7708 WAR CRIMES GROUP EUROPEAN COM AND APO 407

30 December 1947

UKITED STATES

v .

Cese No. 000-Flossonburg-10

Mox AUERSWALD

REVIEW AND TECOMMENDATIONS

I. TRILL DATA: The accused was tried at Dachau, Germany, on 21 October 1947 before a Ceneral Malitary Government Court.

II. CHARGE AND PARTICULARS:

CHLRGE: Violation of the Laws and Useges of War.

Particulars: In that Max AUERSWALD, a German national, did, at or in the vicinity of Flossen-buerg, Germany, in or about April 1945, wrongfully encourage, aid, abet and participate in the killing of approximately four non-verman nationals, inmates of flossenbuerg Concentration Omap, who were then in the custody of the then German Weich, the exact names and numbers of such persons being unknown.

(Correct name of accused AUERSWALD is actually Max Arthur AUERSWALD; h 19, F-Ex e.)

SS at Flossenburg Concentration Camp from 7 February 1040 to 20 April 1945, beginning as a guard and rising to the rank of technical sergeant on 1 June 1944. On 20 April 1945 inmates were evacuated from Flossenburg in the direction of Dachau Concentration Camp due to the approaching American forces.

On this inmate evacuation march, the accused killed three or four immates who were Allied nationals.

IV. EVIDENCE AND RECOM ENDATIONS:

Max Arthur AUERSWALD

Nationality:

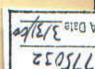
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Civilian Status:

mestaurant-keeper



Party Status:

None

Military Stetus:

SS Technical sergeant

Plea:

NG

Findings:

CV.

Sentence:

Death by honging

Evidence for Prosecution: The occused testified that he was at Flossenburg a total of about five years; that from 1943 until the final evacuation started on about 16 April 1945 he worked in the electrical shop as an assistant to Schubert; and that he left Flossenburg on a wagon convoy on about 20 April 1945 (R 46, 47). A witness testified that the lumates all walked (R 17).

The accused stated in his questionnaire that he was a guard at Flossenburg from February 1940 to October 1943; that he became an 33 technical sergeant on 1 June 1944; and that he supervised the light and water supply installations from October 1943 to 20 April 1945 (7 19; P-Ex 6).

one witness, Staskiewicz, who was a Polish inmate on the evacuation march, testified that he left Flossenburg on 20 April 1945; that he saw the accused on the first three days of the march; that on 21 April 1945 he saw the accused shoot a rifle once into the inmate column; that he saw two inmates, one Dutch and the other probably French, fall after the shot was fired by the accused; and that he did not know what happened to the two shot inmates (R 8-11). This witness further testified that the immates were weak from hunger and that the ration on the march consisted of one 200 gram piece of bread, a 50 gram piece of blood sausage and grass and potatoes secured from the roadside (R 13).

A second witness, Berendt, an employee of the Polish consulate and an inmete on the evacuation march, testified that he left Flossenburg on the immate evacuation march on



sew the accused shoot and kill three Allied innetes, one of whom was a friend of this witness of two years standing; that two of the victims were shot in the head, but he was not sure where the other was shot; that he was at the most 30 meters from the accused when he shot his friend; and that he passed within two meters of the dead body of his friend (R 15, 16).

Evidence for Defense: 4. witness testified that the necused left Flossenburg on a baggage transport departing Flossenburg approximately 1300 hours, 20 April 1945; that this transport consisted only of about 10 to 12 horse drawn baggage wagons and SS guards. There was a driver and two men to each wagen (R 23). He saw no immates except three accompanied by two SS men (R 25). This witness testified that the destination was supposed to be Dachau (R 27) but he did not know whather the accused was with the wagon crows (R 27); and that he only saw the accused while he was riding with the witness a portion of one day (R 27); and that the witness took the secused on his wagon because he could not walk any longer (R 23). The witness did not see the accused on 20 or 21 April but only on 22 or 23 April 1945 (E 27). This transport was overrun by American troops on 23 April 1945.

heggage transport which left on 20 April 19-5, earrying food for troops and baggage (R 29); that there were 15 to 20 wagons and 60 "soldiers" (R 29); that there were a few inmates with the cannot kitchen, but later he testified that he saw no immates; that "there must have been" some immates ahead of the wagon convoy (R 32); that the accused was part of this cannot (R 32); but that he only saw the accused on 23 April 1945 at the time the transport broke up upon advance of Americans (R 29, 30, 33).

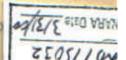
A third witness testified that he accompanied a baggage transport on 20 April 1945 (R 35); that he saw the accused from time to time during the transport (R 35); and that he saw no inmetes until 23 April (R 36). On cross-examination this witness testified that he saw the accused on 20 and 21 April on this baggage transport and that he stayed with this transport all the time (R 40).

The accused testified that he left Flossenburg on a horse drawn transport on 16 April 1945 returning to Flossenburg on 17 April 1945 (R 46, 47); that he left on the horse drawn beggage transport on 20 April; that he saw the foregoing defense witnesses on the transport; however, he did not see one of them until the transport disintegrated; and that the transport was disrupted by American Fire on 23 April 1945 (R 48). The accused further testified that he did not see any live inmates until 23 April 1945, but he admitted that when the transport disintegrated, immates were 800 to 1000 meters behind; and that on the transport he was armed only with an .08 pistol (R 49). The accused however later admitted that carbines and other weapons were carried on the horse drawn beggage transport (R 52).

Sufficiency of Evidence: The secused and defense witnesses were evasive as to whether the wagens accompanied a column of inmates. They admitted inmates were near at the end. From all the evidence, including admissions by the secused and defense witnesses, the number of wagens and the type of loads thereon, the accused's defense fails of persuasiveness. The findings of guilty are werranted by the evidence. The sentence is not excessive.

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

Recommendation: That the findings and sentence be ap



V. QUESTIONS OF L.W:

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

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

THOMAS C. MARLON Major, CAV Post Triel French

Having	exemined	the	necond	of.	triel,	T	eoneum,	this	-
day of				190	18.				

C. E. STLIGHT Lieutenant Colonel, J.GD Deputy Judge Lavocate for War Crimes

