

DEPUTY JUDGE ADVOCATE'S OFFICE  
7708 WAR CRIMES GROUP  
EUROPEAN COMMAND  
APO 407

16 December 1947

UNITED STATES )

v. )

Nikolaus MUTH )

Case No. 000-50-2-92

REVIEWS AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 11 June 1947, before a General Military Government Court.

II. CHARGE(S) AND PARTICULARS:

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

Particulars: In that Nikolaus MUTH acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual aiding in 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, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, 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 German Reich in exercise of belligerent control.

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

Particulars: In that Nikolaus MUTH acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual aiding in 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, willfully, deliberately and wrongfully encourage, aid, abet and 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, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: The accused was an inmate of Dachau Concentration Camp and/or its outcamps. He served as a block eldest and capo for considerable periods of time between the dates al-

Camp mass atrocity. Prosecution's Exhibit P-Ex 2 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. WEISS, et al., 000-50-2, Opinion DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, Post, R 32).

IV. EVIDENCE AND RECOMMENDATIONS:

Nikolaus MUTH

Nationality:	German
Age:	38
Civilian Status:	Unknown
Party Status:	None
Military Status:	None
Pleas:	NG Charge I; NG Charge II
Findings:	G Charge I; NG Charge II
Sentence:	3 years, commencing 1 May 1945

Evidence for Prosecution: One witness testified that the accused was a room eldest in block 15, room #3, of Dachau Concentration Camp from January 1942 until 1943 (R 45, 48). In 1943 he was transferred to Hallein, an outcamp of Dachau Concentration Camp, and remained there until February 1945, when he was sent back to Dachau because of listening to a forbidden radio station (R 52, 69). The number of inmates in block 15, a punishment block, varied from 150 to 500 (R 6, 61, 62). A second witness, Schenk, testified that in January 1942 the inmates of block 15 were required to line up outside the block. The block leader ordered the accused to pour buckets of water over them. Due to this treatment most of the inmates became sick and many contracted diarrhea. The accused required a 70 year old German inmate to do thirty to forty knee bends while holding a 20 pound chair in his outstretched hands. When this inmate, due to his weakened condition, collapsed, his fellow inmates received permission from the accused to carry him inside the block where he died (R 7). The accused required a young inmate to kneel on wooden blocks. He also

required this inmate to do knee bands with a chair in his hands (R 7).

The accused beat inmates with his fists until they bled. Because everything was required to be kept in excellent condition in punishment block 15, the accused beat the inmates for not keeping their equipment in order (R 12). This witness testified that the accused struck him for leaving his underpants in his bunk (R 14). When the accused discovered that the inmates had unclean feet, he beat them with a stick or a leather belt (R 15). The accused beat an inmate, when he had taken to the dispensary for treatment, with his fists, and after this inmate collapsed, he kicked him (R 17, 23). He repeatedly beat sick inmates at the dispensary without any cause. These inmates frequently fell to the ground and then the accused kicked them. Several times the inmates bled from the beating and kicking. Included among those beaten by the accused in 1942, were Polish inmates (R 25, 31).

In an extrajudicial sworn statement, a third witness stated that in October 1942 the accused beat a Dutch clergyman inmate; and that he required this witness to do one hundred knee bands with a stool in his outstretched hands as punishment for steady-ing himself against a wall when he tripped (R 33; 1-Ex 3). Another witness stated in an extrajudicial sworn statement, that he saw the accused beat inmates, especially Poles; and that if he knew that one of the inmates in room #3, block 15 was a Polish officer "this was sufficient to seal his fate" (R 33; 1-Ex 4). A fifth witness stated in his extrajudicial sworn statement, that the accused beat old and helpless inmates; that he often wrote reports which resulted in inmates being beaten or hung on a tree; and that he was the "truest servant of the SS" (R 34; 1-Ex 5).

Evidence for Defense: A witness, a former capo in the dispensary, testified that he never heard anything against the accused; and that the accused frequently requested medicine for the inmates under his charge (R 38, 39). Another witness, a

former inmate, testified that he never heard anything against the accused; that at outcamp Hallein, the accused was very decent and did not mistreat the inmates; and that the inmates of room #3, block 15, were professional criminals (R 45, 47, 51).

The accused testified that he was an inmate of Dachau Concentration Camp and its outcamps from 1934 until 1945 (R 61). As room eldest it was his responsibility to take care of the distribution of food, cleanliness, and to maintain order and discipline (R 63, 70). He admitted beating the prosecution witness Schenk for reporting him to the SS. As a result of Schenk's report the accused was given 25 lashes, six times, and hung from a tree for an hour, three times (R 64). He only talked to the SS men when it was necessary (R 63). The block leader gave the order for inmates to do knee bonds. During the time he was in block 15, no inmate died (R 65). He admitted that he slapped inmates on many occasions for stealing from other comrades or for 'denouncing' them.

The accused asserted that if he had reported the inmates to the SS instead of slapping them, they would have received 25 lashes and a transfer to another camp. He once received punishment consisting of hanging for one hour on a tree because he failed to report that an inmate had a hole in his pants (R 66). He could not have beaten inmates on the street in front of the block without being reported to the SS (R 67). He denied that he beat or kicked a Polish inmate at the dispensary. He bought food for the inmates at the canteen (R 60). The witnesses who testified against him must have made a mistake in identification (R 68).

Karl Kramer, a former inmate, testified that he never heard of the accused beating inmates (R 56). In 1942 he saw the accused buy additional food at the canteen for the inmates (R 57). All severe punishments were administered by the SS (R 60). He never heard that the accused was friendly with the SS (R 61).

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.

V. QUESTIONS OF LAW:

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

Application of the 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 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 Crimes Cases", 14 October 1946, and the Parent Case). The accused was shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceeding, in concluding as to him that he not only participated to a substantial degree but that the nature and extent of his participation were such as to warrant the sentence imposed.

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 sentence be approved.

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

MURRAY J. ANDROVETTE  
Attorney  
Post Trial Branch

Having examined the record of trial, I concur, this \_\_\_\_\_ day  
of \_\_\_\_\_ 1948

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