In the Matter of Merchant Mariner's Document No. Z-186792-D2 and
All Other Seaman Documents
Issued to: JOSEPH ENRIQUE JAMES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1201

JOSEPH ENRIQUE JAMES

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

By the order dated 11 August 1959, an Examiner of the United States Coast Guard at Long Beach, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as chief electrician on the United States SS PRESIDENT MADISON under authority of the document above described, on or about 9 June 1958, Appellant wrongfully brought certain stones into the United States; on the same date, Appellant wrongfully had marijuana in his possession.

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

After the Examiner deferred ruling on counsel's objection that there was no jurisdiction to proceed under 46 U.S.C. 239 on the alleged narcotics offense, the Investigating Officer introduced in evidence documentary exhibits and the testimony of the Customs

Officer who searched Appellant on 9 June 1958.

In defense, Appellant offered in evidence several letters of commendation and his testimony which was limited to the alleged offense of wrongful importation of the stones.

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

Appelllant's breif on appeal was received on 10 October 1960 from substitute counsel for kenneth W. Gale, Esquire, who represented Appellant during the hearing.

FINDINGS OF FACT

On 9 June 1958, Appellant was serving as chief electrician on the United States SS PRESIDENT MADISON and acting under authority of his Merchant Mariner's Document No. Z-186792-D2 while the ship was at Wilmington, California prior to completion of a foreign voyage on 11 June 1958.

About 0415 on 9 June 1958, Appellant had just left the ship when he was searched by Customs Officer Hawthorn who was assigned to this area. In one of his pockets, Appellant had a facial tissue which contained a green, leafy substance resembling marijuana. At that time, Appellant said this substance was the remainder of a quantity of bulk marijuana which he had purchased in Cuba; and that he had smoked approximately ten marijuana cigarettes en route from Cuba.

A search of Appellant's room on the ship disclosed 182 unset, red stones which were not manifested as cargo and had not been declared by Appellant. Appellant had purchased the stones in Singapore. There was also a very small quantity of the green, leafy substance in the room. By subsequent analysis, it was determined that the green, leafy substance was marijuana -- 32 grains in the tissue and one-half grain in the room.

Appellant was indicted under separate counts alleging the

smuggling and importation of 32 grains of marijuana and 182 unset stones into the United States. Before the United States District Court for the Southern District of California, Central Division, Appellant was convicted on his plea of guilty to the count which referred to the stones. As to the alleged marijuana offense, the indictment was dismissed upon motion by the United States Attorney. Imposition of sentence was suspended and Appellant was placed on probation for three years.

Appellant has no prior record with the Coast Guard. He testified that he had been going to sea on United States merchant vessels for seventeen years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

I. Appellant is not addicted to the use of narcotics.

II. The regulation requiring examiners to order revocation in narcotics cases is invalid because it is contrary to 46 U.S.C. 239(g) which authorizes either revocation or a less severe order.

III. The Examiner denied Appellant due process of law by refusing to exercise discretion as to the extent of the order.

IV. The special statute (46 U.S.C. 239a-b) concerning narcotics is a jurisdictional limitation on the general statute (46 U.S.C. 239) and, therefore, the former is the exclusive remedy in narcotics cases. There is no jurisdiction under the general statute because it is a penal statute which must be strictly construed and it does not state that narcotics violations constitute misconduct.

V. The Court dismissal of the narcotics charge is res judicata as indicated by 46 U.S.C. 239a-b; but the conviction is not res judicata since there is no comparable legislation (to 46 U.S.C. 239a-b) which deals with "smuggling" convictions.

VI. The Coast Guard has no jurisdiction because these two

matters did not involve the public interest or safety, and they were not related to Appellant's employment under the authority of his document. As a matter of law, Appellant was not guilty of "smuggling" the stones because he did not take them across the Customs line.

VII. Appellant is an outstanding seaman and he has a prior clear record. Therefore, if the order of revocation is affirmed, it is requested that this appeal be considered as an application for a new document since the remedial purpose of the statute, to protect the public interest, has been served.

VIII. It is respectfully urged that the Examiner's decision should be reversed or modified so that Appellant may resume his occupation as a merchant seaman.

APPEARANCE ON APPEAL: Martin J. Jarvis, Esquire, of San Francisco, California, of Counsel

OPINION

The decision of the Examiner, including the order of revocation, is supported by substantial evidence, the law, and valid regulations. The order will be affirmed.

Concerning the lesser offense of wrongfully bringing (or importing) certain stones into this country, it is contended that, as a matter of law, the Federal court conviction cannot be res judicata as to the facts on which it is based and Appellant was not guilty of "smuggling" because the stones were not taken across the Customs line. Also, Appellant states that this matter had no bearing on Appellant's employment status on the ship.

It is clear that the conviction was based on the same facts as the specification herein. Therefore, the judgement of conviction is held to be res judicata as provided for in 46 CFR 137.15-5(a) with respect to convictions in Federal courts. This is considered to be a reasonable regulation in view of the greater degree of proof required in criminal actions than in these administrative proceedings. Since the court judgement is res judicata of the issue decided, there is no need to prove independently that Appellant was guilty of "smuggling" but the conviction is also for

the offense of "importing and bringing into the United States" said stones contrary to law. The courts recognize a distinction between the two (*Nung v. United States* (C.A. 9, 1955), 221 F. 2d 917) and Appellant was charged in the specification only with the latter offense of "bringing [the stones] into the United States."

With respect to the relationship between this offense and Appellant's employment status it is believed to be a proper function of the Coast Guard to take action against the documents of seamen for unlawful acts which they are in a position to commit because of their service as seamen on United States merchant vessels. Hence, it follows that this offense occurred while Appellant was acting under the authority of his document.

The other offense, wrongful possession of marijuana, is much more serious because users of it have been known to commit extremely serious crimes invoking physical violence upon other persons as well as destruction of property; and use of narcotics is a short step from possession. The complete unpredictability of the effect of marijuana makes it one of the most dangerous drugs. The Supreme Court has stated that the use of narcotics, except for medical purposes, is rigidly condemned by universal sentiment. *Yee Hem v. United States* (1925), 268 U. S. 178. In recent years, Congressional legislation has made the penalties much more severe for narcotics offenders.

The Commandant of the Coast Guard is compelled by statutory mandate (46 U.S.C. 239) to protect lives and property at sea by suspending or revoking seamen's documents in appropriate cases. In view of this duty and the factor mentioned in the preceding paragraph, it has been the consistent policy of the Commandant to revoke the documents of any seaman found guilty of an offense involving narcotics, including marijuana. The reasons for this policy are set forth in detail in *Commandant's Appeal Decision* No. 338 dated 5 July 1949. In order to preclude abuse of this long-standing policy, the Commandant, in January 1954, promulgated 46 CFR 137.03-1 which requires examiners to order revocation in narcotics cases after a finding of guilty, This is not an invalid limitation on 46 U.S.C. 239(g), which authorizes suspension or revocation by the Commandant, because the effect is simply to limit the delegation of authority, from the Commandant to the examiners,

to revocation in one category of cases. It is my opinion that Appellant was not denied due process of law by the reasonable limitation on the discretion of the Examiner. This policy of revocation is consistent with the spirit of 46 U.S.C. 239a-b which authorizes revocation in certain situations involving narcotics.

The Coast Guard has jurisdiction to proceed under 46 U.S.C. 239 despite the enactment in July 1954 of 46 U.S.C. 239a-b which, in part, permits revocation only after proof of conviction, by a court of record, for a narcotics offense. In Commandant's Appeal Decision No. 958, it was pointed out that the purposes of the 1954 law was to extend the authority granted under 46 U.S.C. 239 which is limited to cases where a seaman is acting under authority of his document. This limitation is not in the 1954 statute. It would be inconsistent with this extension of authority to state that no action can now be taken in a narcotics case, when a seaman us acting under the authority of his document, unless there is a conviction.

The proof in this case is based primarily on the testimony of the Customs Officer who search Appellant when he left the ship. The dismissal of the indictment as to the narcotics offense is not res judicata in this proceeding because: 46 U.S.C. 239a-b is a separate statute which has no application here; the greater degree of proof required in criminal actions signifies that dismissal of such an action should not preclude this administrative action; and Appellant was not charged with smuggling and importation in this case as in the indictment but he was charged with wrongful possession of marijuana. Appellant was afforded an opportunity at the hearing to refute the evidence that he was guilty as alleged. If he had done so, the case would have been dismissed.

It has consistently been held in the Commandant's appeal decisions that 46 U.S.C. 239 is a remedial rather than a penal statute and should be liberally construed. In Appeal No. 1131, reference is made to a former Attorney General's statement that these proceedings are viewed not in the light of a punishment for an offense committed, but rather as a remedy to insure greater efficiency and to guard against obstructions of commerce. *24 Op. Atty. Gen. (1902)* 136, 141-2. See also Appeal No. 471.
Under this interpretation, it has repeatedly been held by the Commandant that narcotics offenses constitute misconduct within the

meaning of this statute. An interpretation that this is a penal statute would not affect these holdings.

Undoubtedly, there is an important element of public interest and safety involved when seamen on United States vessels commit offenses in a category which has been the subject of considerable Congressional action. When such an offense is committed by a seaman who is employed on a ship and, therefore, is acting under the authority of his document, it is the duty of the Commandant to take appropriate action. Admittedly, there is evidence in the record which indicates that Appellant is a competent seaman and he has no prior record. Nevertheless, the order of revocation will be sustained because of the insidious nature of narcotics and the constant danger to lives and property created by its presence on board ships.

This appeal is not acceptable as an application for a new document. The provisions with respect to such applications are set forth in 46 CFR 137.03-30. For the purpose of this regulation, the order of revocation became effective when Appellant's document was surrendered to the Coast Guard on 30 October 1959.

ORDER

The order of the Examiner dated at Long Beach, California, on 11 August 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 7th day of November, 1960.

***** END OF DECISION NO. 1201 *****

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