judge concluded as a matter of law that jurisdiction attached under R.S. 4450, as amended (46 U.S.C. 239), and that the charge and specification were found proved by substantial evidence of a reliable and probative nature.

Wherever a charge of misconduct by virtue of the possession or association with narcotic drugs, including marijuana, is found proved, the administrative law judge shall enter an order revoking all licenses, certificates, and documents held by such a person (46 CFR 5.03-4). Revocation of the documents is appropriate when the charge and specification have been proved to ensure that the overall discipline and the safe operation of ships at sea are preserved. (Commandant's Decision on Appeal 1987 (BROWN), affirmed by NTSB Order EM-37).

Whenever a person has been involved in acts of such a nature that permitting such a person to sail under their documents would be clearly a threat to the safety of life or property, the Coast Guard is bound to initiate administrative action seeking to revoke that person's documents. Possession or association with marijuana is an act deemed to affect the safety of life at sea, the welfare of seamen, and the protection of property aboard ship (46 CFR 5.03-5).

Appellant contends that the Judge is vested with broad discretion under 46 CFR 5.03-4 to enter an order less than revocation where there is evidence of only experimentation with the drug. That is correct. However, experimentation was not raised in mitigation of the offense during the hearing. Also, Appellant expressly denied in his sworn testimony any intent to experiment with the drug.

II

With respect to Appellant's second basis for appeal, the fact that local drug enforcement authorities declined to prosecute Appellant is irrelevant to this proceeding. The suspension and revocation proceedings are intended to maintain standards of competence and conduct essential to the promotion of the safety of life and property at sea (Commandant's Decision on Appeal 1987 (BROWN)). If the Appellant's competence or conduct were to be compromised by his association with marijuana, the entire vessel and crew would become victims of his transgression.

Persons who are apprehended having possession of marijuana or other narcotics or drugs, are undesirable as seamen in the American merchant marine. This is a policy designed not so much for punishment of the individual offenders, as for the protection of the lives and property within the mandate of Congress addressed to that purpose, as revealed in 46 U.S.C. 239 (R.S. 4450), as amended. (Commandant's Decision on Appeal 359 (KASZUBSKI)).

III

Appellant next urges that he was the victim of circumstances. Although he readily admits association with the drug and acknowledges his acceptance of it from a fellow crewmember without question, he insists that his intention to either return it to the donor or dispose of it over the side should militate against the seriousness of the offense.

The Appellant's allegations, that he was not going to keep the marijuana, do not diminish the seriousness of the admitted possession. It is the duty of the Coast Guard to protect American ships and their crews from danger. Possession of marijuana poses a danger in that it can be used by the holder or other member of the crew at any time. Consequently, possession alone is considered to be a serious offense because of potential hazards on shipboard resulting from its use by the possessor or by others (Commandant's Decision of Appeal 401 (PATTERSON)).

Appellant urges that the quantity of marijuana possessed is minimal, being only seven tenths of one ounce. However, the record indicates that there was enough to fill three plastic bags and some prepared cigarettes. Commandant's Decision on Appeal 339 (LUCIEN) stated that "the offense of possession of narcotics is considered one of the most pernicious arising within the administration of the Coast Guard and one for which revocation is demanded. There is no greater single threat to the safety of a ship or the seamen onboard than a person under the influence of narcotics. The fact that appellant had no selling the cigarettes does not lessen the seriousness of his offense of having had them in his possession."

The stipulation as to Appellant's "excellent reputation", and the Investigating Officer's statement in closing argument that "I almost believe that he was a victim of circumstances" are not determinative of the basic issue. The NTSB, in affirming BROWN, reiterated the factual nexus between association with marijuana and the concepts of safety at sea. In order dismissing BROWN's appeal, EM-37, the Board concluded:

"We thus have no hesitancy in holding that his offense jeopardized maritime safety and calls for revocation as a necessary remedy to protect the interests of safety of life at sea"

CONCLUSION

I find that there is substantial evidence of a reliable and probative character to support the Administrative Law Judge's

findings.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 11 May 1977, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C. this 25th day of May 1978.

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