

In the Matter of Certificate of Service No. E-654982
Issued to: RAFAEL L. BACHILLER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

341

RAFAEL L. BACHILLER

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

On 21 April, 1949, Appellant was tried before an Examiner of the United States Coast Guard at New York City on a charge of misconduct supported by two specifications. The first specification alleges that while Appellant was serving as utilityman on board the American SS AGWISTAR, under authority of his duly issued Certificate of Service No. E-654982, he unlawfully, and knowingly, combined and conspired with certain named persons, on or about 15 October, 1948, and continuously thereafter up to on or about 3 February, 1949, to violate 26 United States Code 2591(a) and 26 United States Code 2593(a). The second specification alleges that, while serving as above, Appellant, on or about 27 January, 1949, unlawfully acquired approximately one pound of marijuana without having paid the transfer tax imposed by 26 United States Code 2590(a) and thus violated 26 United States Code 2593(a).

Appellant was represented at the hearing by counsel and the latter, in behalf of Appellant and with his authorization, entered a plea of "not guilty" to the first specification and a plea of

"guilty" to the second specification. The Examiner received testimony from both parties in connection with the first specification. The Examiner then, having found the first specification "proved in part" and the second specification "proved by plea," entered an order revoking Certificate of Service No. E-654982 and all other valid licenses, documents and certificates held by Appellant which had been issued to him by the Coast Guard or the predecessor authority.

In his appeal, Appellant urges leniency because he has never been involved in a violation of any law; he has an excellent reputation in his neighborhood; his wife and four children are wholly dependent upon him for support and the only reason he succumbed to the temptation was to help pay heavy medical expenses. Appellant further states that, if given another opportunity, he would never again commit an offense; the revocation of his certificate is extremely harsh and severe in view of his past good record and the surrounding circumstances.

According to the testimony of the Appellant, there had not previously been any disciplinary action taken against him by the Coast Guard during his four years at sea.

FINDING OF FACT

From on or about 15 October, 1948, to on or about 3 February, 1949, Appellant was serving as a member of the crew in the capacity of utilityman on board the American SS AGWISTAR under authority of Certificate of Service No. E-654982. On 14 February, 1949, the Appellant pleaded "guilty" in the District Court of the United States for the Southern District of New York, to an indictment alleging that he unlawfully conspired with James Lorenzo Lewis, Rosvelt Johnson and Jose Quinones, to transfer marijuana without using the form prescribed by law (26 U.S.C. 2591(a)) for that purpose. The indictment also alleges that those four men conspired to act as transferees of marijuana and to acquire certain quantities of marijuana without paying the transfer tax as required by 26 United States Code 2593(a). The wording of the indictment is substantially the same as the wording of the first specification.

Appellant's testimony indicates that he did not conspire with any of these other three men except that he gave Rosvelt Johnson

ten dollars with which to buy marijuana and that Appellant expected to receive some profit on his ten dollar investment after the marijuana had been sold.

On or about 27 January, 1949, during a search of the ship, a quantity of marijuana was discovered and Appellant admitted, at that time, that one package of the marijuana, which contained approximately one pound, was in his possession.

OPINION

The finding of the Hearing Examiner with respect to the first specification is in error. 46 Code of Federal Regulations 137.15-5 states that:

"The judgment of conviction by a Federal court is res judicata of the issues decided by that judgment. Where acts forming the basis of the charges in a Federal court are the same as those involved in proceedings under Title 46 U.S. Code section 239, the said judgment of conviction is conclusive in the latter proceedings."

The Appellant's conviction in the District Court of the United States for the Southern District of New York resulted from charges based on the same facts as are the charges proffered against the Appellant in this proceeding. The Federal court record was properly received in evidence and became a part of the record of this proceeding under 46 United States Code 239.

Hence, based upon his plea to the allegation that he conspired with three other persons, on the Federal judgment of conviction, Appellant should have been found guilty of the charge on the first specification. The wording of the above regulation makes it clear that the Federal judgment establishes a conclusive rather than a prima facie case.

Appellant has been found guilty of both possessing narcotics and conspiring with others to violate narcotics laws. The seriousness of these charges results from the constant threat of grave danger to the safety of ships and crews when narcotics are in their midst. For this reason, I consider it essential to follow the well-established policy of revocation in such cases despite

Appellant's plea for leniency based on his good character, family hardships and lack of any previous violations.

CONCLUSION AND ORDER

The order of the Examiner dated 21 April, 1949, should be, and it is, AFFIRMED.

J.F. FARLEY
ADMIRAL, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of June, 1949.

***** END OF DECISION NO. 341 *****

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