IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-270644-D4 AND ALL OTHER SEAMAN DOCUMENTS
Issued to: MARK KOSONOVICH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1640

MARK KOSONOVICH

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

By order dated 6 April 1966, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for 9 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Able Seaman on board the United States SS GOLDEN GATE under authority of the document above described, on or about 12 November 1966, Appellant wrongfully failed to perform his duties; on or about 17 December 1966, Appellant assaulted and battered a fellow crewmember; and on or about 17 December 1966, Appellant wrongfully had intoxicating beverages in his possession.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the specifications alleging failure to perform and possession of liquor, and not guilty to the assault specification.

The Investigating Officer introduced in evidence relevant

documents and the testimony of two witnesses.

Appellant testified on his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of 9 months.

The entire decision was served on 7 April 1966. Appeal was timely filed on 5 May 1966.

FINDINGS OF FACT

In November and December of 1965, Appellant was serving as an Able Seaman on board the United States SS GOLDEN GATE and acting under authority of his document while the ship was on voyage from New Orleans to the Orient.

On 12 November 1965, Appellant wrongfully failed to perform his assigned duties by reason of intoxication.

There is considerable conflict in the record as to the events occurring on 17 December 1965. The Examiner stated in his decision, however, that "the conflicts in the evidence have been resolved in favor of the testimony of the person charged." Appellant's version of the incident is also accepted here.

While the vessel was at sea on the date in question, Appellant and his bunk mate, Mahmaud Awadalla, returned to their quarters after standing watch. An argument started at this time over whether the port should be opened. Appellant left to see the Chief Mate. He and the Chief Mate returned to the room and the latter stated "[you] could use some air". (R-23).

The Chief Mate left and Appellant partially opened the port. As he was doing this, Awadalla struck Appellant on the arm, then backed off and put his hand in his hip pocket, stating " you , I'll cut your head off." Appellant cursed

Adawalla and grabbed his hand in the pocket, and with his other hand picked up an empty bottle, stated "I got a present for you, you knife artist", (R-50.) and struck Awadalla on the side of the head. Bleeding from the wound, Awadalla left the room and brought down the Master and another officer.

Awadalla told them Appellant had hit him without any provocation, and that he had some bottles of liquor in his locker. The Master ordered Appellant to open his locker. Four of five bottles of intoxicants were discovered, and later thrown overboard.

Appellant stated that he felt the knife in Awadalla's pocket, but did not see it: "I didn't give him a chance to pull it out." (R-50.)

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The following errors have been assigned:

1. Appellant did not have enough time to prepare his case and was thus denied due process of law.

2. Logbook entries were erroneously admitted into evidence.

3. A Doctor's report was erroneously admitted into evidence.

4. A consular report was erroneously admitted into evidence.

5. Appellant should have been given an opportunity to withdraw his plea of guilty to the specification of failure to perform on 12 November 1965, because there was no supporting evidence of guilt.

6. Appellant should have been given the opportunity to withdraw his plea of guilty to wrongful possession of intoxicants because he was not in fact guilty of this offense.

7. The Examiner's finding of guilty to the specification of assault and battery is inconsistent with his findings of fact, and therefore erroneous.

APPEARANCE: Avnet & Avnet of Baltimore, Maryland;
by Samuel A. Culotta, Esquire, of counsel.

OPINION

The Examiner explained Appellant's rights to him at the commencement of the proceedings. Appellant complained that the Chief Officer had told him the charges were dropped. The Examiner then stated:

"A Coast Guard charge can be dropped only by the Coast Guard, and not by someone else. However, if you need time to prepare your defense, or time to consult with a lawyer, I will give you what time you need for that."

Appellant replied: "No sir, I would rather get it over with right now."

Examiner: "You would rather get it over with?"

Appellant: "Yes, sir." (R-4.)

Thus, Appellant was given an opportunity to have more time to prepare his case, and declined to take advantage of it. The Examiner did not err in complying with Appellant's request to "get it over with".

The three documents Appellant contends were erroneously admitted into evidence against him were all concerned with the assault and battery specification. The Examiner accepted Appellant's version of the incident, however, so regardless of any technical defects in the documents, they were given no weight, and any admissibility issue is considered moot.

Appellant pleaded guilty to the failure-to-perform specification, and admitted that he "was an hour and a half late in New Orleans" (R-9), but that he thought the Master had forgiven him for it. It is evident that Appellant's plea was not improvident, and the finding of guilty to this specification if affirmed.

Likewise, Appellant's admission by plea to wrongfully having intoxicants on board the vessel on 17 December 1965, is supported by his own testimony as well as the testimony of other witnesses. There is no reason to upset the Examiner's finding of guilty to this specification.

Although he accepted Appellant's version of the assault and battery specification, the Examiner held the burden of proving self-defense had not been sustained. I agree with the Examiner's conclusion.

If the Appellant was reasonably in fear of imminent bodily harm from Awadalla, then he could use reasonable force to protect himself.

Surely, Appellant was justified in grabbing Awadalla's hand to prevent what he reasonably considered was a forthcoming knife attack on his person. Once he had a firm grasp on Awadalla's hand he had effectively defended himself; that is, he had used reasonable force to neutralize his assailant. Unfortunately, Appellant did not stop at this point, but grabbed a heavy object and brought it down on Awadalla's head. That this action was deliberate is clearly indicated by Appellant's statement at the time that he "had a present" for Awadalla. It is considered that Appellant exceeded what reasonable force was warranted by the situation, and thus was himself guilty of an assault and battery.

Appellant's acts of misconduct were committed while he was on probation for previous misconduct. The Examiner's order of nine month's outright suspension is considered reasonable under the circumstances and is approved.

ORDER

The order of the Examiner dated at San Francisco on 6 April 1966 is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 28th day of June 1967.

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***** END OF DECISION NO. 1640 *****

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