

In the Matter of Merchant Mariner's Document No. Z-197706-D2 and
all other Licenses and Documents
Issued to: JAMES MONROE GANDY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

975

JAMES MONROE GANDY

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

By order dated 20 December 1956, at New Orleans, Louisiana, an Examiner of the United States Coast Guard revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications allege in substance that while in the service of the American SS ULUA as an able seaman and acting under authority of the document above described, on or about 8 October 1954, while said vessel was in a foreign port, Appellant wrongfully had marijuana in his possession; and, on or about 9 October 1954, Appellant failed to join his ship at Balboa, Canal Zone.

The hearing was conducted at Mobile, Alabama. Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing - revocation of his documents or dismissal of the charge and specifications. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and each specification.

The Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer then introduced in evidence several documentary exhibits including a consular report enclosing a record of Appellant's conviction before the Second Court of the Circuit of Chiriqui, Republic of Panama for possession of marijuana on 8 October 1954, and affirmance of this conviction by the appellate court.

In defense, Appellant offered in evidence his sworn testimony on 3 August 1956. Appellant stated that he was not convicted in Panama; he did not understand the proceedings which were conducted in the Spanish language; the proceedings were not fully translated for Appellant by the interpreter; and Appellant was not properly represented by the lawyer he hired in Panama.

As a result of this testimony, the Examiner suggested that the depositions of Appellant's lawyer and interpreter in Panama be obtained by interrogatories and cross-interrogatories. The hearing was adjourned on 3 August 1956 for this purpose. On 30 November 1956, the hearing was reconvened to consider the two depositions which had been obtained. At this point, counsel withdrew his appearance on behalf of Appellant since the latter was not present and he had failed to keep in touch with his lawyer as promised. The two depositions were introduced in evidence by the Investigating Officer. They indicated that Appellant's rights had been fully protected by his lawyer at the trial in Panama and an interpreter had translated the proceedings into English for Appellant.

The hearing was concluded on 30 November 1956 except for the rendering of the Examiner's decision dated 20 December 1956. The Examiner concluded that the charge and two specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-197706-D2 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority. Appellant was not served with the decision until 27 February 1957.

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

FINDINGS OF FACT

On 8 and 9 October 1954, Appellant was in the service of the American SS ULUA as an able seaman and acting under authority of his Merchant Mariner's Document No. Z-197706-D2. On 8 October, the ship was at Puerto Armuelles, Panama. On 9 October, the ship departed from Balboa, Canal Zone.

On , October 1954, Appellant was arrested on the Custom Wharf at Puerto Armuelles on suspicion of possession of marijuana. While Appellant was being taken to the Customhouse, he surreptitiously attempted to drop a small white bundle into a nearby trash can. This act was witnessed by three persons who later testified at Appellant's trial. The bundle fell near the trash can and was found to contain 22 marijuana cigarettes. The white wrapping was a handkerchief bearing Appellant's initials. Appellant admitted ownership of the handkerchief but denied having any knowledge concerning the marijuana cigarettes. Appellant was detained to await trial and, consequently, failed to join his ship on 9 October 1954 at Balboa, Canal Zone.

On 27 May 1955, Appellant was convicted before the Second Court of the Circuit of Chiriqui, Republic of Panama, for unlawful possession of marijuana on 8 October 1954. Appellant was represented by a lawyer of his own choice and the proceedings conducted in Spanish were translate into English by an interpreter. Appellant was sentenced to the minimum penalty of six months' imprisonment but was released immediately since he had served the sentence by detention from the date of 8 October. At the same trial, another person was convicted and two persons were acquitted in connection with the seizure of the 22 marijuana cigarettes. The court found the other person convicted had sold the cigarettes to Appellant. On appeal to the Second Superior Court of Justice of the First Judicial District of Panama, the decision of the lower court was affirmed on 9 August 1955.

On 1 December 1955, a hearing was held at Long Beach, California, wherein Appellant was charged with absence from his vessel, the ULUA, on 29 September 1954, and failure to perform his duties on the same date. At the Long Beach hearing, Appellant was not charged with the narcotics offense now under consideration because a record of Appellant's conviction by the Panamanian court

had not been obtained at that time. Nevertheless, the Examiner made a finding that Appellant had been released in Panama without trial on the narcotics charge and that the case had been dismissed due to lack of evidence against Appellant. By order dated 6 December 1955, Appellant was admonished at Long Beach for the two offenses on 29 September. These were the only specifications with which he had been served in connection with that hearing.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1. Appellant was deprived of putting in his defense because he was not given due notice of the date of the hearing. Appellant was released from jail in Panama due to the lack of sufficient evidence to sentence him.
2. Appellant was tried twice for the same narcotics offense since he was found not guilty of this offense by an Examiner at Long Beach in December 1955.
3. Appellant was charged with the same offense again in June 1956 but the Investigating Officer told Appellant to remain on his ship. He did not hear from the Coast Guard again until served with the decision in February 1957.
4. If this appeal is denied, it is respectfully requested that consideration be given to the 7 months' period during which Appellant was wrongfully jailed awaiting trial in Panama.

OPINION

The record does not support Appellant's claim that he was deprived of submitting his defense to the narcotics charge. Appellant testified about this incident on 3 August 1956 and he had the opportunity to introduce additional evidence on this date. The next hearing date was 30 November 1956 when Appellant failed to appear in person and his counsel withdrew because of Appellant's failure to keep in touch with his counsel. Hence, this subsequent

lack of representation at the hearing was Appellant's fault since he had due notice of the hearing through his lawyer. In any event, Appellant was not prejudiced by his absence after his lawyer withdrew because the only additional evidence received was the two depositions which the Investigating Officer offered in rebuttal of Appellant's testimony. The latter testimony given on 3 August 1956 belies Appellant's implication that he knew nothing about the hearing proceedings between June 1956 and February 1957 when he was served with the decision on which this appeal is based.

The Long Beach Examiner's decision is the evidence on which the above findings, concerning the hearing at Long Beach in December 1955, are based. This shows conclusively that Appellant was not charged with this narcotics offense at that hearing. The Long Beach Examiner's finding about the narcotics incident in Panama was completely unwarranted since this issue was not properly before him. Hence, the present action with respect to the possession of marijuana on 8 October 1954 is proper because Appellant had not been charged previously with this offense in this type of proceeding. Appellant's prior criminal conviction in Panama for this offense has no bearing on the action taken in these remedial proceedings to protect life and property on United States merchant ships. Consequently, Appellant's seven months' imprisonment in Panama will not be taken into consideration in this decision.

The record of Appellant's conviction in the Panamanian court constitutes substantial evidence in support of the specification alleging wrongful possession of marijuana on 8 October 1954. See Commandant's [Appeal No. 773](#) and [Appeal No. 916](#) concerning foreign judicial records. The copies of the court records received in evidence have been certified as true by the lawful custodian and this certification has been authenticated by a consular officer of the United States, resident in the foreign country, as required by 28 U.S.C. 1741.

It is the regulatory policy of the Coast Guard to revoke the documents of a seaman who has been found guilty, in these proceedings, of a narcotics offense (46 CFR 137.03-1).

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on
20 December 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 15 day of Jul, 1957.

***** END OF DECISION NO. 975 *****

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