

In the Matter of Merchant Mariner's Document No. Z-700219
Issued to: BENNY CUFFIE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

5

BENNY CUFFIE

This review of a proceeding conducted under 46 U.S. Code 239b has been made in accordance with Title 46 Code of Federal Regulations 137.35 which provides for review by the Commandant on his own motion after a "guilty finding" by an examiner.

In a decision dated 24 December 1964, a Coast Guard Hearing Examiner at Houston, Texas made a finding that the person charged was guilty of having been convicted, as alleged in the specification, on or about 3 June 1960, by the United States District Court for the Southern District of Texas, Brownsville Division, a court of record, for violation of a narcotic drug law of the United States. (The conviction was for violating 26 U.S. 4744(a)(2) by unlawfully concealing and transporting approximately a pound and 13 ounces of marijuana without having paid the transfer tax required by law.) Accordingly, the Examiner concluded that the charge of conviction for a narcotic drug law violation and the specification had been proved.

The Examiner then entered an Order dismissing the charge and specification on the basis of his conclusions that the person charged was an addict at the time of his conviction but that, at the time of the hearing, he was "cured of any addiction to marijuana and/or narcotics."

Although a discussion of the insufficiency of the evidentiary

bases for these conclusions is not pertinent to this decision, it is noted that there could be no cure for "addiction" relative to the conviction since the word "user" was inserted in 46 U.S. Code 239b because marijuana is not considered to be an addict-forming drug (Hearing on H.R. 8538, 83rd Cong., June 16, 1954); the word "cure" as used in the statute is intended "to mean proper medical care for a reasonable time" (Hearing on H.R. 8538, 83rd Cong., June 16, 1954); and it would be improper under any circumstances to dismiss similar charge, after proof of the conviction, without changing the charge to "use of narcotics" or "addiction to use of narcotics" as provided in 46 CFR 137.05-20(c).

OPINION

The primary error in the Examiner's decision is that he failed to enter an order of revocation after concluding that the charge and specification had been proved. As stated in *Commandant's Appeal Decisions* Nos. 1037 and 1457, an order of revocation may be avoided, in cases of convictions for the use of, or addition to the use of, narcotics if the person charged presents satisfactory evidence of cure at the hearing. This is considered to be, by analogy, a reasonable extension of the statutory provision which precludes revocation after proof of use of or addiction, where there has been no conviction, if the person charged furnishes satisfactory evidence of cure at the time of hearing.

It is recognized that it would lead to undesirable complications to extent the utilization of the defense of cure to cases involving narcotics convictions for possession, sale, transportation, purchase or any category other than use or addiction. *Commandant's Appeal Decisions* Nos. 1092 and 1253 state that the defense of cure is not available unless the conviction was specifically for the use of, or addiction to the use of, narcotics; and that the examiner must enter an order of revocation after proof of a narcotics conviction for other than use or addiction. Since the conviction of the person charged was for the concealment and transportation of marijuana without having paid the transfer tax, the Examiner was required to have entered an order of revocation.

Regardless of the limitations imposed on an examiner as to the types of cases in which he may give effect to evidence of cure, seamen should be permitted to introduce in evidence matters relevant to narcotics rehabilitation, including cure, for possible

future consideration since seaman may later apply for the restoration of their documents.

CONCLUSION

Although the Examiner's order of dismissal is improper, it shall remain a matter of record and no further action will be taken in this case.

P. E. TRIMBLE
Rear Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 21st day of April 1965.

INDEX

NARCOTICS

cure as defense
cure, as evidence of
defense, cure

NARCOTICS STATUTE

addiction conviction, defense of cure available
addiction not applicable to marijuana
addiction, proper charge for
conviction for transporting, revocation mandatory
cure, applies to addiction conviction
cure as defense, when available
cure, invalid dismissal
cure, not applicable to possession conviction
discretion of examiner, not after conviction for possession
etc.
dismissal based on cure, invalid
dismissal, reviewed by Commandant
evidence of cure, requires addiction conviction
evidence of rehabilitation, always admissible
rehabilitation claim
rehabilitation evidence, always admissible
review permitted after invalid dismissal
use, applicable to marijuana

ORDER OF EXAMINER

dismissal invalid, narcotics case

REVIEW OF COMMANDANT'S MOTION

***** END OF REVIEW NO. 5 *****

[Top](#)