

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

6 February 1948

U N I T E D S T A T E S)

v.)

Case No. 000-50-5-51

Anton KLEIN)

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused was tried at Dachau, Germany, during the period 22-24 October 1947, before a General Military Government Court.

II. CHARGE AND PARTICULARS:

CHARGE: Violations of the Laws and Usages of War.

Particulars: In that Anton KLEIN, German national or persons acting with German nationals, acting in pursuance of a common design to subject the persons hereinafter described to killings, beatings, tortures, starvation, abuses and indignities, did, at or in the vicinity of the Mauthausen Concentration Camp, at Gestle Hartheim, and at or in the vicinity of the Mauthausen Sub-Camps, including but not limited to Ebensee, Gros-Raming, Gunskirchen, Gusen, Hinterbrühl, Lambach, Linz, Loiblpass, Melk, Schwechat, St. Georgen, St. Lambrecht, St. Valentin, Steyr, Vienna, Wiener-Neudorf, all in Austria, at various and sundry times between January 1, 1942 and May 5, 1945, wrongfully encourage, aid, abet, and participate in the subjection of Poles, Frenchmen, Greeks, Jugoslavs, Citizens of the Soviet Union, Norwegians, Danes, Belgians, Citizens of the Netherlands, Citizens of the Grand Duchy of Luxembourg, Turks, British Subjects, stateless persons, Czechs, Chinese, Citizens of the United States of America and other non-German nationals who were then and there in the custody of the then German Reich, and 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 killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such persons being unknown, but aggregating thousands.

III. SUMMARY OF EVIDENCE: The accused was an inmate at the Mauthausen Concentration Camp and some of its subcamps for considerable periods of time between the dates alleged, and was shown to have participated in the Mauthausen Concentration Camp

mass atrocity as a capo and block oldest. Prosecution's Exhibit 6 is a certified copy of the charges, particulars, findings and sentences in the parent Mauthausen Concentration Camp case (United States v. Altfuldisch, et al., 000-50-5, opinion DJAWC, February 1947, hereinafter referred to as the "Parent Case", see Section V, post; R 6).

IV. EVIDENCE AND RECOMMENDATIONS:

Anton KLEIN

Nationality:	German
Age:	31
Civilian Status:	Agricultural Worker
Party Status:	None
Military Status:	None
Plea:	NG
Findings:	G
Sentence:	Death by hanging

Evidence for Prosecution: The accused became an inmate of a concentration camp in 1938 (R 115), and during the year 1944 he was transferred from Mauthausen Concentration Camp to subcamp Ebensee, where he was capo of the unloading detail and a block oldest (R 109). Two witnesses testified that in September 1944, they saw the accused participate in loading a Russian inmate, who was badly beaten, out of Block 11 at subcamp Ebensee; that the accused placed a rope around this inmate's neck, threw the end over a limb of a tree, and pulled down on the rope, lifting this inmate's feet off the ground, and hanging him; that this inmate remained hanging from approximately 0500 hours until 1200 hours (R 34, 40-43, 60, 61, 67-69). The victim obviously could not have lived after the hanging (R 34). One of the aforementioned witnesses further testified that the accused in 1944, kicked and also beat a Hungarian Jewish inmate with a stick in the washroom at subcamp Ebensee until he was unconscious. Then the accused participated in putting the head of this unconscious

