

1 July 1947

UNITED STATES)
))
 v.) Case No. 000-50-2-34
))
Hans Adam BURGER, et al.)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, on 17 December 1946 before an Intermediate Military Government Court.

II. CHARGES AND PARTICULARS:

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

PARTICULARS: In that Hans Adam BURGER, Nikolaus FEILER, Friedrich Rudolf von FUCHS, Eduard Richard KOLLECKER, Victor KREMER, 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 LANDSBERG, 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 mistreatment, the exact names and numbers of such civilian nationals 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 CHARGE: Violation of the Laws and Usages of War.

PARTICULARS: In that Hans Adam BURGER, Nikolaus FEILER, Friedrich Rudolf von FUCHS, Eduard Richard KOLLECKER, Victor KREMER, 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, wilfully, 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 the then German Reich, to cruelties and mistreatment, the exact names and numbers of such prisoners of war being unknown but aggregating many hundreds.

II. SUMMARY OF EVIDENCE: All the convicted accused were members of the SS at Camp Dachau and/or its outcamps for considerable periods of time between the dates alleged, and were shown to have participated as guards in the Dachau Concentration Camp mass atrocity. Prosecution's exhibit P-Ex 1 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp Case (U.S. v. Weiss et al., OOO-50-2, March 1946, hereinafter referred to as the "Parent Case"; see Sec. V, post; R 7).

V. EVIDENCE AND RECOMMENDATIONS:

1. HANS ADAM BURGER

Nationality:	German
Age:	25
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Plea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 21 months from 2 May 1945

1945

Evidence for Prosecution: Accused BURGER was a guard at Camp Dachau, working on the Munich-Freimann outdetail, from 20 February 1945 to 1 March 1945. He was a member of the Waffen SS from 4 August 1943 to 2 May 1945 (R 8; P-Ex 2).

Evidence for Defense: No defense was offered by this accused other than his extrajudicial sworn testimony in the form of a Fragebogen (questionnaire). Outdetail Munich-Freimann is mentioned only once in the Parent Case, in the testimony of Simon Kiern who was sentenced to death therein, and it was not shown that atrocities were committed there (Vol. VI, p 1234, Parent Case).

Sufficiency of Evidence: The findings of guilty are not warranted

by the evidence.

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

Recommendation: That the findings and sentence be disapproved.

2. NIKOLAUS FEILER

Nationality:	Roumanian (Volksdeutscher)
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Pfc.
Plea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 21 months from 29

April 1945

Evidence for Prosecution: Accused FEILER was a guard on outdetail Munich, Freimann, operating out of Dachau, from 25 February 1944 to 30 April 1945. His Waffen SS membership dates from 15 July 1943. From 30 March 1945 to 29 April 1945 he served in the infantry (R 9; P-Ex 3).

Evidence for Defense: No defense was offered by this accused other than his extrajudicial sworn testimony in the form of a fragebogen (questionnaire). Outdetail Munich-Freimann is mentioned once in the Parent Case, in the testimony of Simon Kiern who was sentenced to death herein, and it was not shown that atrocities were committed there (Vol. VI, p 1234, Parent Case). Roumania was a co-belligerent of Germany.

Sufficiency of Evidence: The findings of guilty are not warranted by the evidence.

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

Recommendation: That the findings and sentence be disapproved.

3. FRIEDRICH RUDOLF von FUCHS

Nationality:	German
Age:	39
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Plea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 20 months from 23 June 1945

Evidence for Prosecution: Accused von FUCHS was a clerk for his guard company at outcamp Germering from April 1944 to October 1944; and at outcamp Fischeben from October 1944 to April 1945. On 1 May 1943 he was promoted to corporal and ordered from the Luftwaffe to the Waffen SS on 14 November 1944 (R 10; P-Ex 4). Von FUCHS testified to the effect that there were 350 to 380 prisoners at outcamp Germering working at the Dornier Works. Many prisoners had to go to the dental clinic (R 18). Wilhelm Wagner, who was sentenced to death in the Parent Case, was leader of outcamp Germering from October 1943 to April 1944, when he was sent to outcamp Allach (R 317, 319, 324-327, Parent Case).

Evidence for Defense: Accused von FUCHS testified in his own defense to the effect that he disliked being assigned to prison work when he was a soldier and made several applications to be relieved from his duty, but without success. One application was in writing to the personnel man of his old unit, Weather Service, Air Task Command 7 (R 16). Defense witness Ammann who was the personnel man at Weather Service, Air Task Command, testified he received the letter from von FUCHS about the beginning of 1944 but there was nothing which could be done about arranging the transfer for him (R 22-24). Von FUCHS told Ammann in a conversation that he regretted very much that he could not go back to duty with the Weather Service because his duty with the concentration camp's guard was something entirely different (R 25).

