UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 208795
Issued to: Bradford L. NEAT

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2428

Bradford L. NEAT

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

By order dated 23 July 1958, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, revoked Appellant's license upon finding proved the charge of "narcotics conviction." The specification found proved alleges that, being the holder of the captioned document, on or about 12 June 1987, Appellant was convicted by the Twenty-fourth Judicial District Court, Parish of Jefferson, State of Louisiana, a court of record, for knowingly and intentionally possessing with intent to distribute a controlled dangerous substance, to wit: marijuana. A second charge, alleging misconduct, was found not proved.

The hearing was held at Miami, Florida, on 23 July 1985.

Appellant appeared at the hearing without counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence two exhibits.

In defense, Appellant introduced in evidence five exhibits and

his own testimony.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved, and entered a written order revoking all licenses and documents issued to Appellant.

The complete Decision and Order was served on 14 August 1985. Appeal was timely filed on 30 July 1985 and perfected on 18 September 1985.

FINDINGS OF FACT

On or about 12 June 1984, Appellant was convicted, on his plea of guilty, by the Twenty-Fourth Judicial District Court, Parish of Jefferson, State of Louisiana, a court of record, for knowingly and intentionally possessing with intent to distribute a controlled dangerous substance, to wit: marijuana. He was originally sentenced to 10 years' imprisonment at hard labor. The sentence was subsequently reduced to 5 years' imprisonment, of which Appellant served four months. He was also required to pay a fine of $18,000, plus court costs, and was placed on probation for a period of five years.

The following circumstances led to Appellant's arrest and subsequent conviction. In November 1978, an individual who Appellant had known for some time hired Appellant to load the contraband from a shrimp boat at a dock into a tractor trailer truck. The shrimp boat was carrying approximately twenty tons of marijuana. Appellant was to receive $50,000. Appellant was arrested on the dock.

Subsequent to the service of the sentence, Appellant received an automatic first offender pardon from the State of Louisiana.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that it is improper for the Commandant to follow a "blanket" policy of revoking licenses or documents for drug convictions, and that Appellant's

pardon sets aside his conviction.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant first contends that revocation is improper. This argument is without merit. Title 46 US 7704 provides, in pertinent part:

> (b) If it is shown at a hearing under this chapter that a holder of a license ... issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license ... *shall be revoked.* (Emphasis added.)

See Commandant v. Cain, NTSB Order EM-125 (1985). (Statute unequivocally requires revocation and does not contemplate discretionary exceptions.)

II

Appellant next contends that his pardon unconditionally sets aside his conviction. I disagree.

The pertinent regulations which were in effect at the time of the hearing provided:

> An order of revocation will be rescinded by the Commandant if the seaman submits satisfactory evidence that the court conviction on which the revocation is based has been set aside for all purposes (see 5.20-190(b)). An order of revocation will not be rescinded as the result of the operation of any law providing for the subsequent conditional setting aside or modification of the court conviction, in the

> nature of the granting of clemency or other relief, after the court conviction has become final. 46 CFR 5.03-10(b).

and,

> When the proceeding ... is based on a narcotics conviction ..., recission of the revocation of a license ... will not be considered unless the applicant submits a specific court order to the effect that his conviction has been unconditionally set aside for all purposes. The Commandant reserves the personal right to make the determination in such case. 46 CFR 5.20-190(b).

In Appeal Decision 2208 (ROGERS), rev'd on other grounds sub. nom., *Commandant v. Rogers*, NTSB Order EM-85 (1981), the Commandant determined:

> [T]he [regulatory] intent was to provide for recission of the order of revocation when, upon successful appeal to an appellant court for instance, proper authority has determined that the conviction was somehow defective and should never have been rendered. Thus, an important distinction must be drawn. An expungement statute does serve to affect the *record* of conviction in much the same fashion as a successful appeal. Nevertheless, and this is the crucial distinction, it does not affect whatsoever the *underlying finding of guilt*.

Clearly, the Louisiana first offender statute in question is such an expungement statute. Appellant's first offender pardon does not alter the historical fact of conviction. Accordingly, recission of the revocation is inappropriate.

III

Coast Guard regulations provide that an individual whose licenses or documents are revoked as the result of conviction for a dangerous drug law violation may, three years after compliance with the revocation order, apply for the issuance of a new license.

46 CFR 5.901 (a). I have discretion to waive the three-year waiting period in cases where the individual has demonstrated good character in the community for a period exceeding three years from the occurrence on which the revocation was based. 46 CFR 5.901 (b). Appellant has requested that I do so here. However, on appeal, the Commandant is limited to the review of orders of Administrative Law Judges which suspend or revoke licenses, certificates or documents (46 US 7702(b)). Although on rare occasions in the past, suspension and revocation appeal decisions have contained grants of waivers of the type Appellant requests, (See Appeal Decisions 2303 (HODGMAN) and 2338 (FIFER), aff'd sub. nom. *Commandant v. Fifer*, NTSB Order NO. EM-111 (1984)), I have determined that the suspension and revocation appeal process should no longer be used as a forum for granting or denying such requests. More appropriately, such requests should be made via the Coast Guard Clemency Review Board, according to the provisions of 46 CFR 5.905.

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge revoking Appellant's mariner's license, dated at Jacksonville, Florida on 2 August 19852, is AFFIRMED.

J. C. IRWIN
Vice Admiral, U.S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C., this 7th day of August, 1986.

***** END OF DECISION NO. 2428 *****

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