

EXHIBIT No. 3142

(15)

Def. Doc. #2244

Exh. No.

Translated by
Defense Language Branch

Sentenced on July 30, 1943

Put into effect on the same day

Judgment

The Mukden P.O.W. Camp

P.O.W. Joe Bill Chostin (24)
American
Marine Sergeant
Formerly a member of
K Company, 3rd Battalion,
4th Marine Regiment.

The Mukden P.O.W. Camp

P.O.W. Ferdinand F. Mehringolow (21)
American
3rd Warrant Officer
Formerly a member of
the crew of the Canovas,
aircraft carrier.

The Mukden P.O.W. Camp

P.O.W. Victor Palioty (23)
American
Marine Corporal
Formerly a member of
B Company, 1st Battalion,
4th Marine Regiment.

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After trial at this Court Martial with Judiciary Captain NAKAFUJI, Kotaro, a prosecutor, as an advisor, a decision has been given to the cases against the above named defendants: the defendant Chestin on charges of being a ringleader of collective escape, theft, murder, and attempted murder; the defendant Mehringolow on charges of collective escape, theft, murder, and attempted murder; the defendant Palioty on charges of collective escape, murder, and attempted murder.

The decision is as follows:

Text of Judgment

The Court sentences the defendants Chestin, Mehringolow, and Palioty to death.

The seized articles --- a map of Manchoukuo, a compass, and a knife (Exhibit 1 - 3) shall be confiscated.

Reasons

The defendants Chestine, Mehringolow, Palioty were all taken prisoners by the Japanese Army in the battle of Corregidor, the Philippines on May 6, 1942, in consequence of the surrender of the American Army Commander. They were at first interned in the P.O.W. camp on the spot, and later on Nov. 11, 1942 removed to the Marston P.O.W. Camp. The defendant Chestin was strongly built, dauntless, and intrepid. After his internment as a prisoner, very soon he became a latent power among his mates, always taking their leadership. While he was a marine, he was instructed by his superiors that in case he should be taken prisoner he should seize every opportunity to escape from the enemy's hand and come home to America, and that he should not do anything in the interest of the enemy. So he always watched for a chance to escape from the camp, intending to go north-ward and come home by way of Russia. The defendant Mehringolow, a boxer of the American Fleet, was also strongly built, but being loose and reckless by nature, he detested the camp life. On May 1, 1941, he attempted to escape from the camp, but was arrested then. He was sentenced to 30 days' close confinement. But he had no mind to change his way and watched a chance for escape. The defendant Palioty also detested the interned life in the camp and secretly desired to get himself free as soon as possible.

(No. 1) About June 10, 1943, the defendant Chestine revealed his intention to Palioty and Mehringolow and suggested them to escape from the camp with him. The two willingly agreed with him.

... of ... at every opportunity and

After that they met together secretly at every opportunity and talked about the plan for escaping, and all the time Chestin took their lead. He ordered the defendants Mehringgolow and Palioty to arrange necessaries for escaping and travelling. After they had finished the preparations, about noon on the 21st of the same month Chestin called the two into the bathing room in the camp and told them to carry out the plan after the roll-call that evening, taking advantage of darkness as it was moonless that night and appointed the time and place to meet. About 10 o'clock that evening the three met at a hollow place near a storehouse behind the dispensary in the camp. They crept toward the barbed wire entanglements about 50 metres east of the hollow place. About 10:50 they succeeded to pass under the entanglement then they went on foot north-west ward toward Russian territory, helping each other with a compass (which belonged to the defendant Chestin --- exhibit 2) and a map of Manchukuo (which belonged to the defendant Mehringgolow --- exhibit 3) as their guides. But about 6:30 p.m. on July 2, 1948, they were arrested about 3 kilometres south-west of a mongolian village of Liangchiatzu, Putonhargenmitok, Korchin Tsuayii-hochi, West Hsingan Province by members of the vigilantes of the above-mentioned village.

- (No. 2) With the intention of getting necessary tools for the plan,
- (1) in March (the day not clear) of the same year, the defendant Chestin stole 2 knives at two times, with the same criminal intention each time, from the kitchen of the Manchurian Machine Tool Manufacturing Company, 2nd Block, Churin Street Tatung Ward, Mukden, where he was working on duty as cook at that time. The knives belonged to the above company.
 - (2) about June 1, 1948 the defendant Mehringgolow stole a knife (the owner was unknown) placed on the shelf in a room of the camp-affairs section in the camp.
 - (3) While escaping they were pinched for food and went together to a house in which lived Tuasampu (31), an assistant police inspector and Chief of the branch police station at Liangchiatzu. The three asked him for some food without knowing that he was a policeman. Tuasampu, harboring suspicion in his mind, put them a few questions the three tried to put him off with false explanations in a dumb-show that they were German fliers and that their plane had crashed on their way home from Japan, three of their comrades being killed on the spot, and that they were going to the station of the Japanese Army, the assistant police inspector demanded them to accompany him to the

crash scene, and the three defendants were compelled to go there with him. About 4 that afternoon the three left the village with the assistant police inspector followed by Patuten (56) and Kao Fengshan (56), both Mongolians and vigilance men of the village. On their way the defendant Chestin suggested the other two, Mehringolow and Palioty, to kill the assistant police inspector and the two Mongolians. Mehringolow and Palioty agreed with him at once. At this they decided by mutual consent the defendant Chestin would kill the assistant police inspector, the defendant

