

23 May 1947

UNITED STATES )  
 vs )  
 Erich METTE and Otto PETERS, )  
 German nationals )

Case No. 12-1812

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA:

Tried at Dachau, Germany  
 Date: 16-17 January 1947  
 General Military Government  
 Court

<u>ACCUSED</u>	<u>DATA</u>	<u>SENTENCE</u>
<u>METTE, Erich</u>	Age 23 Attended school 7 years; In Hitler Youth 1/2 year when 16 years old; drafted into Labor Service at age of 16-1/2 years, re- mained 1/2 year; drafted into Waffen SS, served 4-1/2 to 5 years on both fronts Wounded in action Highest rank, Sergeant	Death by hanging
PETERS, Otto	Age 23 Attended school 8 years Left school at 14 years Dutch 4 years In Hitler Youth 3/4 year when 17 years of age Volunteered for Navy in 1941, served until end of war Highest rank, Corporal equivalent	Life imprisonment

<u>CHARGE:</u>	<u>PLEAS</u>	<u>FINDINGS</u>
Violation of the Laws of War.	PETERS METTE	NG G
<u>FARTH COLLARS:</u> In that Otto PETERS and Erich METTE, German nationals, did, at or near WEINDORF, (WOLFENBUTTEL), Germany, on or about 10 May 1944, wilfully, deliberately and wrongfully encourage, aid,	PETERS METTE	NG G

abet and participate in the killing of an unknown member of the United States Army, who was then an unarmed, surrendered prisoner of war in the custody of the then German Reich.

2. RECOMMENDATIONS: That the findings and sentences be approved.

3. EVIDENCE:

For the Prosecution. During the month of May 1944 an American airman was taken into custody near Kissenbruck, Germany, by a German civilian, searched and brought to Kissenbruck (R 9, 10, 12). The flyer had a sprain, as a result of his jump, which made it difficult for him to carry his parachute (R 13). In Kissenbruck the flyer was turned over to Ortsgruppenleiter KREMLING, who was accompanied by the two accused (R 11). The flyer was taken to a restaurant in the village and was seen about a half hour later, around noon, sitting on a bench in front of the restaurant between the two accused, and KREMLING was present (R 12, 13, 22). Accused METTE was dressed in an SS uniform and FETERS was dressed in a Navy uniform (R 16). Evidence was presented that KREMLING gave an order to METTE and FETERS to take the flyer to a nearby town, Wolfenbittel (R 23); however, according to extrajudicial sworn testimony of accused METTE, KREMLING ordered him to shoot the man at once (p 8, I-Ex 2). METTE, FETERS and the airman left in the direction of Wolfenbittel with the airman pushing a bicycle on which his parachute had been placed (R 25, 26, 59). Enroute to Wolfenbittel, about 150 meters past the village of Melndorf, the flyer was shot and killed by accused METTE with a pistol that had been furnished by KREMLING (R 25, 59; p 8, 9, I-Ex 2). according to extrajudicial testimony of Otto FETERS, accused METTE told him on the way to Wolfenbittel that KREMLING had given the order to shoot the American. FETERS had previously been told that KREMLING had ordered the two men to take the prisoner on foot to Wolfenbittel. FETERS tried to persuade METTE not to shoot the prisoner but METTE said it was his duty because his house had been destroyed by bombs and his mother and sister had

become ill because of air attacks. PETERS dissuaded METTE once from killing the prisoner but later, when PETERS dropped behind to tie a boot lace, METTE shot the flyer from behind, in the neck (I-Ex 2). Accused METTE does not know what accused PETERS was doing at the time he (METTE) fired the shot. PETERS came up shortly thereafter and guarded the body of the flyer while METTE went to Wolfenbittel and reported the incident. METTE was given 20 cigarettes by the Police Chief in Wolfenbittel. He returned to the scene of the shooting, took maps and a compass from the body of the airman and delivered them to the burgomaster at Neindorf (pp 9, 11, 12, I-Ex 2).

While PETERS was guarding the body of the flyer a witness arrived who testified that when he asked a sailor what had happened to the dead airman in the ditch, he answered, "he shot him". This witness further testified that he could not imagine that the flyer had wanted to escape because there was no shelter or cover available (R 63). The flyer was later buried in Kissenbruck (R 46). One witness testified that he was a block leader; that Ortsgruppenleiter KREMLING was his immediate superior; that he knew nothing of a rule in May 1944 that soldiers and sailors were directed to report to their Ortsgruppenleiter in an emergency; that Ortsgruppenleiter KREMLING had authority to give orders to soldiers and sailors who were home on leave; and that, if a soldier or sailor refused to obey such an order, a report could have been made to his respective unit and the person involved could have been punished by the unit (R 75, 79).

