

In the Matter of Merchant Mariner's Document Z-456458
Issued to: FRED EUGENE TERCERO

DECISION AND FINAL ORDER OF THE COMMANDANT

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FRED EUGENE TERCERO

This appeal comes before me by virtue of 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On 3 March, 1949, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document Z-456458 issued to Fred Eugene Tercero upon finding him guilty of a charge of misconduct based upon two specifications alleging that on 17 March, 1948, he unlawfully imported a quantity of marijuana without having registered and paid the tax required by law, and that he unlawfully acquired this marijuana without paying the transfer tax required by law.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was advised that he was entitled to counsel, but Appellant chose to act as his own counsel. Appellant entered a plea of "not guilty" to the first specification and a plea of "guilty" to the second specification. The Investigating Officer made an opening statement concerning his investigation of the case, and took the witness stand for the purpose of identifying a certified copy of a commitment order of the United States District Court for the Southern District of California, Central Division, dated 15 April, 1948, in the case of United States versus Fred E. Tercero.

Appellant made an opening statement, and later took the witness stand where he testified under oath that he had acquired the marijuana in Pernambuco, Brazil, while serving on the American SS PROVO VICTORY, that he thought he had smoked all of the marijuana before the vessel returned to port in the United States, but that Customs Agents had found some marijuana in his possession, and that he had been convicted on two counts. In his opening statement, not made under oath, he stated the marijuana found amounted to about 12 grains and that it was found in his clothes locker. No other witnesses appeared. At the conclusion of the hearing, the Examiner entered the order of revocation.

This appeal followed, and it is urged that the order be mitigated and Appellant be given another chance because:

- (a) of his youth;
- (b) he did not realize the legal and moral aspects involved at the time, but is fully aware of them now;
- (c) he likes the sea, knows no other livelihood and wants to continue going to sea;
- (d) he has paid the penalty for the error and vows never to become involved in any unlawful act again;
- (e) other members of the crew, older than himself, had marijuana, and influenced his actions.

Based on a careful study and consideration of the Record in this case, I make the following

FINDINGS OF FACT

On 17 March, 1948, Appellant was serving under authority of Merchant Mariner's Document Z-456458 as a seaman on the American SS PROVO VICTORY. On that date, Appellant imported a quantity of marijuana in bulk aboard said vessel without complying with the requirements of applicable United States statutes.

OPINION

I am not favorably impressed by the reasons offered by the Appellant as a basis for this appeal. The unlawful possession and use of marijuana creates a potential menace to himself, his

shipmates, and the vessel on which he is serving. The Coast Guard has an obligation to do whatever it can to discourage the illegal introduction of marijuana into the United States and to prevent potential violators from engaging in a service where such acts may be carried into effect. The promotion of safety for the many outweighs the hardship of the individual when documents are revoked because of possession or use of marijuana or narcotics.

The Record does not support the Examiner's finding on the second specification and that specification should be and it is dismissed. The Record does support the Examiner's finding on the first specification; and such finding sustains the charge.

CONCLUSION AND FINAL ORDER

My review of the Record and consideration of the grounds of appeal in this case do not satisfy me that mitigation of the Examiner's order is warranted.

The decision and order of the Examiner, dated 3 March, 1949, based upon the charge and first specification are AFFIRMED.

MERLIN O'NEILL
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 11th day of May, 1949.

***** END OF DECISION NO. 334 *****

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