

DEPUTY JUDGE ADVOCATE'S OFFICE
7700 WAR CRIMES GROUP
EUROPEAN COMMAND

2 May 1947

UNITED STATES

vs

Case No. 000-50-2-9

Franz BEZAK; Hans EBERT;
Josef EIDLER, Karl CASTL,
Johann KRAFFT, Karl LANG-
STEL, Stefan SCHAEFFLER
and Franz VIZTHUM

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried jointly at Dachau, Germany
Date: 4 November 1946
Intermediate Military Government Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
BEZAK, Franz	Age 30 Czechoslovakian national Drafted Waffen SS March 1943, ordered to Dachau July 1945 Duties: Orderly to camp commandant. No guard duty Rank: Pfc	Acquittal
EBERT, Hans	Age: 23 German national SS guard out-camp Augsburg, September 1944 to March 1945 Front-line unit until capitulation Rank: Unknown	2 years confine- ment from 4 May 1945
EIDLER, Josef	Age 30 German national SS guard Dachau and out- camp Augsburg-Haunstetten October 1944 to capitula- tion Rank: Unknown	2 years confine- ment from 12 May 1945
CASTL, Karl	Age 42 Married, 0 children German national SS guard Dachau, Septem- ber to December 1944, and out-camp Augsburg-Pforsee, February 1945 to capitula- tion Rank: Unknown	Acquittal

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
KRAFFT, Johann	Age 22 Roumanian national Drafted German Army July 1943. Training Dachau, July 1943 to October 1943 SS guard Augsburg October 1943 to March 1945 Rank: Unknown	Acquittal
LANGSTEIN, Karl	Age 36 German national, former- ly Czechoslovakian Drafted German Army August 1939 SS guard Dachau and out- camp Augsburg-Pfarssee, July 1944 to April 1945 Rank: Sergeant	2 years confine- ment from 2 May 1945
SCHAEFFLER, Stefan	Age 37 German national SS guard out-camp Kempten March 1944 to April 1945 Rank: Unknown	2 years confine- ment from 15 May 1945
VITZTHUM, Franz	Age 41 German national Drafted German Army February 1942 SS guard out-camps Friedrichshafen and Saulgau, July 1944 to April 1945 Rank: Unknown	2 years confine- ment from 27 August 1945

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

PARTICULARS: In that Franz BEZAK, Hans EBERT, Josef ERDLER, Karl GASTL, Johann KRAFFT, Karl LANGSTEIN, Stefan SCHAEFFLER and Franz VITZTHUM, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at, or in the vicinity of DACHAU and LAUDERBERG, Germany, between about 1 January 1942 and about 29 April 1945, wilfully, deliberately and wrongfully participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mis-treatment, the exact names and numbers of such civilian nationals

BEZAK
EBERT
ERDLER
GASTL
KRAFFT
LANGSTEIN
SCHAEFFLER
VITZTHUM

<u>PLEAS</u>	<u>FINDINGS</u>
NG	NG
NG	G
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being unknown but aggregating many thousands who were then and there in the custody of the then German Reich in exercise of belligerent control.

SECOND CHARGES: Violation of the Laws and Usages of War.

PARTICULARS: In that Franz BEZAK, Hans EBERT, Josef ENDLE, Karl GASTL, Johann KRAFFT, Karl LANGSTEIN, Stefan SCHAEFFLER and Franz VIEZTHUM, acting in pursuance of a common design to commit the acts hereinafter alleged, and as individuals aiding in the operation of the Dachau Concentration Camp, did, at or in the vicinity of DACHAU, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

BEZAK
EBERT
ENDLE
GASTL
KRAFFT
LANGSTEIN
SCHAEFFLER
VIEZTHUM

<u>Pleas</u>	<u>Findings</u>
NG	NG
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2. RECOMMENDATIONS: That the findings and sentences be approved except as to accused SCHAEFFLER, and that the finding and sentence as to accused SCHAEFFLER be disapproved.