Accused knew of no beatings at outcamp Germering (R 19). There is no evidence in the Parent Case or this subsequent proceedings of atrocities committed at outcamps Germering or Fischen.

Sufficiency of Evidence: The findings of guilty are not warranted by the evidence.

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

Recommendation: That the findings and sentence be disapproved.

4. KARL OTTO HESS

The name of this accused was apparently stricken from the charge sheet and he was not before the Court.

5. TOENIJEN JANSSEN

The name of this accused was apparently stricken from the charge sheet and he was not before the Court.

6. EDUARD RICHARD KOLLECKER

Nationality:	German
Age:	54
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Flea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 21 months from 12 June 1945

Evidence for Prosecution: Accused KOLLECKER was a guard at outcamp Allach from 1 February 1944 to 3 March 1945; at Camp Dachau from 3 March 1945 and at outcamp Stefanskirchen from 8 April 1945 to 28 April 1945. He was taken into the Waffen SS 1 September 1944. He was guard on the prisoner march from outcamp Stefanskirchen 27 - 28 April 1945, with approximately 180 prisoners under 26 guards (R 11; P-Ex 5).

Evidence for Defense: No defense was offered by this accused

(questionnaire) (R 11; P-Ex 5).

Sufficiency of Evidence: 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.

7. VICTOR KREMER

Nationality:	Roumanian (Volksdeutscher)
Age:	43
Civilian Status:	Unknown
Party Status:	Unknown
Military Status:	Waffen SS, Corporal
Plea:	NG first charge; NG second charge
Findings:	G first charge; G second charge
Sentence:	Confinement 21 months from 8 May 1945

Evidence for Prosecution: Accused KREMER was a guard on the outdetail Munich Freimann, working out of Camp Dachau, from 18 Februar 1944 to 15 April 1945; then with Guard Company No. 1 as guard at Camp Dachau until 28 April 1945. He escaped from Camp Dachau on the approach of the Americans and was captured on 8 May 1945 at Wasserburg. He joined the SS 12 July 1943 (R 12; P-Ex 6).

Evidence for Defense: No defense was offered by this accused other than his extrajudicial sworn testimony in the form of a Fragebogen (questionnaire). He did not participate in prisoner marches (R 12; P-Ex 6).

Sufficiency of Evidence: There is no evidence, either in the Parent Case or in this subsequent proceeding, that atrocities were committed on the outdetail Munich-Freimann. However, accused was a guard at Camp Dachau when the consolidation of the outcamps was taking place and plans being made there for the evacuation of the camp by prisoner marches and transports (R 237, 241, Parent Case). Roumania was a

co-belligerent of Germany.

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.

8. ALCIS LOEFFLER

The name of this accused was apparently stricken from the charge sheet and he was not before the Court.

9. JOSEF MEURER

The name of this accused was apparently stricken from the charge sheet and he was not before the Court.

10. RUDOLF FARG

The name of this accused was apparently stricken from the charge sheet and he was not before the Court.

V. QUESTIONS OF LAW:

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

Parent Case: The Court was required to take cognizance of the decision rendered in the Parent 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 JAG-AGO, subject: "Trial of War Crime Cases." 14 October 1946, and the Parent Case). With the exception of accused BURGER, FEILER and von FUCHS all of the convicted accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in the 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 BURGER, FEILER and von FUCHS, it was shown that they participated and the nature of their duties was satisfactorily proved. However, a search of the record of the Parent Case and the record of this subsequent proceeding reveals no evidence as to atrocities committed at outdetail Munich-Freimann or outcamps Germering or Fischen. It is true that it was shown that 350 to 380 slave laborers were worked at outcamp Germering but if they were not otherwise mistreated and tortured, it is believed that the participation of BURGER, FEILER and von FUCHS 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 Munich-Freimann outdetail and outcamps Germering and Fischen, they are not shown to have participated to a substantial degree and there is inadequate evidence as to the nature and extent of their 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 detail and outcamps mentioned above were subjected to cruelties and tortures substantially like those clearly shown to have been inflicted at the parent camp and the other outcamps. If that view were adopted, at least theoretically, injustice 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.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused, except as to the sentences imposed as to accused BURGER, FEILER and von FUCHS.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences as to accused KOLLECKER and KREMER be approved but that the findings and the sentences as to accused BURGER, FEILER and von FUCHS be

disapproved.

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

/s/ Louie T. Tischer
LOUIE T. TISCHER
Attorney
Post Trial Branch

Having examined the record of trial, I concur.

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

