

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

2 February 1948

UNITED STATES)

v.

Albert MUELLER

Case No. 000-Nordhausen-2

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 1 December 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Albert MUELLER, a German national, did at or in the vicinity of Nordhausen, Germany, in or about September 1943, wrongfully encourage, aid, abet and participate in committing an assault upon an unknown Russian national, an inmate of Nordhausen Concentration Camp, who was then in custody of the then German Reich.

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

Particulars: In that Albert MUELLER, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about November 1943, wrongfully encourage, aid, abet and participate in committing an assault upon two Belgian nationals believed to be Albert DeFrey and Marcel Levet, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich.

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

Particulars: In that Albert MUELLER, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about December 1943, wrongfully encourage, aid, abet and participate in the killing of approximately two unknown French nationals, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich.

On motion by the prosecution (R 2) the particulars of Charge II were amended to read as follows:

"In that Albert MUELLER, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about November 1943, wrongfully aid, abet and participate in committing an assault upon one Belgian national believed to be Albert DeFrey and one French national believed to be Marcel Levet, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich."

The particulars of Charge III were amended to read as follows:

"In that Albert MUELLER, a German national, did, at or in the vicinity of Nordhausen, Germany, in or about December 1943, wrongfully encourage, aid, abet and participate in committing an assault upon two unknown French nationals, inmates of Nordhausen Concentration Camp, who were then in the custody of the then German Reich."

III. SUMMARY OF EVIDENCE: The accused was in charge of roll call and counted prisoners entering and leaving the tunnel at Dora, a subcamp of Nordhausen Concentration Camp.

In September 1943, he assaulted an unknown Russian inmate of Nordhausen Concentration Camp. In November 1943, he assaulted two inmates, one a French national and the other a Belgian national at Dora, a subcamp of Nordhausen Concentration Camp. In December 1943, the accused assaulted two unknown French inmates. All of the assaults took place in the vicinity of Nordhausen, Germany.

IV. EVIDENCE AND RECOMMENDATIONS:

Albert MUELLER

Nationality:	German
Age:	26
Civilian Status:	Cook
Party Status:	None
Military Status:	Corporal
Plea:	G Charge I; G Charge II; G Charge III
Findings:	G Charge I; G Charge II; G Charge III
Sentence:	25 years, commencing 1 December 1947

Evidence for Prosecution: Witness DeFroy, who was an inmate of Nordhausen Concentration Camp from 12 October 1943 to 5 April 1945, testified that the accused was in charge of roll call and counted the inmates entering and leaving the tunnel at Dora, a subcamp of Nordhausen Concentration Camp (R 9); that on 5 November 1943 in the secretary's office at Dora, after he and a French comrade named Marcel Levet had escaped and were brought back to the camp, the accused struck both. He employed a stick, a meter long, and a thick cable in administering the beating (R 10). While beating the witness the stick broke after 17 strokes

had been given to the witness and then he used the cable. The accused beat Levst over the head, with a rubber hose containing wire cables; in a place where he had a previous wound. They were then manacled and were required to spend the night without medical attention. Both received serious injuries. DeFroy testified that he was hospitalized for 18 months after the liberation as a result of the beating (R 9-14).

DeFroy further testified that in December 1943, the accused beat two French inmates with a stick and rubber hose; that they were seriously injured; and that one Frenchman died from an infection which set in. The other was assigned to a disciplinary detail where he lost track of him (R 14-17).

Bernhardt, a former inmate of Nordhausen Concentration Camp, stated in a sworn extrajudicial statement that he knew the accused at Dora where the accused was an SS sergeant on duty at the gate; that on first Sunday after 1 September 1943, a Russian inmate escaped, was recaptured and returned to the camp; that the accused beat him so severely with a heavy stick that the Russian received terrible injuries and collapsed (R 22; P-Ex 6).

Evidence for the Defense: The defense offered evidence of mitigating circumstances after the findings by the Court.

Leinweber, a former inmate of Nordhausen Concentration Camp, stated in his extrajudicial sworn statement that the accused never killed anyone there. He knew the accused from October 1943 until January 1945 and saw him practically every day (R 24; D-Ex 1).

Nikel stated in a pretrial unsworn statement that the accused aided the inmates at Nordhausen in every way, and informed them of plans of the SS. He aided 25 inmates to escape during the evacuation and never had an active part in actions directed against inmates (R 25; D-Ex 2).

The accused testified that being young and fresh from the troops he was used to carrying out orders (R 27). He denied beating anyone with a rubber hose or stick. If someone stole he slapped his face once or twice. He was never on duty in the orderly room and was only a corporal. There

he aided inmates, and when he was confronted with 120 - 130 of them, many offered to testify for him. He aided many to escape during the evacuation (R 28, 29).

Sufficiency of Evidence: The plea of guilty of the accused to the charges and particulars was accepted by the Court (R 7, 23). The statements for the prosecution and defense and the evidence introduced as to Charges I and II are sufficient to warrant the Court in findings of guilty. Although the record indicates that defense counsel did not have sufficient time to prepare the defense and witnesses did not appear (R 21), such statements merely constitute assertions by counsel. Defense counsel was assigned 10 days prior to the trial and no continuance was requested to obtain witnesses. However, in view of the possibility that some evidence which might have been presented in mitigation may be lacking, the sentence is deemed excessive.

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

Recommendations: That the findings and sentence be approved, but that the sentence be reduced to 10 years.

V. QUESTIONS OF LAW:

Plea of Guilty: The plea of guilty by the accused was properly accepted by the Court (R 7, 23).

Section 501, "Manual for Trial of War Crimes and Related Cases," 15 July 1946, provides that the Court may impose a sentence on a plea of guilty without further proof. Similarly, Paragraph 88 (a), TM 27-255, "Military Justice Procedure," provides that an accused can be convicted on the basis of a plea of guilty without any evidence being presented.

Section 5-328, Title 5, "Legal and Penal Administration", of "Military Government Regulations", published by Office of Military Government for Germany (US), Change 1, 27 March 1947, provides in part as follows:

"The procedure in Intermediate and General MG Courts shall be the same as that provided herein for Summary MG Courts except that: ***

may be accepted provided the Court is satisfied from the nature of the case that the punishment of death would be clearly excessive and that a lesser punishment which it is within its power to impose would suffice."

Section 5-135, a, Title 5, supra, provides in part, with respect to the procedure in Summary MG Courts, as follows:

"Upon a plea of guilty of all offenses charged, a Summary Court will hear such statements for the prosecution and the defense and such evidence as it requires to enable it to determine the sentence to be imposed. ***"

The Court complied with the above prescribed procedure in accepting the plea of guilty.

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

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

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentence be approved, but that the sentence to 25 years imprisonment be reduced to 10 years.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

E. LLOYD MEYER
Captain CMP
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