

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 52118
Issued to: Graylon W. HESTER

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2441

Graylon W. HESTER

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

By order dated 26 September 1985, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's license upon finding proved the charge of "conviction of a narcotic drug law violation." The specification found proved alleges that, being the holder of the captioned document, on or about 15 December 1983, Appellant was convicted by the State of Mississippi, Circuit Court of Jackson County, of possession of marijuana.

The hearing was held at New Orleans, Louisiana, on 25 September 1985.

Appellant appeared at the hearing without counsel. The Administrative Law Judge entered on Appellant's behalf an answer of denial to the charge and specification.

The Investigating Officer introduced in evidence five exhibits.

In defense, Appellant introduced in evidence two 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 issued to Appellant.

The complete Decision and Order was served on 27 September 1985. Appeal was timely filed on 5 November 1985.

FINDINGS OF FACT

On or about 15 December 1983, Appellant was convicted, on his plea of guilty, by the Circuit Court of Jackson County, State of Mississippi, of possession of marijuana. He was sentenced to imprisonment for five years and fined \$5000. However, execution of the prison sentence was suspended, and Appellant was placed on probation for a term of five years.

On 24 September 1985, an "Order Expunging Record" was entered by the same court. The order recited the fact of the conviction and the sentence adjudged, and noted Appellant's good behavior and subsequent release from probation. The order continued:

IT IS THEREFORE ORDERED and ADJUDGED that all official records and all recordation relating to the Defendant's arrest, affidavit, posting of bond and adjudication of guilt, are hereby expunged from all official record [sic] and the effect of this Order shall be to restor [sic] to Graylon Hester all of his civil rights, in contemplation of the law, before such arrest or affidavit and Graylon Hester shall not hereafter under any provision of the law, be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, affidavit, posting of bond, plea or adjudication of guilt in response to any inquiry made of him for any purpose.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that, pursuant to Mississippi law, his record has been expunged and is therefore clear.

Appearance: Mark A. Maples, Esq., Robertson and Maples, Moss Point, Mississippi 39563.

OPINION

Title 46 USC 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.)

Appellant argues that the expungement order clears his record of "any and all prior convictions." However, the pertinent regulations (46 CFR 5.547) provide:

The judgment of conviction for a dangerous drug law violation by a Federal or State court is conclusive in proceedings under this part. If as part of a state expungement scheme the respondent pleads guilty or no contest or is required by the court to attend classes, make contributions of time and money, receive treatment or submit to any manner of probation or supervision or forego appeal of the trial court finding, the respondent will be considered, for the purposes of 46 U.S.C. 7704, to have received a final conviction. A later expungement of the record will not be considered unless it is proved that the expungement is based on a showing that the court's earlier "conviction" was in error.

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 rescission of the order of revocation when, upon successful appeal to an appellate 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 guilty*.

In this case, the expunction of the criminal conviction under state law does not alter the historical fact of conviction. Rather than vacating the conviction, the court's order removes only the civil disabilities flowing from it.

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 conclusion 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 New Orleans, Louisiana on 26 September 1985, is AFFIRMED.

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

Signed at Washington, D.C. this *10th* day of *December* 1986.

***** END OF DECISION NO. 2441 *****

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