

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO> Z-1130845
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: Adolphe MATTE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1673

Adolphe MATTE

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 25 January 1967, an Examiner of the United States Coast Guard at Port Arthur, Texas, 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 holder of the document above described, on or about 6 June 1963, Appellant was convicted of possession of a narcotic drug in violation of a narcotic drug law of the State of Texas, in the Criminal District Court of Jefferson County, Texas.

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

The Investigating Officer introduced in evidence certified minutes of the conviction.

In defense, Appellant offered in evidence matter in mitigation.

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

The entire decision was served on 25 January 1967. Appeal was timely filed on 24 February 1967.

FINDINGS OF FACT

On 6 June 1963, Appellant was convicted in the Criminal District Court, Jefferson County, Texas, of a violation of a narcotic drug law of the State of Texas.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order should be suspended on probation because of the length of time since Appellant's conviction.

APPEARANCE: James S. McGrath, Esq., of Beaumont, Texas.

OPINION

Appellant urges here that since the Commandant has authority to modify orders of examiners under 46 CFR 137.20-190, the revocation should be suspended on probation.

An order of revocation on probation is considered generally undesirable and unwarranted in any case. First, when revocation is an appropriate order, revocation should take place. Second, if under any valid concept a revocation could be suspended on probation, an anomaly might follow that a person on such probation could trigger revocation by an offense of failure to join.

However, this case arises under 46 U.S.C. 239b. Under this law revocation is the only order authorized by statute if the charge is proved.

46 U.S.C. 239 (R.S. 4450) contains no limitation on the kind of remedial action taken. Examiners have reasonable discretion in framing orders, except under 46 CFR 137.03-3, and there remains, on appeal, the power to modify examiners' orders, even those covered by the regulation just mentioned. This power, I believe, does not exist under a statute in which Congress has authorized only revocation.

For good cause shown, other avenues are open for the exercise of clemency powers, but on appeal in a case such as this an order of an examiner properly arrived at cannot properly be set aside or modified.

ORDER

The order of the Examiner dated at Port Arthur, Texas on 25 January 1967, is AFFIRMED.

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

Signed at Washington, D. C. this 20th day of December 1967.

INDEX

Modification of examiner's order
not appropriate under 46 U.S.C. 239b

Examiner order
modification not appropriate under 46 U.S.C. 239b

***** END OF DECISION NO. 1673 *****

[Top](#)