

5-20-3/A
HQ 5 Cdn Armd Div
27 Mar 45

Major T H White,
Perth R

Field General Court Martial - 8 Feb 45
W55305 Pte TOWNSEND R J
C B Highrs

1 On 8 Feb 45 you were the President of a FOCM with Capt N H Shaw, Ir R C and Capt F J Stephen, C B Highrs, as members, for the trial of the m/n on two charges (1) when on active service deserting His Majesty's Service and (2) when on active service absenting himself without leave. The accused pleaded not guilty to the first charge and guilty to the second, was found guilty of the first charge, and was sentenced to undergo four years imprisonment with hard labour.

2 By reference to AA Sec 44, sentences of imprisonment may not be in excess of two years so that the sentence awarded by you in this case was excessive.

3 The first charge alleges that the accused absented himself without leave "with intent to avoid battle". The only witness for the prosecution gave evidence that he did not know the accused, that he was given a list of men who were to be in his section and that he called the roll. The accused could not then be found. This witness was the section comd. He did not know if the section had been warned of any impending action as he had just returned from leave.

4 The accused gave evidence that he had not been warned by anyone that action was imminent. He stated that he knew the platoon he was in, but that the Sgt said something about changing his section, but nothing definite. He was drinking all day of the 20 Dec 44 in his platoon house and woke up the next morning in a house down the road. He did not notice anyone getting ready. There was some talk among the men about going into the line but they expected to rest for a while.

5 The accused further stated that when he went for breakfast to his Company cookhouse on the morning of 21 Dec 44 the Staff told him that the Company had gone, and told him the direction. The accused then got his equipment and started after the Company. This is corroborated by a member of the cookhouse staff who gave evidence. The accused stated that he locked for his unit but could not find it.

6 It is therefore my opinion that there is no evidence that the accused was properly warned for the forthcoming action, nor is there the necessary evidence of an intent to desert.

7 For the reasons given above, I therefore direct that you re-assemble this Court at the earliest opportunity for the purpose of reconsidering your finding on the first charge, and the sentence for both charges. Your attention is directed to AA Sec 54(2), RP 52 and MML page 759 for procedure on revision, and to AA Sec 44 for the scale of punishments which may be awarded. Your attention is also drawn to AA Sec 56(3). The record of your revision will be set out in the form given on page 759 MML.

8 Original proceedings are attached hereto for your consideration, and will be returned with your record of revision.

B. M. Hoffmeister
(B M Hoffmeister) Maj
GOC 5 Cdn Armd Div