

13 June 1947

UNITED STATES)
))
 v.)
Josef NEUNER.)

Case No. 000-50-2-78

REVIEW AND RECOMMENDATIONS

1. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 27 - 28 March 1947 before a General Military Government Court.
2. CHARGES AND PARTICULARS:

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

Particulars: In that Josef NEUNER 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, and 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 Josef NEUNER 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.

3. SUMMARY OF EVIDENCE:

a. For the Prosecution: Accused participated in the Dachau Concentration Camp system. He was a member of the SS with duties as guard, detail leader and roll call leader at Camp Dachau and various outcamps and details thereof. He also participated in killings, executions, beatings and mistreatment of prisoners.

b. For the Defense: Accused did not participate in killing, beating or mistreating any prisoners. He attempted to help prisoners whenever he could.

4. EVIDENCE, PETITIONS AND RECOMMENDATIONS AS TO ACCUSED:

Josef NEUNER

Nationality: German
Age: 34
Civilian Status: Miner
Party Status: Member of the National Socialist Party
Military Status: SS Master Sergeant
Plea to Charges and Particulars: Not Guilty
Findings: Guilty
Sentence: Death by hanging

Evidence for the Prosecution: The prosecution's case was based on oral sworn testimony of seven witnesses and four exhibits as hereinafter indicated. Exhibit P-1 is a certified copy of the charges, particulars, findings and sentences in the Parent Dachau Case (U.S. vs Weiss, et al., 000-50-2, March 1946, hereinafter referred to as the "Parent Case"; R 5). Exhibit P-2 is the extrajudicial testimony of the accused (R 83). Exhibit P-3 is the sworn questionnaire of the accused (R 84). Exhibit P-4 is extrajudicial sworn testimony marked for identification but not admitted into evidence (R 87, 89).

The accused joined the Waffen SS in May 1934. Between May 1934 and 1 January 1942 the accused did duty at Dachau and Flossenburg Concentration Camps. He was a guard at the crematory at Camp Dachau from 1 January 1942 to September 1942; from September 1942 to February 1943 he was an SS block leader

at Camp Dachau; from February 1943 to May 1943 he was detail leader at outdetail Freimann; from May 1943 to August 1943 he was detail leader at outdetail Haunstetten; from August 1943 to October 1943 he was second roll call leader at Camp Dachau; from October 1943 to July 1944 he was detail leader at outdetail Gendorf; from July 1944 to April 1945 he was roll call leader at outcamp Allach (P-Ex 3, R 84). Witness Kaiser, a former inmate, testified to the effect accused, in company of another SS sergeant, took two Russian prisoners who had escaped and had been recaptured to the crematory. While there the accused said "Now you can't escape any more. I will put the noose around your necks myself." He then placed the noose around their necks and the ropes were thrown over the branch of a tree. These Russian prisoners were never seen again in Camp Dachau. The accused had a bad reputation and was known as a beater (R 8, 9, 15, 18). Accused was in charge of the prisoner march from outcamp Allach in April 1945 and the columns joined the main Prisoner march that had left from Camp Dachau. The accused was seen firing his pistol during the prisoner march (R 20). Witness Kromer, a former inmate, testified to the effect he knew accused in Camp Dachau and outcamp Allach. The accused, while at Camp Dachau in 1942, was on duty at the crematory and had under his charge a working detail of eight Jews. These prisoners were beaten, kicked or killed by the accused and then be placed in the ovens in the crematory and burned regardless of whether they were dead or alive. Such incidents occurred every 4 to 6 or 8 weeks (R 29). None of the Jews that worked on the crematory detail ever got out or off the detail alive (R 31). The accused beat prisoners viciously with a stick not only at Camp Dachau but at outcamp Allach (R 31, 32, 37, 38). Accused also participated in the execution of prisoners by shooting. The prisoners executed were of all nationalities such as French, Polish, Russian, Belgian and Austrian (R 32, 33). Witness Kohlför, a former inmate, testified to the effect accused beat and kicked Jewish prisoners (R 48, 49). Witness Wolf, a former inmate, testified to the effect accused, while on the prisoner march in April 1945, pulled his pistol from the pistol holster, loaded it, took aim and shot four prisoners in the

head, killing them. These prisoners were lying exhausted in the ditch along the side of the road. Two of them were Russian and one was an Italian (R 54, 55). Witness Richl, a former inmate, testified to the effect accused, on the prisoner march, shot and killed seven or eight Russian or Italian prisoners who were lying along the side of the road too exhausted to continue the march (R 66, 68).

Witness Hahn, a former inmate, testified to the effect accused, while participating in the prisoner march in April 1945, shot with a pistol three prisoners who were lying exhausted in the ditch (R 96, 97).

For the Defense: The accused testified to the effect he left Camp Dachau in the fall of 1942 as his nerves were bad due to his position in the crematory. He had had a nervous breakdown at the end of 1941 (R 91, 92). The only Jewish prisoners working on the crematory detail who disappeared were the ones he had turned over to another SS guard. The Jewish prisoners attacked this guard and the guard shot them. The bodies were burned in Munich (R 105, 106). He did not kill any prisoners in Camp Dachau or on the prisoner march (R 106). During the prisoner march several prisoners escaped but were recaptured and were beaten by some of the guards who also threatened to shoot them. He interceded himself on behalf of the prisoners so they would not be shot (R 107, 108, 110). He also helped prisoners to secure water, milk, bread and a place to sleep. Prisoners who collapsed on the march were left lying on the side of the road as they were to be picked up by vehicles following along in the rear of the column (R 111, 112, 114, 115). At Camp Dachau he reported another SS guard for beating the Jewish prisoners working on the crematory detail. He also aided a young Jewish prisoner by helping him to send a letter out of the camp to his parents (R 122, 123).

Legal Sufficiency of Evidence: The findings of guilty are warranted by the evidence.

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

atrocious 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, AG 000.5, JAG-AGO, subject: "Trial of War Crimes", 15 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 that he not only participated to a substantial degree, but the nature and extent of his participation was such as to warrant the sentence imposed.

The sentence imposed is not disproportionate to the crime.

Petitions: Petition for Review was filed 3 April 1945 by Fred R. Manfredi, defense counsel.

Recommendation: That the findings and the sentence be approved.

5. QUESTIONS OF LAW: The Court was legally constituted and had jurisdiction of the person of the accused and of the offenses.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

6. CONCLUSIONS:

- a. It is recommended that the findings and the sentence be approved.
- b. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

/s/ Elmer Moody
ELMER MOODY
1st Lt., Inf.
Post Trial Branch

Having examined the record of trial, I concur.

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