

In the Matter of Merchant Mariner's Document No. Z-1039977 and all
other Licenses, Certificates and Documents
Issued to: REINALDA A. PORTELA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

974

REINALDA A. PORTELA

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.

An Examiner of the United States Coast Guard conducted a hearing at New York, New York, and by order dated 3 October 1956 revoked the seamen documents of Appellant upon finding him guilty of the charger of "conviction for a narcotic drug law violation." The specification alleges in substance that, on or about 21 June 1955, Appellant was convicted for violation of the narcotic drug laws of the State of New York.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a record of Appellant's conviction as choice. Appellant entered a plea of "not guilty" to the charge to "guilty" upon request of counsel and confirmation by Appellant.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner concluded that the charge and specification had been proved by plea. He then entered order revoking Appellant's Merchant Mariner's Document No. Z-1039977 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 21 JUNE 1955, Appellant was convicted by the Court of General Sessions of the County of New York State, a court of record, for a violation of the narcotic drug laws of the State of New York.

The indictment alleged that Appellant feloniously possessed a narcotic drug. Appellant appeared before the court on 21 February 1955 and entered a plea of guilty to the crime of attempting to commit the crime of feloniously possessing a narcotic drug. On 21 June 1955, Appellant was sentenced to imprisonment for a period of 2 of 4 years. Execution of the sentence was suspended and Appellant was placed on probation.

OPINION

On appeal, it is requested that Appellant be granted leniency so that he may continue his usual means of employment. Appellant also feels that the order of revocation is cruel and harsh since it was not connected with Appellant's duties as a seaman.

Appellant's request will be denied. Title 46 U.S.C. 239a-b provides for the revocation of a seaman's documents after he has been found guilty of having been convicted, in a court of record, for a violation of the narcotic drug laws. There is no provision for an order less than revocation. This mandatory requirement of the statute is emphasized by 46 CFR 137.04-10 which states that the Examiner must enter an order of revocation when the case is proved.

This statutory requirement is equally applicable to the Commandant on appeal from an Examiner's decision. Consequently, the order revocation must be sustained.

Since the purpose of the statute is to deny employment on our merchant vessels to narcotics offenders, the fact that Appellant was not performing the duties of a seaman at the time of the offense is not material. The possible danger which the presence of such seamen would create on board ship is guarded against by the statute.

ORDER

The order of the Examiner dated at New York, New York, on 3 October 1956. is AFFIRMED.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C. this 10th day of July, 1957.

***** END OF DECISION NO. 974 *****

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