

DEPUTY JUDGE ADVOCATE'S OFFICE
7702 WAR CRIMES GROUP
EUROPEAN COMLAND
APO 407

1 December 1947

UNITED STATES)

v.)

Johann VICAN)

Case No. 000-Flossenburg-3

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, on 2 October 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

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

Particulars: In that Johann VICAN, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Russian national, an inmate of Flossenbuerg Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Johann VICAN, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about December 1944, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Flossenbuerg Concentration Camp, who was then in the custody of the then German Reich.

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

Particulars: In that Johann VICAN, an Austrian national, did, at or in the vicinity of Lengenfeld, Germany, in or about January 1945, wrongfully encourage, aid, abet and participate in the killing of an unknown Polish national, an inmate of Flossenbuerg Concentration Camp, who was then in the custody of the then German Reich.

III. SUMMARY OF EVIDENCE: The accused, an Austrian national, was an inmate and capo, at Lengenfeld, a subcamp of Flossenbuerg Concentration Camp, from August 1944 to April 1945. Between November 1944 and February 1945 the accused beat one Russian and two Polish inmates to death.

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IV. EVIDENCE AND RECOMMENDATIONS:

Johann VICAN

Nationality: Austrian
Age: 34
Civilian Status: Weaver
Party Status: None
Military Status: None
Pleas: G Charge I; G Charge II; G Charge III
Findings: G Charge I; G Charge II; G Charge III
Sentence: 20 years, commencing 1 May 1945

Evidence for Prosecution: One witness stated in an extrajudicial sworn statement that the accused, in December 1944, told him, "I just killed a Russian"; that this witness saw the dead body of the Russian inmate in the morgue and that this killing occurred in Lengenfeld (R 9; P-Ex 7). Another witness stated in an extrajudicial sworn statement that in December 1944, the accused beat a Polish inmate with a stick; that this inmate died a few hours later; that in January 1945 the accused beat another Polish inmate; that this inmate died in the camp hospital the next day; and that these inmates were killed in Lengenfeld (R 9; P-Ex 6).

Evidence for Defense: The accused did not testify in Court. In an extrajudicial sworn statement the accused admitted that he was a capo from January 1945 until the end; that he beat inmates on about 50 occasions; and that such beatings were for violations of camp regulations (R 10; P-Ex 8). It was stipulated between the accused, defense attorney and prosecution attorney that the accused was sent to Dachau Concentration Camp as an inmate on 15 October 1940 for anti-Nazi activities; that after his release from Dachau on condition that he join the SS, the accused was sent back to Dachau three days later for failure to join the SS. It was further stipulated that one witness, if present, would testify that the accused beat inmates only for the purpose of maintaining order and discipline and was not unnecessarily brutal; and that another

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witness, if present, would testify that the Polish inmates at Hengenfeld were incorrigible (R 11; D-Ex 1).

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: The Court had jurisdiction of the person of the accused and of the subject matter.

Plea: The Court was not in error in accepting the plea of guilty by the accused. The accused was advised of his rights by the Court. The plea of guilty was accepted by the Court only after the Court had satisfied itself from the nature of the case and evidence adduced that the punishment of death would be clearly excessive and that a lesser punishment which is within its power to impose would suffice. (Section 5-328, Title 5, "Legal and Penal Administration" of "Military Government Regulations", Change 1, published by Office of Military Government for Germany (U.S.)).

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

GEORGE A. McDONOUGH
Attorney
Post Trial Branch

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

C. E. STRAIGHT
Lieutenant Colonel,

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