UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT (REDACTED)
Issued to: Qincey Leon COOPER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2168

Qincey Leon COOPER

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 3 October 1978, an Administrative Law Judge of the Untied States Coast Guard at Jacksonville, Florida, after a hearing at Charleston, South Carolina, revoked Appellant's Merchant Mariner's Document upon finding him guilty of "conviction for a narcotic drug violation." The specification found *pro*ved alleges that while the holder of the above-captioned document on 30 April 1971, Appellant was "convicted of pos*se*ssion of narcotics, to wit, marijuana, by the Circuit Court of Cook County, Illinois."

At the hearing, Appellant appeared pro se and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced into evidence a certified copy of the "Complaint for Preliminary Examination" and subsequent conviction by the Circuit Court of Cook County, Illinois, dated 20 September 1971.

Appellant offered no evidence but elected to make a sworn statement in extenuation and mitigation pursuant to the provisions of 46 CFR 5.20-85(b).

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order

revoking all documents issued to Appellant.

The entire decision and order was served on 6 October 1978. Appeal was timely filed on 6 October 1978, immediately after service.

FINDINGS OF FACT

On 30 April 1971, Appellant was holder of the captioned document. On that date Appellant was convicted in the Circuit Court of Cook County, Illinois, a court of record, of violation of Chapter 38, Section 22-3 of the Illinois Revised Statutes for possession of marijuana. As a result of his conviction Appellant was placed on probation for one year.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant's sole contention is that he should be accorded leniency due to the age of and circumstances surrounding his conviction for possession of marijuana.

OPINION

I

The sole basis for this appeal is Appellant's request for leniency.normally such a request would place the case in a posture requiring a *pro forma* affirmance of the Administrative Law Judge's decision and possibly a letter to Appellant suggesting that he make a *pro*per application for administrative leniency. Appellant makes no argument that he was not, in fact, convicted of the offen*se* cited in the charge and specification. He did plead guilty and the exhibit introduced into evidence by the Investigating Officer fully supports the plea entered.

Due, however, to egregious procedural errors and the faulty transcript in this case, additional scrutiny is appropriate. As appears below, the cumulative impact of the errors committed at various points in the prosecution and hearing of this case is of such nature as to require vacation of the order.

The initial determination by the Investigating Officer to prefer charges appears to have been made without proper consideration of agency policy concerning preferment of charges under 46 U.S.C. 239b in cases where a document holder is convicted

of a drug offense involving marijuana. When the conviction involves a minimal amount of marijuana, occurred more than one year before coming to the Investigating Officer's attention, and was for simple possession; when the seaman has record free of subsequent drug involvement; and when the seaman can provide probative evidence that he is no longer associated with drugs, discretion can be exercised by the Investigating Officer. In this case when the Investigating Officer decided to prefer charges, Appellant's conviction was approximately seven years old. From all that appears in the record, the circumstances in Appellant's case fell within the known policy. While I shall stop short of terming the Investigating Officer's action an abuse of discretion, it certainly appears that the exercise of discretion not to prefer charges would have been a more reasonable course of action than what actually transpired.

The transcript in this case is wholly unsatisfactory. In fourteen(14) pages of eight by ten and one-half inch double spaced text, there are sixty-one (61) hand-written, signed "corrections" by Administrative Law Judge. It is highly questionable whether this transcript is an accurate and complete record of the hearing. The corrections made go far beyond minor editorial changes of punctuation, spelling, and the like. Rather, they involved extensive changes of the text which materially change the sense of the phrases affected. If in fact the court reporter was so unskilled or inattentive to have committed the number and type of errors "corrected" by Administrative Law Judge the record is rendered extremely suspect. Since Appellant appeared pro se at the hearing and presumably did not have the benefit of legal counsel in reviewing the transcript and perfecting his appeal, it is appropriate that this issue should be raised here *sua sponte* and dealt with accordingly.

The Administrative Law Judge failed to advise the respondent of his right to counsel until after the plea of guilty had been entered. While the sequence of events prescribed by 46 CFR 5.20-1(c) is by no means mandatory, and a departure therefrom might under other circumstances be overlooked, it must be weighed in the cumulation of irregularities in this case.

Finally, the Administrative Law Judge's comment that "it really doesn't make much difference whether you plead guilty or not guilty because I assume that they have the evidence" is hardly reflective of a proceeding in which the respondent was accorded administrative due process. It should be noted that the respondent had not been advised of his right to counsel when this presumptions remark was made. Again, while such breach of judicial decorum standing alone might not require that the Administrative Law

Judge's order be overturned, it is another factor to be considered in determining whether Appellant was accorded a fair hearing.

No single factor received substantially more weight than another in reaching the decision in this case; rather the cumulation of these factors on the whole record represents a violation of basic due process which demands redress.

ORDER

The order of the Administrative Law Judge, dated at Charleston, South Carolina, on 3 October 1978, is VACATED and the charge DISMISSED.

J.B. Hayes
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 23rd day of October 1979.

INDEX

***** END OF DECISION NO. 2168 *****

Top