

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 202721
Issued to: Cecil Lee BROWN

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2408

Cecil Lee BROWN

This appeal has been taken in accordance with 46 U.S.C. 7702(b) and 46 CFR 5.30-1.

By order dated 22 April 1985, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's motorboat operator's license upon finding proved the charge of conviction of a dangerous drug law violation. The specification found proved alleged that while being the holder of the above captioned license, on or about 21 December 1981, Appellant was convicted in the Circuit Court of Monroe County, Florida, a court of record, for possession of marijuana. The Administrative Law Judge also found proved a second charge of misconduct and its supporting specification which alleged that Appellant, while serving under the authority of his license, on or about 19 August 1982, wrongfully made a fraudulent statement in his application for license renewal by answering "no" to the question: "Have you been convicted by any court - including military court - for other than a minor traffic violation?"

The hearing was held at Miami, Florida, on 15 March 1985 and 9 April 1985.

At the hearing, Appellant was represented by professional

counsel. He entered a plea of not guilty to the charges and specifications.

The Investigating Officer introduced in evidence three exhibits.

In defense, Appellant offered in evidence his own testimony and 22 exhibits.

At the end of the hearing, on 9 April 1985, the Administrative Law Judge rendered an oral Decision in which he concluded that the charges and specifications had been proved. He also served a written Order on Appellant revoking his license. The complete decision was served on 22 April 1985.

On 15 April 1985, Appellant filed a timely notice of appeal which set forth identifiable grounds for appeal as permitted by 46 CFR 5.30-1(c). Appellant has offered nothing further in support of his appeal. My decision, therefore, is based on the grounds identified in the notice of appeal.

FINDINGS OF FACT

On 21 December 1981, Appellant was convicted of possession of a controlled substance, over 20 grams of marijuana, in violation of Florida law. F.S. 893.13. Appellant attempted to plead nolo contendere but the Circuit Court Judge exercised his discretion to reject that plea. Appellant then entered a plea of guilty, was convicted and placed on probation for 3 years which he successfully completed.

Over the last 29 years, Appellant has worked as a professional fisherman and guide. He takes small groups fishing in the Everglades and Chokoloshee areas of Florida.

During late 1980 or early 1981, Appellant, while on such a fishing trip, came upon some bales of marijuana which he believed had been jettisoned from a larger vessel. He brought 3 or 4 bales aboard his boat. However, a U.S. Customs Service seaplane observed his actions. Appellant then headed for shore, but before arriving, returned the bales to the water. Subsequently, the Coast Guard

boarded Appellant's boat and found the quantity of marijuana residue which eventually led to his conviction.

On 19 August 1982, Appellant completed a license renewal application form, CG-866, at the Coast Guard Marine Safety Office in Miami, Florida. Block 19 of that form requires a "yes" or "no" answer to the question: "Have you been convicted by any court - including military court - for other than a minor traffic violation?" Appellant checked and initialed the box marked "no" and certified by his signature that the information on the application was true.

BASES OF APPEAL

Appellant takes this appeal from the order imposed by the Administrative Law Judge. Appellant contends that the Administrative Law Judge's revocation order should be reversed or at least reduced because Appellant's conviction is very old, he successfully completed the 3-year probation period and he is completely rehabilitated.

APPEARANCE: Frank C. Furci, of Black & Furci, Miami, Florida.

OPINION

Appellant, citing Appeal Decision [2303 \(HODGMAN\)](#) (1983), contends that the Administrative Law Judge could have and should have granted leniency because Appellant's 1981 conviction was very old, he successfully completed probation long before the 1985 proceeding to revoke his license, and he was completely rehabilitated when that proceeding began. This argument, however, is not supported by the controlling statute, 46 U.S.C. 7704(b), or by *HODGMAN, supra*.

46 U.S.C. 7704(b) states in pertinent part:

If it is shown at a hearing...that a holder of a license..., within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of...a State, the license...*shall* be revoked (emphasis added).

Therefore, neither I nor the Administrative Law Judge *can* order anything less than revocation in this case since the evidence shows Appellant was convicted of violating such a Florida law. Appeal Decisions [2377 \(HICKEY\)](#) and [2388 \(MANLEY\)](#).

In addition, *HODGMAN, supra*, only acknowledged the Commandant's authority to modify a revocation order under authority of 46 U.S.C. 239b, which was subsequently replaced by 46 U.S.C. 7704(b) later in 1983. As noted above, the Commandant no longer has such discretion. *MANLEY* and *HICKEY, supra*. The Administrative Law Judge never had such discretion. See 46 CFR 5.03-10 and *HODGMAN, supra*.

In short, Appellant's argument simply has no bearing on whether an order of revocation is required once a properly convened proceeding establishes proof of a conviction.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the applicable regulations. The Administrative Law Judge properly revoked Appellant's license as required by statute and regulations.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida on 22 April 1985 is AFFIRMED.

J. S. GRACEY
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C. this 2 day of Oct., 1985.

***** END OF DECISION NO. 2408 *****

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