3. EVIDENCE:

For the Prosecution. The Prosecution's case was based on extrajudicial sworn testimony as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (R-7; U.S. vs Weiss et al, 000-50-2, March 1946). Exhibits P-2 to P-9, inclusive, are extrajudicial sworn testimony of each of the accused.

It was shown that during the period 1 January 1942 to 29 April 1945 each of the accused was an SS guard at Dachau Concentration Camp and/or subsidiary camps thereto, namely, Augsburg-Haunstetten, where there were 1500 to 2000

prisoners working at a Messerschmitt Factory (P-3, R-8; P-4, R-9); Augsburg-Pforze, where 1200 to 1400 inmates were incarcerated (P-5, R-10; P-6, R-11; P-7, R-13); Kempten, which had over 400 prisoners (P-8, R-15); and the Friedrichshafen group which included Radrach, Saulgau and Ueberlingen, where work-camps were maintained for the Zeppelin Works and the manufacture of V-weapons (P-9, R-14).

For the Defense. The defense elected to make no opening statement nor call any witnesses (R-15) and relied upon the extrajudicial testimony of the accused (P-2 to P-9, inclusive). The accused were informed of their rights and elected not to testify.

Accused EBERT was transferred from the Air Corps to the Waffen SS on 2 September 1944 and sent to out-camp Augsburg as a guard. He performed this duty until 12 March 1945, when he was transferred to a front-line unit. Out-camp Augsburg consisted of 1500 to 2000 prisoners of various nationalities working at the Messerschmitt Factory (P-3, R-8; U.S. vs Weiss et al, 000-50-2, March 1946, R-531, 073).

In defense, EBERT claims he never saw prisoners beaten, nor did he beat prisoners or report them for punishment (P-3, R-8).

Accused EBDLE was a guard at Dachau Concentration Camp from 23 August 1944 to 10 January 1945, when he was transferred to out-camp Augsburg-Haunstetten, where he remained as guard until the capitulation in April 1945. He was also a guard on the prisoner march from Augsburg to Klenbach just prior to the capitulation (P-4, R-9).

In defense, EBDLE denied any prisoners were beaten on any of his details at either Dachau Concentration Camp or out-camp Augsburg-Haunstetten. He also claimed no prisoners were beaten or shot on the prisoner march upon the evacuation of out-camp Augsburg. Whether the prisoners died of illness he did not know (P-4, R-9).

Accused LANGSTEIN was sergeant-of-the-guard at out-camp Augsburg-Pfersee where there were 1200 to 1400 prisoners. His duties from the middle of August 1944 until the capitulation consisted of guarding approximately 200 prisoners in transit back and forth from the Augsburg-Pfersee work-camp to the Messerschmitt works, a distance of approximately 10 kilometers.

In defense, accused LANGSTEIN claims the prisoners were delivered to civilians at the Messerschmitt Factory and that the transit or escort guards had nothing to do with the work of the prisoners. In performing these duties he never saw prisoners beaten by guards or civilian workers, nor did he beat or report any prisoners for punishment himself (P-7, R-13).

Accused SCHAEFFLER was a work-detail and tower guard at out-camp Kempten where there were 400 to 440 prisoners. He participated in the prisoner march, consisting of 400 prisoners, from Kempten to Fussen on 27 April 1945 (P-8, R-13)

In defense, SCHAEFFLER claims food and sanitation conditions at out-camp Kempten were good. He assisted two prisoners who fell out on the prisoner march from Kempten in April 1945. He was never personally in Dachau nor inside the out-camp at Kempten (P-8, R-13).

