

In the Matter of Merchant Mariner's Document NO. Z-848332 and all
other Licenses, Certificates and Documents
Issued to: WILLIAM JAMES WILSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

978

WILLIAM JAMES WILSON

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 18 February 1957, an Examiner of the United States Coast Guard at New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a wiper on board the American SS AFRICAN SUN under authority of the documents above described, on or about 19 October 1956, while said vessel was at Weehawken, New Jersey, Appellant wrongfully had possession of marijuana, a narcotic substance.

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 - dismissal of the charge or revocation of Appellant's documents. 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.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of two U. S. Customs Agents and a copy of the U. S. Customs Laboratory Report on the substance alleged to have been in Appellant's possession.

In defense, Appellant offered in evidence his sworn testimony. Appellant admitted that he was trying to get rid of the cigarette, when he dropped it on the pier at Weehawken shortly before he was apprehended by the Customs Officials, because he knew it was a "narcotic cigarette." (R. 31, 33). Appellant stated that he had obtained the marijuana cigarette from a native worker on the ship at Lourenco Marques, Mozambique, in exchange for American cigarettes, and had forgotten about it after putting it in a stationery box in his locker.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, 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. Z848332 and all other licenses 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 19 October 1956, Appellant was serving as a wiper on board the American SS AFRICAN SUN and acting under authority of his Merchant Mariner's Document No. Z-848332 while the ship was in the port of Weehawken, New Jersey.

At approximately 1800 on this date, Appellant left the ship with two other members of the crew. When Appellant was 15 to 20 feet from the entrance to the pier, he stopped, bent down as though to tie his shoelace and flicked a marijuana cigarette from his trouser cuff. The three seamen left the pier after they were searched by a Customs Agent. The latter official and his partner then recovered the cigarette dropped by Appellant and thought it was marijuana. The three seamen were overtaken, apprehended and subjected to interrogation by the Customs officials. Appellant

admitted that he had obtained two marijuana cigarettes at Lourenco Marques, Mozambique, Africa, and that the cigarette found on the pier was one of these two marijuana cigarettes which had belonged to him. Appellant stated that he had taken two puffs on the other cigarette while on board the ship at Lourenco Marques and then had gotten rid of it because he did not like it.

It was determined by analysis at the New York City Customs Laboratory that the cigarette discarded on the pier by Appellant contained marijuana. No additional evidence of marijuana was found on Appellant's person or in his quarters on board the ship.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that there is no evidence that Appellant knew the cigarette which he smoked on board ship contained marijuana or proof that it did contain marijuana. There is no evidence that the alleged marijuana found on the pier was the same item discarded by Appellant rather than by another person. The fact that a person thinks he is doing an illegal act does not make him guilty unless the act is actually illegal. Appellant's rights were not protected at the hearing as they should have been since Appellant appeared without counsel.

In conclusion, it is respectfully requested that the decision be reversed and a new hearing scheduled in order to allow Appellant to set forth his defense while represented by counsel.

APPEARANCE ON APPEAL: Messrs. Bobick and Deutsch of New York City by Edward Bobick, of Counsel.

OPINION

Since Appellant was charged only with wrongful possession of marijuana on 19 October 1956 at Weehawken, New Jersey, the reference on appeal to the cigarette Appellant smoked at some earlier date on the ship at Lourenco Marques is not relevant except for the fact that Appellant's admissions placed both cigarettes in

the same category. Appellant admitted in his testimony and to the two Customs Agents who testified that he knew the two cigarettes obtained in Africa contained marijuana and that the marijuana cigarette which was recovered on the pier was the one which he had left there. The marijuana content of the cigarette was confirmed by the subsequent laboratory analysis. Hence, there is no doubt that the act which Appellant thought was illegal was, in fact, illegal and wrongful as alleged in the specification.

Appellant's rights were fully protected at the hearing. He made damaging admissions in his voluntarily given testimony only after waiving his right to representation by counsel which he had ample time and opportunity to obtain after service of the charge and specification on 21 December 1956. Hence, Appellant cannot claim that such testimony against his interests resulted from any failure on the part of the Examiner to protect Appellant's rights at the hearing. Regardless of Appellant's testimony, the admissions of Appellant which were testified to by the two Customs Agents constituted substantial evidence of the offense. Consequently, Appellant's request to be granted a new hearing with the benefit of counsel is denied.

ORDER

The order of the Examiner dated at New York, New York, on 18 February 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 20th day of August, 1957.

***** END OF DECISION NO. 978 *****

