

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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VS

MERCHANT MARINER'S
DOCUMENT NO. Z(REDACTED)

Issued to Marcus S. Terry

: DECISION OF THE
:
: COMMANDANT
:
: ON APPEAL
:
: NO. 2602
:
:

This appeal is taken in accordance with 46 U.S.C. § 7702 and 46 C.F.R. § 5.701.

By an order dated October 2, 1995, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida revoked Mr. Marcus Terry's ("Appellant") license upon finding proved one charge of "Conviction for a Dangerous Drug Law Violation." The specification for the charge of Conviction for a Dangerous Drug Law Violation alleged that Appellant, the holder of the captioned document, was, on or about November 15, 1993, convicted of possession of a dangerous drug with intent to distribute, to wit: Crack Cocaine.

The hearing was held on September 26, 1995 in Jacksonville, Florida. Appellant was charged with Misconduct, supported by one specification and Conviction for a Dangerous Drug Law Violation, supported by one specification. Appellant entered a response of deny to the charge of Misconduct. Appellant entered a response of no contest to the charge of Conviction for a Dangerous Drug Law Violation.

The Coast Guard Investigating Officer introduced into evidence the testimony of one witness and seven exhibits. In defense, Appellant introduced into evidence his own testimony and the testimony of two witnesses. The Investigating Officer withdrew the charge of Misconduct.

The Administrative Law Judge issued a written Decision and Order ("D&O") on October 2, 1995. The Administrative Law Judge concluded, based on Appellant's answer of no contest, that the charge of Conviction for a Dangerous Drug Law Violation supported by one specification was

proved. The Administrative Law Judge revoked Appellant's document.

The Decision and Order was served on Appellant on October 3, 1995. Appellant filed a timely notice of appeal. The notice of appeal described with particularity the grounds for the appeal. In the case of a pro se Appellant, this is sufficient to constitute an appeal memorandum. The appeal is considered perfected.

APPEARANCE: Pro se.

FINDINGS OF FACT

At all relevant times, Appellant was the holder of the above captioned document. See Investigating Officer ("I.O.") Exhibit 1.

Appellant was convicted, by a Court of South Carolina, of possession with intent to distribute crack cocaine. See I.O. Exhibit 5.

BASES OF APPEAL

Appellant requests that the Commandant exercise his discretion and reverse the Order of the Administrative Law Judge revoking Appellant's Merchant Mariner's Document.

OPINION

The Administrative Law Judge was incorrect in stating that I have discretion in amending the sanction when it has been proved, at a hearing, that the holder of a license has been convicted of violating a dangerous drug law. In the Decision and Order ("D&O") the Administrative Law Judge cited a line of cases in which the Commandant exercised discretion in deciding whether the sanction of revocation was appropriate following a dangerous drug law conviction. See D&O at 7-8. Those cases were decided under a statute, 46 U.S.C. § 239(b), that has been recodified. The statute in place now is 46 U.S.C. § 7704. Under 46 U.S.C. § 7704, neither the Administrative Law Judges nor I have the discretion to impose a sanction other than revocation when it has been found proved, at a hearing, that a holder of a license has been convicted of violating a dangerous drug law. See 46 U.S.C. § 7704; Commandant v. Cain, NTSB Order EM-125.

This error by the Administrative Law Judge in stating that I have the discretion to impose a sanction that is less than revocation was not material to the findings of facts or Decision and Order; therefore, it is a harmless error. See Appeal Decisions 2572 (MORSE); 2487 (THOMAS); 2531 (SERRETTE).

Appellant is directed to 46 C.F.R. §§ 5.901, 5.903, and 5.905, which describe the procedures for applying for a new document after revocation.

CONCLUSION

The Administrative Law Judge properly found the charge of Conviction for a Dangerous Drug Law Violation, supported by one specification, proved on the basis of Appellant's answer of no contest, in accordance with 46 CFR § 5.527.

ORDER

The Decision and Order 7 of the Administrative Law Judge dated October 2, 1995 is AFFIRMED.

/S/

J. C. CARD
Vice Admiral, U. S.
Coast Guard
Acting Commandant

Signed at Washington, D.C., this 23 day of July, 1998.