

Aviation Regulations ("FAR"), 14 C.F.R. Part 61.² The law judge also affirmed the Administrator's revocation of respondent's airline transport pilot and repairman certificates. We deny the appeal.

The complaint is founded on respondent's conviction (following his plea of guilty) for violating 21 U.S.C. 963, 952, and 960(a)(1)³ in connection with two separate incidents with two different aircraft. The overt acts named in the indictment are as follows:

1. In or about 1981, PINNEY and Rourke [a co-conspirator, see infra] transported a DC-6 airplane from the Northern District of Oklahoma to South Cacus Island in the Bahamas which was to be later used to import marijuana from Colombia, South America to the Northern District of Oklahoma.
2. In or about August 1981, on the Island of Antigua, PINNEY and Rourke obtained an airplane to be used to smuggle marijuana into the United States.

In pleading guilty, respondent admitted (see Exhibit A-1, PETITION TO ENTER PLEA OF GUILTY and ORDER ENTERING PLEA) that he:

²FAR § 61.15(a) reads in pertinent part:

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana [sic], or depressant or stimulant drugs or substances is grounds for -

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(2) Suspension or revocation of any certificate or rating issued under this part.

³Exhibit A-1 includes the indictment, which describes these provisions. As described and applied to respondent, they prohibit conspiring knowingly to import controlled substances.

installed radio equip. in aircraft and acted as second pilot in delivering a DC-6 plane from Oklahoma to So. Cacus Island with knowledge the aircraft may be used to import marijuana into the United States. For over 25 years I have sold aircraft and installed radio equip. for Rourke, but in the two "overt acts" I did so with knowledge Rourke was smuggling marijuana into the U.S.

On appeal, respondent claims that summary judgment was inappropriate, and that revocation is not warranted and not supported by precedent.⁴ For the reasons discussed below, we find these arguments without merit.

Summary judgment is appropriate where there are no material issues of fact that are contested. We fail to understand respondent's claim that he was entitled to a hearing on "the crucial question of 'operation of the aircraft.'" Appeal at 3. Whether respondent was involved in aircraft operations as a part of the illegal activity is not material to whether he has violated FAR § 61.15(a). Because finding a § 61.15(a) violation only requires that a conviction "relate" to, among other things, importing marijuana, and because respondent was convicted for violating a Federal statute clearly "related" to importing marijuana, there were no disputed facts relevant to proof of a violation of § 61.15(a).⁵

⁴Although respondent initially lists other grounds for appeal, such as that the law judge's findings are not supported by reliable, probative, and substantial evidence, these other arguments appear to be subsumed in the two mentioned. Because they are not directly discussed or supported in the appeal, we will not address them.

⁵Respondent's citation to Administrator v. Mines, 5 NTSB 846 (1985) is not on point. There, respondent denied that an aircraft had been involved in the incident and, as a result, the Board
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Instead, whether respondent was engaged in aircraft operations is an issue we have looked at in reviewing the Administrator's sanction. If aircraft operations are involved -- as opposed to offenses unrelated to operation of an aircraft -- we have affirmed certificate revocation (rather than suspension) as the appropriate sanction. Respondent suggests that Administrator v. Freeze, 3 NTSB 1794 (1979), requires suspension here. We disagree.

In determining whether aircraft operations are involved, we have considered significant the degree of involvement. Thus, in Freeze, although respondent was convicted of using an aircraft with a co-conspirator in that he gave a check-ride, we declined to revoke his certificate. In support of that result, we noted that the indictment had not even stated that an aircraft had been used in transporting the controlled substance. In other cases, the issue is much more straightforward. See, e.g., Administrator v. Pekarcik, 3 NTSB 2903 (1980) (piloting aircraft that is loaded with narcotics is operation of aircraft for sanction purposes).

The case before us falls between these two sets of circumstances. In view of its particular facts, we find it fits closer to Pekarcik than Freeze. Even disregarding the FBI testimony suggesting respondent's deeper involvement, respondent's actions to ferry the two aircraft to South Cacus and Antigua are, we think, sufficient to constitute "operation of the

⁵(...continued)
properly found summary judgment on another issue -- the sanction -- inappropriate.

aircraft" and therefore warrant certificate revocation. Respondent used his ATP certificate to further an unlawful conspiracy to import marijuana, and his involvement was not peripheral, as was true in Freeze. Accord Administrator v. Anderson, 5 NTSB 564 (1985) (piloting aircraft to position it for loading of marijuana involved the use of an aircraft and revocation is appropriate).⁶

Finally, we note that throughout the evidentiary hearing, respondent took the position that he was not aware that the aircraft were going to be used to smuggle drugs. Respondent does not explain what this is intended to prove or disprove. It cannot be used to change the criminal conviction and, therefore, cannot affect the finding that FAR § 61.15(a) was violated. Nor does it relate to whether an aircraft was used in the unlawful activity or the related sanction analysis. We note that Public Law No. 98-488, 49 U.S.C. 1429, enacted October 19, 1984, requires revocation in certain cases where the airman acted "knowingly." This statute is irrelevant here, however. The statute did not apply retroactively, and the incidents in this case occurred in 1981.⁷

⁶We also agree with the law judge's finding that revocation meets the rigorous standards of Administrator v. Whitaker, 1 NTSB 1982 (1972).

⁷In any case, even were respondent's knowledge relevant to the questions before us, we cannot credit his testimony before the law judge. As noted above, respondent represented to the District Court that he was aware of the smuggling. Even if respondent is not estopped from arguing differently now (and we believe he is), his explanation that he knew nothing but decided to plead guilty
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In sum, we find no error in the law judge's decision to grant summary judgment on the § 61.15(a) claim, or in his finding that revocation was the appropriate sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the order of suspension are affirmed; and
4. The revocation of respondent Pinney's airline transport pilot and repairman certificates shall begin 30 days from the date of service of this order.⁸

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷(...continued)
anyway for financial reasons (Tr. at 31), and that pleading guilty "was the lesser of two evils" (Tr. at 44) is unconvincing. Respondent also engaged in the following problematic discussion with Administrator's counsel:

Q The representations that you made to Judge Brett in your petition to enter a plea of guilty were incorrect?

A I'm not going to admit to anything as incorrect, I don't know that.

⁸ For the purposes of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR section 61.19(f).