In the Matter of Merchant Mariner's Document No. Z-772003-D1 and all other Licenses, Certificates and Documents issued to: HOWARD BATES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

965

HOWARD BATES

This appeal has been taken in accordance with Title 46 United States Code 239a-b (Public Law 500, 83d Congress, 68 Stat. 484) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 3 December 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked the seaman documents of Appellant upon finding him guilty of the charge of "conviction of a narcotic drug law violation." The specification alleges, in substance, that, on or about 20 November 1956, Appellant was convicted by the United States District Court for the District of Massachusetts, a court of record, for violation of the narcotic drug laws of the United States.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the two possible results of the hearing - revocation of his document or dismissal of the charge and specification. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in evidence certified copies of the record of Appellant's conviction for violation of 26 U.S.C. 4744(a) and 26 U.S.C. 4755(b), both of which statutes pertain to marijuana which is specifically included within the definition of "narcotic drug" contained in 46 U.S.C. 239a-b.

Appellant stated that the Customs officials found 7 or 8 marijuana cigarettes in appellant's locker on board ship.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-772003-D1 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 20 November 1956, Appellant appeared with counsel and entered a plea of "guilty" before the United States District Court for the District of Massachusetts, a court of record, to the charge of failure to pay taxes on marijuana in violation of 26 U.S.C. 4744(a) and 26 U.S.C. 4755(b). Appellant was convicted and sentences to be imprisoned for a period of 2 years. Execution of sentence was suspended and Appellant was placed on probation for a period of 2 years.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner lacked jurisdiction because Appellant's conviction in the Federal court was improper; Appellant was not adequately advised of his rights at the hearing; and the order of revocation is too severe.

APPEARANCE ON APPEAL: Sheldon A. Rubenstein, Esquire, of Baltimore,Maryland, of Counsel.

OPINION

This proceeding was conducted under 46 U.S.C. 239a-b (Public Law 500, 83d Congress, 68 Stat. 484) rather than under R.S. 4450, as amended (46 U.S.C. 239). By provisions of the statute, proof of the charge of "conviction of a narcotic drug law violation" is based upon proof of such a conviction by a court of record; and an order of revocation is the only order which an Examiner may enter after a seaman has been found guilty of the charge. Hence, the conclusive documentary proof of Appellant's conviction by the United States District Court may not be collaterally attacked in this proceeding and the Examiner had no choice with respect to the severity of the order.

As stated in Appeal No. 932, Appellant's recourse, with respect to the alleged impropriety of his conviction in the Federal court, was to make application to the court to be permitted to withdraw his plea of guilty. So long as the conviction is outstanding, there is no basis for questioning the Examiner's jurisdiction to conduct a hearing under 46 U.S.C. 239a-b.

The record shows that Appellant was fully advised of his rights at the hearing including his right to represented by counsel. Appellant replied in the negative when the Examiner asked Appellant if he wanted counsel. It does not appear that Appellant was deprived of any constitutional rights during the course of the hearing.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 3 December 1956, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 22nd day of May, 1957.

***** END OF DECISION NO. 965 *****

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