

26 January 1948

UNITED STATES)

v.)

Case No. 000-Buchenwald-13

Alfons KUNIKOWSKI)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 28 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

CHARGE I: Violation of the Laws and Usages of War.

Particulars: In that Alfons KUNIKOWSKI, a German national, did, at or in the vicinity of Weimar, Germany, in or about January 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown non-German national, an inmate of Buchenwald Concentration Camp, who was then in the custody of the then German Reich.

CHARGE II: Violation of the Laws and Usages of War.

Particulars: In that Alfons KUNIKOWSKI, a German national, did, at or in the vicinity of Weimar, Germany, in or about March 1944, wrongfully encourage, aid, abet and participate in committing an assault upon approximately three non-German nationals, inmates of Buchenwald Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

CHARGE III: Violation of the Laws and Usages of War.

Particulars: In that Alfons KUNIKOWSKI, a German national, did, at or in the vicinity of Weimar, Germany, in or about December 1944, wrongfully encourage, aid, abet and participate in committing an assault upon approximately 12 non-German nationals, inmates of Buchenwald Concentration Camp, who were then in the custody of the then German Reich, the exact names and numbers of such persons being unknown.

(The particulars of Charge I were amended, before arraignment, by striking out "the killing of" and substituting therefor "an assault upon" (R 6).)

III. SUMMARY OF EVIDENCE: The accused was a criminal inmate in Camp Laura, a subcamp of Buchenwald Concentration Camp, from October 1943 to April 1945, and he held the position of camp

eldest there from November 1943 to August 1944. Between January and April 1944, he subjected non-German nationals, inmates of the camp, to mistreatments in the form of beatings.

He entered pleas of guilty to all charges and particulars. Evidence was introduced and the Court then acquitted the accused of Charge III.

IV. EVIDENCE AND RECOMMENDATIONS:

Alfons KUNIKOLSKI

Nationality:	German
Age:	44
Civilian Status:	Sailor
Party Status:	Unknown
Military Status:	None
Plea:	G Charge I; G Charge II; G Charge III
Findings:	G Charge I; G Charge II; NG Charge III
Sentence:	7 years, commencing 9 December 1946

Evidence for Prosecution: In his extrajudicial sworn statement the accused admitted that he was a criminal inmate in Camp Laura, a subcamp of Buchenwald Concentration Camp, from October 1943 to April 1945 and that he held the position of camp eldest there from November 1943 to August 1944. For approximately four years prior to this he had been an inmate in other concentration camps (R 8; P-Ex 6A, pp. 1, 2). According to the extrajudicial sworn statement of an inmate, the accused regularly beat Russian inmates with a hose during the period from February 1944 to April 1944. This witness further stated that on one occasion he saw the accused strike a young Russian inmate about 15 times with a hose for refusing to participate in an act of sodomy with him. At other unspecified times he saw the accused walk about inside the camp beating inmates with a hose (R 9; P-Ex 7A).

The case against the accused was based on his pleas of guilty (R 7), the extrajudicial sworn statement of the witness

Marcinkowski (R 9; P-Ex 7A), and the admissions contained in his own extrajudicial sworn statement (R 8; P-Ex 6A).

Evidence for Defense: The accused, after being informed of his rights, declined to take the stand and testify (R 9). In his extrajudicial sworn statement he denied that he ever struck inmates with a hose (R 8; P-Ex 6A, p. 2), and he denied as defamation the accusation that he used young prisoners for purposes of sexual perversion (Idem p. 3). He beat inmates because they stole food (Idem p. 2).

Sufficiency of Evidence: The Court was justified from the evidence adduced and the statements in connection with the accused's plea of guilty in its findings of guilty as to Charges I and II.

The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: A Petition for Review was filed by accused's defense counsel, Major A. R. Myatt, Jr., 10 November 1947. A Petition for Clemency, undated, was filed by the accused.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

Plea of Guilty: The plea of guilty by the accused was properly accepted by the Court (R 9).

Section 5-328, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (US), Change 1, 27 March 1947, provides in part as follows:

"The procedure in Intermediate and General MG Courts shall be the same as that provided herein for Summary MG Courts except that: ***

"c. A plea of guilty to an offense punishable by death may be accepted provided the court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which it is within its power to impose would suffice."

Section 5-325, a, Title 5, supra, provides in part, with

"Upon a plea of guilty of all offenses charged, a Summary Court will hear such statements for the prosecution and the defense and such evidence as it requires to enable it to determine the sentence to be imposed. ***"

The Court complied with the above prescribed procedure in accepting the plea of guilty.

It is clear that the Court had jurisdiction of the person of the accused and of the subject matter.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved.

2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

RONALD D'ALAMIC
2nd Lt., Inf
Post Trial Branch

Having examined the record of trial, I concur, this _____ day
of _____ 1948.

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes