

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Michael W. GILTNER 269614

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2511

Michael W. GILTNER

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By an order dated 19 April 1989, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's Merchant Mariner's License upon finding proved the charge and specification of misconduct having been convicted of a violation of a Federal narcotics law.

The specification supporting the single charge alleges that Appellant, while the holder of the above captioned license was convicted on or about 15 August 1988, in U.S. District Court, Middle District of Florida, Tampa Division, of conspiracy to import in excess of 1,000 pounds of marijuana with the intent to distribute.

The hearing was held at Tampa, Florida on 4 April 1989. Appellant appeared *pro se*, having been fully advised of his right to professional counsel. The Investigating Officer presented three exhibits which were admitted into evidence. Appellant presented three exhibits which were admitted into evidence. Appellant entered the answer of deny to the charge and specification. Upon finding proved the charge and specification of misconduct, the Administrative Law

Judge revoked Appellant's license.

The record does not reflect the date on which the Decision and Order was served on Appellant. However, Appellant submitted a Notice of Appeal on 4 May 1989. This submission is sufficiently detailed to also meet the requirements of an appellate brief as detailed in 46 C.F.R. SS5.703. Accordingly, Appellant's Notice of Appeal and brief are timely and properly before the Commandant for review.

FINDINGS OF FACT

At all times relevant, Appellant was the holder of the above-captioned license authorizing him to serve as operator of small passenger vessels of not more than 50 gross tons upon non-ocean or coastwise waters. This license also permitted Appellant to serve as operator of uninspected passenger vessels upon the Atlantic Ocean, Gulf of Mexico, not more than 100 miles offshore between Delray Beach and Hudson, Florida. Appellant's license was issued by the U.S. Coast Guard on 25 June 1987 at Miami, Florida.

On 15 August 1988, Appellant was convicted in the above-cited U.S. District Court of conspiracy to import in excess of 1,000 pounds of marijuana from about February 1976 until 12 December 1986, in violation of 21 U.S.C. SS952 and SS963, with the intent to distribute said marijuana.

BASES OF APPEAL

Appellant's basis of appeal is that the Government lacks jurisdiction to revoke his license because his Federal criminal conviction is currently on appeal with the Eleventh Circuit Court of Appeals.

OPINION

Appellant argues that since he has appealed his criminal conviction and since the cognizant appellate court has not yet rendered a decision, the Government has no jurisdiction to revoke his license in the interim. I disagree.

Title 46 U.S.C. SS7704(b) provides that the holder of a license or document who has been convicted of violating a dangerous drug law

of the United States or of a State, within 10 years before the beginning of the suspension and revocation proceedings, shall have that license or document revoked. The implementing regulation, 46 C.F.R. 5.59(b) mandates revocation where a respondent is:

"convicted for a violation of the dangerous drug laws, whether or not further court action is pending, and such charge is found proved. A conviction becomes final when no issue of law or fact determinative of the respondent's guilt remains to be decided. A conviction is final so long as no court invalidates it for some error of law or fact in the proceeding that made the original determination of guilt."

See, Appeal Decision [2355 \(RHULE\)](#); Appeal Decision [2435 \(BABER\)](#); Appeal Decision [2462 \(ARMSTEAD\)](#).

The record clearly reflects that a final judgment was rendered in Appellant's criminal prosecution. See, I.O. EXH. 2. Based on applicable law and regulation, the conviction is considered "final" regardless of any pending appeal.

Accordingly, Appellant's assertion that jurisdiction is lacking is without merit.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

ORDER

The decision and order of the Administrative Law Judge dated on 19 April 1989 at New Orleans, Louisiana, is AFFIRMED.

/s/

MARTIN H. DANIELL
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 6th day of September, 1990.

***** END OF DECISION NO. 2511 *****

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