Accused VITZHEIM was ordered to Dachau Concentration Camp on 5 July 1944 where he remained almost a week. After receiving instructions he was ordered to out-camp Friederichshafen, which was 45 minutes to one hour's distance from Radrach where the prisoners were quartered. After the railroad was destroyed it was necessary for the prisoners to walk this distance wearing wooden shoes. The noon meal was brought in buckets by trucks. Upon deactivation of the prisoner camp at Radrach in September 1944, half of the prisoners were sent to out-camp Ueberlingen and the other half to out-camp Saulgau. In Saulgau the same conditions prevailed as at out-camp Friederichshafen with the exception that the factory where the prisoners worked was adjacent to the camp. The food was the same as at Friederichshafen. He was a guard on the prisoner march evacuating out-camp Saulgau, which started toward Friederichshafen at 4:00 AM on 22 April

1945. This march was forced to return to Saulgau after a few hours. A tank alarm caused the camp to be evacuated. Accused VITZTHUM left his unit and went to Munich, arriving there on 25 April 1945 (P-9, R-14).

In defense, VITZTHUM states that he frequently gave food and bread to the prisoners as he knew they were hungry. He did not see any "mistreatment or rudeness, except some boxes in the ear because of thefts or some other offense like that" (P-9, R-14).

4. JURISDICTION: The Court was legally constituted and had jurisdiction of the persons of the accused and of the offenses.

5. COMPLETS: Examination of the entire record fails to disclose any errors or omissions which resulted in injustice to the accused.

The Court was required to take cognizance of the decision rendered in the parent Dachau Concentration Camp Case, including the findings of the Court therein that the mass atrocity operation was criminal in nature and that the participants therein, acting in pursuance of a common design, subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAC-100, subject "Trial of War Crimes Cases," 14 October 1946, letters superseded thereby, and U.S. vs Weiss et al, 000-50-2, March 1946). With the exception of the accused SCHAEFFLER, all accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the parent Dachau case or in this subsequent proceeding, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation was such as to warrant the sentences imposed. Concerning accused SCHAEFFLER, it was shown that he participated and the nature of his duties was also satisfactorily proved. However, a search of the record in the parent case and the record in this subsequent proceeding reveals no evidence

as to atrocities committed at the Kempton out-camp. It is true that it was shown that 400 slave laborers were worked there but, if they were not otherwise mistreated and tortured, it is believed that SCHAEFFLER's participation in this mass atrocity was too remote to form a proper basis of sentencing by the Court. By virtue of the absence of evidence as to what occurred at the Kempton out-camp he is not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of his participation to permit of arriving at an appropriate sentence. It could be contended with considerable merit that the Court, with propriety, could have inferred that the inmates of the Kempton out-camp were subjected to cruelties and torture substantially like those clearly proven to have been inflicted at the parent camp and the other out-camps. If that view were adopted, at least theoretically, injustices could result and those too remotely connected with this or other mass atrocities might be severely punished without a proper gauge to measure the magnitude of their crimes.

Accused BEZAK was shown to have been an orderly and had no duties at the concentration camp. Accused GASTL, father of eight children, was inducted into the SS as punishment for having left his war job without permission. Accused KRAFFT, 22 years of age, a Roumanian national, was not shown to have participated sufficiently in the mass atrocity to warrant conviction. The Court, therefore, properly acquitted them.

6. CLEMENCY: There are no Petitions for Review. The Defense, after verdict, offered to the Court for "what they were worth" two instruments on behalf of accused SCHAEFFLER, signed by the Burgomister: one to the effect SCHAEFFLER had never been a member of the Nazi Party, and the other that he does not subscribe to Nazi principles. Both were received in evidence in mitigation of SCHAEFFLER's sentence. (D-1, D-2; R-16).

7. CONCLUSIONS:

a. It is recommended that all the sentences except that as to accused SCHAEFFLER be approved.

b. It is recommended that the sentence as to accused SCHAEFFLER be disapproved.

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

LOUIE T. TISCHER
Attorney
Post Trial Section

Having examined the record of trial, I concur.

C. E. STEINERT
Colonel, JAGC
Deputy Judge Advocate
for War Crimes