

In the Matter of Merchant Mariner's Document No. Z-1002435 and All
Other Seaman Documents

Issued to: ANTONIO DELGADO (MARCUS ANTHONY DELGADO)

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1205

ANTONIO DELGADO

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

By order dated 14 January 1960, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The two specifications found proved allege that, on 15 February 1956, Appellant was convicted by the United States District Court for the Southern District of New York, a court of record, for violation of the narcotic drug laws of the United States (unlawfully receiving, concealing and selling approximately 107 grains of heroin, on 21 October 1953, in violation of 21 U.S.C. 173, 174); on 24 June 1959, Appellant was convicted by the Court of General Sessions of the County of New York, a court of record, for violation of the narcotic drug laws of the State of New York (unlawful possession of marijuana on 17 December 1956).

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the first specification

and guilty to the second one.

The Investigating Officer submitted documentary evidence of the two convictions alleged.

Appellant testified under oath that he has never used or sold narcotics; his seagoing record for nine years is unblemished; he is married and has nine children. A witness for Appellant testified as to his good character and reputation for the preceding two years.

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

On appeal, it is contented that it was unconstitutional to find the first specification proved because 46 U.S.C. 239a-b does not cover crimes occurring before the enactment of the statute on 15 July 1954; this action subjects Appellant to double jeopardy; the Examiner had discretion to enter an order less than revocation.

APPEARANCE: Benjamin B. Sterling of New York City by Max Cohen,
Esquire, of Counsel

OPINION

As stated (and quoted from) by the Examiner, a detailed discussion of the constitutional issue raised with respect to 46 U.S.C. 239a-b appears in *Commandant's Appeal Decision* No. 954. Briefly, the position taken is that the application of this statute to a conviction for acts committed prior to 15 July 1954 is not an unconstitutional application of the statute. A law which imposes restraint of this type upon persons engaged in certain pursuits is not an ex post facto law if this is a reasonable restraint for the purpose of safeguarding the public interest as in cases involving merchant seamen convicted for violations of narcotics laws.

It is apparent from the wording of this statute that Appellant's argument on the constitutional issue and also on the question of double jeopardy is with Congress. It is simply the

function of the Coast Guard to enforce this law against merchant seamen to the extent that it is applicable by the terms of the statute.

Title 46 U.S.C. 239b states that "The Secretary may --- take action --- to revoke ---." Since there is no provision for any order other than revocation, this has been interpreted to mean that when "action" is taken by holding a hearing before an examiner, the latter must order revocation if the conviction is proved. Appeal No. [806](#); 46 CFR 137.04-10.

Despite mitigating factors in Appellant's favor, the order of revocation will be sustained in accordance with the statute.

ORDER

The order of the Examiner dated at New York, New York, on 14 January 1960, is AFFIRMED.

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

Dated at Washington, D. C., this 14th day of November 1960.

***** END OF DECISION NO. 1205 *****

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