Mehringolow Patuten, the defendant Palioty Kao Fengshan. About 5 that evening when they came to a sandy place 2 kilometres south-east of the village, the defendant Chestin suddenly attacked Tuwasampu, stabbing his abdomen with the carving knife which he carried with him. Tuwasampu made resistance. Chestin repeatedly stabbed his abdomen the wounds were fatal. At the same time the defendant Mehringolow also attacked Patuten with his knife (Exhibit-3) stabbing Mehringolow's back and breast and Patuten fell on the spot. Tuwasampu died from the wounds in the abdomen at 7:30 p.m. at Yongchiatzu Putonhargennutok on the day. They failed to kill Patuten, although he had to receive a three weeks treatment for his wounds on the breast and back. Kao Fengshan, seeing the scrimmage, immediately took to flight.

- We have recognized the foregoing to be true judging from
- (1) the defendants' depositions made at this court,
 - (2) the Army Judicial policeman's statement concerning the reasons of the arrest of the defendants, which was stated by Hsiechiaosuhai.
 - (3) the inspection statement prepared by the above Judicial policeman.
 - (4) Kao Fengshan's interrogatory prepared by the judicial policeman.
 - (5) the written explanation submitted by YONEMOTO, Haruo, the Chief of the P.O.W. Labor Division of the Manchurian Machine Tool Manufacturing Company.
 - (6) the attestation of Tuwasampu's corpse and Patuten's diagnosis prepared by Surgeon-Lt. YONEMOTO, Shiro.
 - (7) the seized articles, a map of Manchoukuo, a compass, and a knife (Exhibit 1 - 3)
 - (8) the defendant Chestin's offenses of the same nature repeated during a short time.

According to the laws, as to the defendant Chestin as the crime of being a ringleader of the collective escape of P.O.W. shown above (in No. 1) comes under the first clause, Article VII of the Penal Law of P.O.W., we decided to condemn him to death --- one of the penalties provided in the law the crime of theft shown above (in No. 2-(1)) comes under Articles CCXXXV, and LV of the Criminal Law, the crimes of murder and attempted murder shown above (in No. 3) come under Articles LX, CXCI, and CCIII of the Criminal Law. But in the present case as one act has constituted two crimes of murder and attempted murder, penalty should be laid on the more serious crime, murder, according to the first clause of the first paragraph of Article LIV and Article X of the Criminal Law. And his crimes shown above are considered to be concurrent crimes, which were provided in the first clause of Article XLV, but as we have decided to condemn him to death on a charge of his being a ringleader of the collective escape, no more penalties are not imposed upon him on charges of the other crimes.

As to the defendant Mehringolow, as the crime of collective escape shown above (in No. 1) comes under the latter clause of Article VII of the Penal Law of P.O.W., the crime of theft shown above (in No. 2-(2)) comes under Article CCXXXV, and the crimes of murder and attempted murder shown above (in No. 3) come under Articles LX, CXCI, and CCIII. But in the present case as one act has constituted two crimes of murder and attempted murder, penalty should be laid upon the more serious crime, murder, according to the first clause of the first paragraph of Article LIV and Article X of the Criminal Law, accordingly we have decided to condemn him to death --- one of the penalties provided in the law. But we condemn him to death on a charge of murder, no more penalties are not imposed upon him on charges of the other crimes.

As to the defendant Palioty, the crime of the collective escape as shown above (in No. 1) comes under the latter clause of Article VII of the Penal Law of P.O.W.; the crimes of murder and attempted murder shown above (in No. 3) comes under Articles LX, CXCI, and CCIII of the Criminal Law. But in the present case one act has constituted two crimes of murder and attempted murder, penalty should be laid upon the more serious crime, murder, according to the first clause of the first paragraph of Article LIV and Article X of the Criminal Law, accordingly as we have decided to condemn him to death, no more penalties are not imposed upon him on charges of the other crimes.

The seized articles, a map of Manchoukuo, a compass (Exhibit 1-2) were used when they committed the crime shown in No. 1, and the other seized article a knife was used when they committed the crimes shown in No. 3. All these articles do not belong to any person other than the defendants, these shall be confiscated according to Article XIX of the Criminal Law.

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Hereby we decided to give judgment as shown in the text.

On this 30th day of July, 1943

Special Court Martial of Kwantung Army

Presiding Judge:

Major ICHIKAWA, Einoshin

Judge:

Judiciary Captain IMANARI, Ichiro

Judge:

Captain SHIONOYA, Kotaro

The above is a copy of the judgment.

On this 30th day of July, 1943

Special Court Martial of Kwantung Army

Clerk: NAKAMURA, Takeichi

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I certify that this document is an correct copy of the document in the custody of the Prisoner of War Intelligence Bureau.

15 of January, 1947.

P.O.W. Intelligence Bureau

/s/ YOKOI, Koji (seal)