

30 October 1947

UNITED STATES)
))
 v.)
Karl THOMA))

Case No. 12-788

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 18 June 1947, by a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violation of the Laws and Usages of War.

Particulars: In that Karl THOMA, a German national, did, at or near WIESBADEN, Germany, in or about the months of March and April 1944, wrongfully commit assaults upon Second Lieutenants George Calvin FADGETT and Harmon SMITH, members of the United States Army, who were then and there unarmed and surrendered prisoners of war in the custody of the then German Reich.

(Upon motion by the prosecution, in open Court, the particulars were amended to delete the name of Harmon Smith, R 5.)

III. SUMMARY OF EVIDENCE: Accused THOMA, on or about 10 April 1944, while a police sergeant in Wiesbaden, Germany, attack an American prisoner of war several times with his fist. The American prisoner of war was Second Lieutenant George Calvin Fadgett who was confined in the Wiesbaden jail at the time of the incident.

IV. EVIDENCE AND RECOMMENDATIONS:

KARL THOMA

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|------------------|--------------------------------|
| Nationality: | German |
| Age: | 54 |
| Civilian Status: | House Painter; Police Sergeant |
| Party Status: | None |
| Military Status: | None |

Plea: G
Findings: G
Sentence: 1 year, commencing 23 May 1947

Evidence for Prosecution: After the accused entered a plea of guilty to the charge and particulars as amended (R 6), the prosecution introduced evidence showing that on or about 10 April 1944 the accused did strike Second Lieutenant George Calvin Padgett, an unarmed American prisoner of war, while he was confined in a jail in Wiesbaden, Germany (R 7, 8; P-Exs 2, 3, 4), and that the accused struck Padgett with his fist so hard that he was knocked to the floor but no permanent injury resulted (R 8; P-Ex 4).

Evidence for Defense: In his unsworn pretrial statement the accused stated that he twice slapped a prisoner of war confined in the Wiesbaden jail because the prisoner was lying on a bed with dirty shoes (R 7; P-Ex 2). The accused stated in Court by way of mitigation that he saw an American prisoner lying on a bed in the jail and that he told him twice to get off the bed and when he didn't get off he slapped the prisoner twice.

Sufficiency of Evidence: The accused entered a plea of guilty which plea was apparently accepted by the Court, after a hearing of the evidence, as was shown by its findings.

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

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

V. QUESTIONS OF LAW:

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

Guilty Plea: The accused entered a plea of guilty to the

charge and particulars. It is clear that the Court substantially complied with the provisions of Section 501, "Manual for Trial of War Crimes and Related Cases", 15 July 1946, even though the record does not show a complete compliance. While the record does not show the taking of a vote by the Court on whether or not to accept the plea of guilty, the record clearly shows that the Court did take a vote on the findings of guilty which substantially complied with the requirements. It cannot be presumed that the Court did not take a vote on whether to accept the plea.

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.

FLOYD M. LUNDBERG
Major JAGD
Post Trial Branch

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

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