For the Defense. Erich METTE elected to testify in his own behalf in substance as follows:

During the time that he was in the Hitler Youth, he worked for the Labor Organization, and performed military service. He received orientation concerning his conduct as a member of the German race and was told that he had to execute the orders of his leaders; otherwise, the death penalty would be invoked. When he was drafted into the Labor

Service and when he took an oath to perform the duties given to him, without question (R 87). He heard on the radio and read in the newspapers that GOEBBELS said it was the duty of every German soldier to treat flyers as criminals (R 88). Before going on leave he had to sign a paper that required him to report to the Ortsgruppenleiter as soon as he arrived home, and he received instructions that he was to obey orders of the Ortsgruppenleiter (R 89). He was ordered by Ortsgruppenleiter KREMLING to shoot the flyer between the villages of Neindorf and Linden. KREMLING gave him his pistol and the pistol of another man (R 90). He asked FETERS if he wanted to go along and, in the meantime, told FETERS about the order. About 200 meters out of Neindorf the flyer tried to escape. He fired one shot and the flyer fell. FETERS came running after the shot was fired. FETERS did not know that he was going to shoot, in fact it was not his intention to shoot at that time. METTE examined the body and the two put the body in a ditch on the side of the road and covered it with a parachute (R 91). FETERS remained with the body while METTE went to Wolfenbittel and reported to the combat group of the Luftwaffe and the police. When he reported to the police officer, the officer already knew everything and said, "You're the man who had that order". METTE answered, "Yes, I have executed that order". Then the police officer gave him 20 cigarettes. METTE drove back to the scene of the shooting and then reported to the burgemeister in Neindorf that the body would be kept there and would be buried (R 92, 93). FETERS did not have a weapon. METTE does not remember anything about FETERS begging him not to shoot the flyer (R 108).

Accused Otto FETERS elected to testify in his own behalf in substance as follows:

During the time that he was a member of the Hitler Youth and German Navy he took an oath of allegiance to Adolf HITLER. Before going on leave he received instructions to report to the Ortsgruppenleiter at home and follow his orders. He was told that in case orders

were not followed heavy punishment could be anticipated; in some cases, even death penalties (R 122, 123). Ortsgruppenleiter KREMLING told him that he should march off the flyer. Just as he, LETTE and the flyer were leaving, KREMLING called METTE back and gave him a weapon. PETERS did not have a weapon (R 124). PETERS first heard of the order to shoot the flyer after the transport had marched 100 meters, but continued with the transport because he had an order from KREMLING. Beyond the village of Neindorf, LETTE drew a pistol and PETERS told him not to shoot, so he put it back (R 125). Afterwards, PETERS stopped to tie a shoe lace and heard a shot. At that time he was approximately 10 to 15 meters from LETTE. When he looked up the flyer was lying on the right-hand side of the road. He and LETTE moved the flyer to the left-hand side of the road into a ditch and covered the body with a parachute. LETTE then went to Wolfenbittel because he said he had an order from the Ortsgruppenleiter to report there that he had shot the flyer. PETERS stood guard over the body of the flyer (R 126). LETTE returned, said he had reported the incident at the police station and received 20 cigarettes. The two took an identification disk from the flyer and turned it over to the mayor of Neindorf (R 127).

Rudolf JOCKEL, a resident of Kiss-bruck who has known Otto PETERS since he was a small child, testified that PETERS told him while discussing air raids, "they had taken one of them away yesterday and they had done away with him". When asked who had done it, PETERS replied, "METTE, by order of KREMLING" (R 138, 139).

A stipulation was entered into between the defense and prosecution to the effect that one Egon SIEGEMANT, if present, would testify that Otto PETERS told him that Ortsgruppenleiter KREMLING gave his pistol to the SS man, LETTE, at the time PETERS and METTE were to take the flyer to Wolfenbittel, and that KREMLING gave them the order to shoot the flyer on the way to Wolfenbittel (R 140).

Robert PETERS, father of accused Otto PETERS, testified that on the evening of the incident, when PETERS reported the happenings to

his father, he started to cry terribly and said, "Yes, father, I know what I did. We did unjust. I am sorry we did it but I can't change it now". When he, Robert FETERS, spoke to the Ortsgruppenleiter about giving an order like that to a boy, KREMLING threatened to put him in a concentration camp (R 141, 143, 144).

Erich WETTE, father of accused Erich WETTE, testified that Ortsgruppenleiter KREMLING was not a man, he was a bandit (R 145, 146).

