

DEPUTY THEATER JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
UNITED STATES FORCES, EUROPEAN THEATER

December 1946.

UNITED STATES)

vs)

Karl POLUS,
a German national)

Case No. 12-1160

REVIEW AND RECOMMENDATIONS

1. TRIAL: The accused was tried at Dachau, Germany, on 13 September 1946 before an Intermediate Military Government Court appointed by paragraph 2, Special Orders No. 250, Headquarters, United States Forces, European Theater, APO 757, dated 7 September 1946.

2. FINDINGS: The offense involved was: Pless Findings
CHARGE: Violation of the Laws of War: NG G

Particulars: In that Karl POLUS, a German civilian, did, on or about 12 September 1944, at or near Warsleben, Germany, wrongfully commit an assault upon an unknown member of the United States Army, then an unarmed surrendered prisoner of war in the custody of the then German Reich, by striking him with his fist, and kicking him with his feet.

NG G

3. SENTENCE: The Court, by at least a two-thirds vote of the members present at the time the vote was taken concurring, found the accused guilty of the Charge and Particulars and sentenced him to be imprisoned for a term of eighteen (18) months, commencing 23 April 1945, at Dachau, Germany, or such other place as might be designated by competent military authority. The case has been forwarded for final action (par. 8d, Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", dated 14 October 1946).

4. DATA TO ACCUSED: Accused is a German national, 34 years of age, and a resident of Ausleben (R 3-4). No further personal data are disclosed by the record.

5. RECOMMENDATION: That the sentence be approved by the Theater Judge Advocate under the provisions of paragraph 8d, of the letter referred to in paragraph 3, supra.

6. EVIDENCE:

a. For the Prosecution. The case for the prosecution consisted entirely of sworn statements taken prior to the trial, and a pre-trial statement of the accused (Prosecution's Exhibits 1a through 4a; Prosecution's Exhibit 5a; R 6-10)

According to the statements of the witnesses other than accused a four-motor American airplane encountered difficulty over the town of Warsleben, Saxony, on the morning of 12 September 1944. Several pilots bailed out, and one landed in some sort of a pit at Warsleben. A crowd gathered at the scene, accused among them. He rushed up to this pilot, and struck him several times in the face with his fist. This caused the pilot to fall to the ground and accused kicked him several times about the body. One Otto MAUSHAKE stopped accused's attacks and escorted the aviator to town where he was lodged in the jail for safety. The evidence does not show what later became of the pilot.

Accused in his pre-trial statement told approximately the same story and said that he struck the pilot three times on the head with his hand, causing the pilot to fall to the ground. He mistreated the pilot "out of anger against the Americans whose bombers frightened my nine years old son and who ran in (his) nightshirt to the cellar every night with fear". (Prosecution's Exhibit 5a).

b. For the Defense. The accused took the stand and testified in his own behalf. He testified that he was in his home on the day alleged, that he saw a pilot land from a plane about one or one and a half kilometers from his town (R 11). As soon as he saw that the pilot was in the air he drove to the spot where the pilot would land, and when he arrived the pilot was standing there. He went up to the pilot and "due to the excitement that I was in as a consequence of the incidents" he struck the pilot two or three blows on the neck. His right hand, with which he struck the blows, was open at the time. He suffered from an impairment of the use of his right hand, due to an injury of the bone for which he was under a doctor's care. Even to-day there is an indentation half way between the elbow and the wrist of his right arm, and he is not able to close his fist. The hand and arm are in better condition now than they were at the time of the incident. The accused is righthanded (R 12-13).

Accused further stated that at the time of the incident the flyer was wearing heavy footgear, so that after accused struck the two or three blows the flyer moved back, and in doing so he fell. This was as a result of his attempt to dodge the blows and "it is impossible that the blows themselves caused it." (R 13, 14). Accused did not kick the flyer after he was on the ground (R 14). Accused's excitement was as a result of the fact that there were large scale aerial attacks upon his area at the time, which caused his son great terror (R 14).

Accused maintained that he was the first German to come upon the scene and that neither he nor anyone else had arrested the flyer. The flyer was not arrested or taken into custody until the arrival of MAUSHAKE (R 15-17).

8. JURISDICTION: The particulars alleged an unlawful assault upon a prisoner of war, entitled under the Laws of War to be protected against acts of violence. Many cases involving similar allegations and proof have previously been reviewed and discussed by this office. It has repeatedly been held that a specially appointed Military Government Court has jurisdiction to try such an offense, and no further discussion of this subject is deemed necessary in this case.

9. DISCUSSION OF THE EVIDENCE: The case was tried entirely upon the record, and except for the testimony of accused in his own behalf, no witnesses were physically present. Hearsay evidence is admissible in the trial of war crimes cases. Such evidence is admissible as has a bearing upon the issues before the court (MGR, Title 5, par. 329; Manual for Trial of War Crimes and Related Cases, Section 270). Previous cases in which the sole evidence has been sworn statements have been upheld as to their findings and sentence by this office. The present case is analogous and there appears nothing in the evidence presented by the prosecution which would induce a departure from the rule in the present case.

There is clear evidence that accused struck a parachuted flyer several blows with his hand or fist and that he kicked him with his feet after he had fallen. Accused denied that the blows were made with his fist and that he kicked the flyer. The court was at liberty to believe the evidence introduced by the

nothing which indicates the court erred in this respect and no reason appears for disturbing its findings. The evidence, however, is not clear that the pilot was actually a surrendered and unarmed prisoner of war, as alleged in the particulars. It is clear, however, that he offered no resistance and that he was in the act of surrendering. While it might under certain circumstances be desirable to amend the court's findings in order to show this fact, the legality of the sentence would not be affected thereby, and it is merely noted for the purpose of the record that there was a failure of adequate proof in this respect.

The proceedings satisfied the requirements of a fair trial. Accused was provided with military counsel for his defense. Competent interpreters were used; challenges for cause were allowed; and a two-thirds vote of the members of the court present was required for conviction and sentence. There were no errors or irregularities which affected any of the substantial rights of the accused. The appointment of the court and its proceedings were in compliance with pertinent directives and with recognized principles of International Law.

10. SENTENCE: The sentence was within the power of the court to impose. It has actually expired by its own terms, as of the date of this review, and it should be stated here that the proper authorities have been notified to release accused.

11. RECOMMENDATION: It is recommended that the findings and sentence be approved by the Theater Judge Advocate under the provisions of paragraph 8d, of the letter, Headquarters, United States Forces, European Theater, referred to in paragraph 3, supra. Forms of action to accomplish this result, should it meet with approval, are attached hereto.

SAMUEL SONENFIELD
Attorney
Chief, Post Trial Section

I have examined the record of trial and I concur:

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