

HEADQUARTERS
EUROPEAN COMMAND
Office of the Judge Advocate

War Crimes Board of Review No. 3

1 March 1948

UNITED STATES : 7708 War Crimes Group APO 407
v. : Trial by General Military Government Court con-
Alfons KUNIKOWSKI : vened at Dachau, Germany on 28 October 1947. The
accused was sentenced to 7 years imprisonment.
Case No. 000-Buchenwald-13

Report of War Crimes Board of Review No. 3

THOMAS, WILSON and MYERS

- I The record of trial in the case of the above named accused has been reviewed by the War Crimes Board of Review No. 3.
- II DISCUSSION: The accused, upon plea of guilty to three charges alleging participation in concentration camps and upon an extra-judicial sworn statement of a witness and his own statement, was found guilty of Charges I and II but was found not guilty of Charge III. The court sentenced the accused to seven years imprisonment. Charge I was amended in the process of the trial to delete allegations of "killing" but to include allegations of "assault." The amendment to the charges does not show upon the charge form, but is included in the record. The evidence is sufficient to support a conviction under Charges I and II for assault but the sentence is believed to be excessive. The statement in the Review and Recommendations by the Deputy Judge Advocate for War Crimes, "This witness further stated that on one occasion he saw the accused strike a young Russian inmate about fifteen times for refusing to participate in an act of sodomy with him" is correct only insofar as it pertains to the beating. The witness' conclusion as to the reason for the beating was hearsay and taken from an inmate VOHANKA who made no statement. The accused vigorously denies that portion of the evidence.
- Petition for Review was filed by the defense counsel under date of 10 November 1947 and the accused filed a Petition for Clemency without date. The Review of the Deputy Judge Advocate for War Crimes adequately covers the Petitions for Review and for Clemency. Such petitions introduce no issue not presented to the court and considered by the Deputy Judge Advocate for War Crimes.

III


CONCLUSIONS: The court was legally constituted and had jurisdiction of the accused and of the offense. No errors or irregularities were committed during the trial resulting in any injustice to the accused. The Board of Review is of the opinion that the evidence in the record of trial is legally sufficient to support the findings of the court but that the sentence recommended for approval by the Deputy Judge Advocate for War Crimes although legal, is excessive. The Review of evidence submitted by the Deputy Judge Advocate for War Crimes is accurate and complete and fully sets forth all material facts except as noted supra.

IV

RECOMMENDATIONS: It is recommended that the findings of guilty be approved but that the sentence of the accused Alfons KUNIKOWSKI to seven years imprisonment be reduced to a term of three years to commence from 9 December 1946 and as reduced be approved and ordered executed.


DAVID H. THOMAS, Lt. Col., AC
Chairman


GEORGE S. WILSON, Lt. Col., Inf.
Member


SHERRY B. MYERS, U. S. Civilian
Member

15 March 1948
Approve reduction in sentence to five years.

J. L. Harbaugh, Jr.