inmate in a keg containing water. The witness saw this inmate carried away on a stretcher, and the witness assumed he was dead (R 61-63). A third witness testified that while he was working in the dispensary during 1944 at subcamp Ebensee, he saw the accused and two other block elders bring one French, one Czech and one Polish inmate to the dispensary, and request the doctor, Captain Jobst, to give them gasoline injections; and that after the doctor refused, the accused participated in driving these three inmates into the electric wire fence where the guards refused to shoot them. These inmates were then taken into the bath room. Later this witness saw these three inmates lying in the dispensary dead, and the witness was told that the accused had participated in drowning them (R 72, 73). The third witness and ~~three additional witnesses~~ testified that between the dates alleged they saw the accused on numerous occasions beat Hungarian, Yugoslavian, Dutch, French, Polish, Russian, and Italian inmates with a stick and rubber hose for the least infractions of the rules of subcamp Ebensee. It was necessary for these inmates to be treated in the dispensary (R 9, 10, 17, 18, 23, 74). One of the aforementioned witnesses further testified that in March 1945 he saw the accused participate in beating a Russian inmate to death with a rubber hose inside of which was a stick, because the inmate had stolen bread; that after this inmate had fallen to the ground the accused proceeded to jump upon the victim's chest with his feet. The witness never saw this inmate again, and he was told that this inmate's body was taken to the crematory (R 23, 24, 30). One of the two witnesses first mentioned, who was a former Polish inmate of subcamp Ebensee, testified that during 1945 the accused gave him and a French inmate 25 strokes each on the buttocks, because they had dropped a case containing glass (R 32, 33). This last mentioned witness further testified that in 1944 the accused severely stamped a Hungarian Jewish inmate with his feet, and that he later saw this inmate's ~~dead~~

body (R 34, 35). A seventh and eighth witness testified that they saw the accused kick and jump upon inmates who were nationals of Allied countries at the roll call square in subcamp Ebensee during 1944 and 1945. One of these witnesses stated that he was told that a Polish inmate died as a result of the aforementioned mistreatments, and the other witness testified that he saw another Polish inmate being carried to the place where dead bodies were usually taken, after having been kicked and jumped upon by the accused (R 49, 50, 53-55). One witness testified he heard the accused took part in the execution of Polish inmates at subcamp Ebensee by crowning and by hanging (R 10,11).

The accused testified that immediately upon his arrival at subcamp Ebensee in 1944, he occasionally beat inmates with a rubber hose (R 111). The first week he was there, he beat eight to ten inmates with a rubber hose. After that time he only admitted slapping them with his hand (R 117).

Evidence for Defense: The accused testified that he arrived at subcamp Ebensee in 1944, and was immediately made a capo in charge of the unloading detail; that later he was made a block eldest (R 109); that on two occasions he was given 25 strokes on the buttocks because upon inspection of his block, iron, dirty socks, and other items were found in some of the beds (R 103); that he saw a Russian inmate hanging from a tree adjacent to his block, but that he had nothing to do with the hanging and does not know who hanged this inmate (R 105); that he was in charge of the detail unloading the cases containing glass on the occasion when one case was dropped, but that he did not administer 25 strokes to the inmates who dropped it, but instead he slapped their faces with his hands (R 106); that he never trampled or stamped an inmate, and never put an inmate's head under water or otherwise participated in killing any inmate (R 107, 108); that he knows nothing about the three inmates to whom it is alleged

he requested Captain Jobst to give injections (R 109). The accused further testified that immediately upon his arrival at subcamp Ebensee in 1944, he participated in punishing inmates by beating them with a rubber hose (R 111), but after 25 strokes on the buttocks were administered to him on two separate occasions, he became aware of the pain occasioned by such treatment, and thereafter he never administered any mistreatment with any instrument other than his hands; that none of these mistreatments caused death or serious injury (R 111, 114, 115, 117). Three witnesses testified that they knew the accused in Mauthausen Concentration Camp, prior to his going to subcamp Ebensee, and that he enjoyed a good reputation among the inmates. One of the aforementioned witnesses testified that the accused had the mentality of a child (R 88). All character witnesses had no personal contact with the accused while he was an inmate in subcamp Ebensee (R 79, 83, 84, 87, 88, 99).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: Petitions for Review were filed by defense counsel, Major Olaf J. Tolnas, Signal Corps, 25 October 1947; and Ludwig Widmann, 3 November 1947. Petitions for Clemency were filed by Konrad Wagner, 6 November 1947; the wife of accused, Mrs. Maria Klein, undated; the accused, 17 November 1947 and 16 January 1948; family of Michael Boeck, 8 December 1947; family of Lorenz Widmann, 4 December 1947; Mathias Frindt, 25 November 1947; Andreas Schilling, 28 November 1947; and Josef Dotzler, 8 November 1947.

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.

Application of Parent Case: 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 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 atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to him 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 the sentence be approved.

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

WILLIAM A. OATES
Major CAC
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