

In the Matter of Merchant Mariner's Document No. 490339-D1 and all
other Seaman Documents
Issued to: EDWARD MARTIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1054

EDWARD MARTIN

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 January 1958, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction of narcotic drug law violation." The specification alleges that, on or about 5 April 1955, Appellant was convicted by the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the City and County of Philadelphia, Pennsylvania, a court of record, for a violation of the narcotic drug laws of the State of Pennsylvania.

The hearing was conducted in absentia since Appellant failed to put in an appearance except to request an adjournment in order to obtain counsel. Thereafter, Appellant was not present in person or represented by Counsel. The Examiner entered a plea of not guilty to the charge and specification on behalf of Appellant.

The Investigating Officer made his opening statement and introduced in evidence documents showing that Appellant was

convicted as alleged. The Investigating Officer also submitted authority to support the allegation that the court in question is a court of record.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant

FINDINGS OF FACT

On 5 April 1955, Appellant was convicted on his plea of not guilty before the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the City of Philadelphia, Pennsylvania, for unlawful possession and control of an opium derivative on 5 December 1954. Appellant was represented by counsel and waived trial by jury. He was sentenced to one year in the Philadelphia County prison. There is no indication in the hearing record that this conviction was appealed by Appellant.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that his conviction was based on guilt by association as the result of sharing an apartment, with two other men, where the police found narcotics paraphernalia. Appellant later learned that one of the other two men was admitted narcotics addict and the third man had a previous record of use of narcotics. The addict admitted ownership of the narcotics paraphernalia. Appellant has never used narcotics in any form and he is being unfairly deprived of his livelihood. Appellant submitted several letters of recommendation and a transcript of his court trial as a part of his appeal.

OPINION

The action taken against Appellant's documents is based solely on proof of his conviction by a court of record for a violation of the narcotic drug laws of the State of Pennsylvania in that Appellant had unlawful possession and control of an opium

derivative. This conviction was by a court of record. *Purdon's Penna. State Annotated*, Title 17, Chap. 4, sec. 331; 15 *Corpus Juris* 690.

The court conviction herein is conclusive and is not subject to collateral attack in this proceeding under 46 U.S.C. 239a-b. Therefore, Appellant's contention that he was not guilty and his explanations as to how he was convicted, although innocent, are of no avail herein. There is no basis for reconsideration of the order of revocation as long as the conviction by the Philadelphia court is outstanding. See *Commandant's Appeal Nos.* [932](#), [1018](#).

ORDER

The order of the Examiner dated at New York, New York, on 16 January 1958, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of July, 1958.

***** END OF DECISION NO. 1054 *****

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