

9 January 1948

UNITED STATES)

v.)

Georg ARZ)

Case No. 000-50-2-94

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, 23 June 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Georg Arz acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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 Georg Arz acting in pursuance of a common design to commit the acts hereinafter alleged, and as individual(s) 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 SS guard at outcamp Pfersee, an outcamp of Camp Dachau, for a consid-

ed period of time between the dates alleged and he was

shown to have participated in the Dachau Concentration Camp mass atrocities. He personally beat, kicked and mistreated many inmates. 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. WLISS, et al., Case #000-F -2, opinion DJ&C, March 1946, hereinafter referred to as the "Parent Case"; Section V, post, R 7).

IV. EVIDENCE AND RECOMMENDATIONS:

George ARZ

Nationality:	Rumanian
Age:	23
Civilian Status:	Farmer
Party Status:	Unknown
Military Status:	SS Private
Pleas:	NG Charge I, NG Charge II
Findings:	G Charge I, NG Charge II
Sentence:	5 years, commencing 29 April 1945

Evidence for Prosecution: Slawinski testified that the accused was an SS guard at outcamp Pfersee, Augsburg, Germany (R 8). The accused, while guarding the inmates when they marched from outcamp Pfersee to the Messerschmitt factory and return, which was a distance of approximately 12 kilometers each way, beat many inmates with the butt of his rifle. Many of the beaten inmates fell to the ground and they were then kicked by the accused (R 8-10, 20). The inmates at outcamp Pfersee were in a poor physical condition due to the lack of food. Any blow they received would cause them to fall to the ground. Most of the inmates on whom the accused used his rifle were merely pushed. This witness testified that he never personally saw any inmate die as a result of the blows administered by the accused

(R 14, 15).

Lehmann, a former inmate aged sixty-one years, testified that in November 1944 the accused kicked him in the right groin because he did not move fast enough on an icy road (R 20). The accused beat many inmates on their heads and bodies with his rifle butt (R 21). On one occasion while beating the witness, the accused said, "I am beating you, you old bastard, on the head until you fold up like a knife." (R 22). Mitre stated in his extrajudicial sworn statement that the accused, while guarding the inmates at work at the Messerschmitt factory in Augsburg, Germany, during January and February 1945, beat many inmates with his rifle butt. He also kicked them (R 32; P-Ex 3).

Evidence for Defense: The accused testified that he was drafted into service 21 July 1943 from his home in Rumania. He was sent to Camp Dachau for training where he remained for a period of three months. He was then transferred to outcamp Augsburg (Pfersee) with duties as a guard (R 36, 37). He denied the testimony of the prosecution witnesses in that he never beat or kicked an inmate and testified that the prosecution witnesses were mistaken in identifying him (R 37). He never saw other guards or anyone beat or mistreat inmates nor did he ever hear of inmates being beaten. The inmates were well-fed (R 38, 39).

Sufficiency of Evidence: Rumania 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.

V. QUESTIONS OF LAW:

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

Motion to Dismiss: The Court's denial of the defense's motion to dismiss the second charge in particulars at the close of the prosecution's case was proper (R 32, 33). It is not error for a war crimes tribunal to overrule a motion for findings of not guilty made at the close of the case for the prosecution if it believes that there is sufficient evidence to support the charge and that the accused should be required to answer it (Section 5-327.2, Title 5, "Legal and Penal Administration" of "Military Government Regulations" published by Office of Military Government for Germany (U.S.), 27 March 1947, and Section 501, page 409, "Manual for Trial of War Crimes and Related Cases", 15 July 1946). A similar practice is followed in courts-martial procedure (paragraph 71d, "Manual for Courts-Martial, U.S. Army", 1928). The Court in this instance did not abuse its discretion in denying the motion.

Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Dachau Concentration Camp 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 Crimes Cases", 14 October 1946, and the Parent Case). The accused was shown to have participated in the mass

atrocities, and the Court was warranted by the evidence adduced either in the Parent Case or in this subsequent proceedings in concluding 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.

ELMER MOODY
1st Lt. INF
Post Trial Branch

Having examined the record of trial, I concur, this _____
day of _____ 1948.

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