Theodor LIPSUS, an evangelical Lutheran pastor who has lived in Kissenbruck since 1935, testified that Ortsgruppenleiter KREMLING was ambitious, false from his heart, and an ardent Nazi (R 149, 153); and that KREMLING ordered a plaque placed above the grave of the flyer with the inscription "Here rests a murderer pilot" (R 154).

4. LEGAL SUFFICIENCY OF EVIDENCE: The evidence is sufficient to support the findings and sentences of the Court.

The evidence offered on behalf of these accused by way of mitigation of punishment because of the element of superior orders is not believed to be sufficient to merit any reduction in the sentence in the light of the rule set forth in paragraph 6, post.

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

6. COMMENTS: Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused; however, the evidence before the Court presents the issue of superior orders. According to the weight of authority the accused who seeks relief because of alleged superior orders assumes the burden of establishing (a) that he received an order from a superior directing that he commit the wrongful act, (b) that he did not know or, as a reasonable prudent person, would not have known that the act which he was directed to perform was illegal or contrary to universally accepted standards of human conduct, and (c) that he acted, at least to some extent, under immediate compulsion. Having satisfactorily established these elements,

the amount to which his sentence should be mitigated depends upon the character and extent of the immediate compulsion under which he acted. (London Agreement of 8 August 1945, Concerning Prosecution and Punishment of Major War Criminals of the European Axis; FM 27-10, War Department, U. S. Army, "Rules of Land Warfare," paragraph 345.1, Change No. 1, 15 November 1944; "International Law," Volume II, Sixth Edition, 1940, by Oppenheim, edited by H. Lauterpacht, paragraph 253, page 453, and the Llandoverly Castle Case cited therein; Manual of Courts-Martial, 1928, paragraph 148; "Report to the President of United States," 7 June 1945, by Mr. Justice Jackson, US Chief Counsel for the Prosecution of Axis Criminality; Extract from Goebbels' "The Air Terror of Our Enemies," found in footnote, page 53, "Military Occupation and the Rule of the Law," by Ernst Fraenkel; and opinions of the Deputy Theater Judge Advocate for "War Crimes in U.S. v. Albert Bury and Wilhelm Hofner, September 1945, U.S. v. Dominikus Thomas, December 1945, and U.S. v. Gerd Beck and Otto Weinreich, December 1946).

There was evidence before the Court sufficient to warrant the belief that the two accused acted pursuant to orders of the Ortsgruppenleiter; however, the Court would have been justified in the conviction that there was insufficient evidence to establish that the Ortsgruppenleiter stood in the position of a superior to the two accused. Further, it may fairly be assumed that a reasonable prudent person would have known that the taking of a human life under the circumstances was contrary to universally accepted standards of human conduct, and it is clear from the facts as related by the two accused that there was no immediate compulsion.

7. CLEMENCY: There are no petitions for Review. Accompanying the record of trial is a Recommendation for Clemency dated 5 March 1947, signed by A.R.S. Barden, Colonel, FA, President of the Court, recommending that the sentence as to accused METTE be reduced from death by hanging to life imprisonment and that the sentence of accused METERS be reduced from life imprisonment to imprisonment at hard labor for

25 years. Petitions for Clemency were filed on behalf of the two accused as follows:

On behalf of Erich NETTE:

Emanuel LEWIS, Captain, Inf., Defense Counsel, 7 March 1947, accompanied by petitions from the following: Erich NETTE and Hedwig NETTE, 26 January 1947; Erich NETTE, 2 February 1947; Municipal Council of the Community of Kissenbruck, 26 January 1947; The Parish-Board of the Lutheran Protestant Church at Kissenbruck, 27 January 1947; AHLEBRECHT, school-director, 27 January 1947; Herman BUSSE, 29 January 1947; Otto CUENTHER, Jr., 26 January 1947; Hermann ROTTER, 27 January 1947; O. BORMANN, 29 January 1947; Karl BEHRENS, 27 January 1947.

On behalf of Otto PETERS:

Emanuel LEWIS, Captain, Inf., Defense Counsel, 7 March 1947, accompanied by petitions from the following: The Common Council of the Community Kissenbruck, 26 January 1947; Theodor LIPSUS, 25 January 1947; Bernhard HEINEMANN, 22 January 1947; AHLEBRECHT, school leader, 24 January 1947; Max LOELAFF, 23 January 1947; B. SCHAFER, 24 January 1947.

8. CONCLUSIONS:

- a. It is recommended that the findings and sentences be approved.
- b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Nora G. Springfield  
/t/ NORA G. SPRINGFIELD  
1st Lt., SAC  
Post Trial Section

Having examined the record of trial, I concur.

/s/ C. E. Straight  
/t/ C. E. STRAIGHT  
Colonel, JAGC  
Deputy Judge Advocate  
for War Crimes