

Conviction Of Lt. Calley Affirmed, 2-1

By Eugene L. Meyer
Washington Post Staff Writer

The civilian tribunal that oversees the military justice system affirmed yesterday the conviction and sentence to 20 years at hard labor of Lt. William L. Calley Jr. for his role in the March 16, 1968, Mylai massacre.

The 2-to-1 decision by the Court of Military Appeals cannot be appealed to the Supreme Court. Defense lawyers said the celebrated officer's fate now lies with President Nixon, who promised in April 1971, to review the case. As commander in chief, Mr. Nixon could commute the sentence.

Calley was convicted on March 29, 1971, of murdering 22 civilians, and assaulting with intent to murder a child, in the South Vietnamese hamlet of Mylai during an infantry assault. Calley was sentenced by a six-officer court-martial to life in prison, but the sentence was reduced on review to 20 years.

In affirming that lower sentence yesterday, Judge Robert E. Quinn wrote, "For 100 years, it has been a settled rule of American law that even in war the summary killing of an enemy, who has submitted to, and is under, effective physical control, is murder."

Quinn dismissed defense arguments that pre-trial publicity prejudiced Calley's case, that the government had failed to prove malice, and that a man of Calley's limited intelligence could not have been expected to understand the subtle difference in war between justified killing and murder.

But George W. Latimer, Calley's chief civilian counsel and

See CALLEY, A6, Col. 7

CALLEY, From A1

a former judge of the military review court, called the convicted officer a scapegoat. He said the decision would "bitterly disappoint" hundreds of thousands of Americans.

"Calley is the only person in the Mylai tragedy who ends up with a conviction," Latimer said. "He's been a pawn for that whole string of people involved." (The Army charged 25 officers and enlisted men with offenses ranging from murder to covering up the Mylai incident, and tried six, of whom only Calley was convicted.)

Latimer said the defense would ask the court to reconsider its decision. "If that fails," he added, "I only hope the President will correct this injustices."

White House deputy press secretary Gerald L. Warren said he understood that the next step is for the Secretary of the Army to review the sentence, routine in all cases involving the dismissal of an officer. Other government sources, however, said that Calley's lawyers are trying to have Mr. Nixon review the case directly.

Another possible tactic, which legal observers consider unlikely at this stage, is for Calley's lawyers to seek relief from the U.S. District Court here. This is the only course by which the Supreme Court could have the ultimate say.

The Court of Military Appeals is, in effect, the Supreme Court of the military justice system. Since its creation in 1951, Presidents have commuted 15 of 35 death sentences to life in prison or less. Court officials could not recall any sentences less than death that had received presidential commutation.

As to yesterday's split decision, Capt. J. Houston Gordon, Calley's appointed military counsel, remarked, "We simply were one judge too short."

The dissent, by Chief Judge William H. Darden, was prompted by his acceptance of a key defense argument—that Calley, a person of "the commonest understanding," might not have understood that the killing was manifestly illegal.



LT. W. L. CALLEY JR.
... faces 20-year sentence

order to kill in this case," Quinn wrote, referring to Calley's contention that he was ordered to "waste" all inhabitants of the village, by Capt. Ernest Medina.

In his dissent, Darden argued that the standard given the Calley court-martial for deciding whether a soldier can distinguish between a legal and illegal order is "too strict in a combat environment."

"This standard," Darden wrote, "permits serious punishment of persons whose training and attitude incline them either to be enthusiastic about compliance with orders or not to challenge the authority of their superiors."

The court majority also rejected the defense appeal based on prejudicial pre-trial publicity. "Most of the [journalistic] matter is factual and impersonal in the attribution of guilty" Quinn wrote, adding, "A considerable amount of the material is favorable to Lt. Calley."

The court also found without merit Calley's contention that the evidence was insufficient to prove his guilt, because no malice was shown.

"Enemy prisoners are not subject to summary execution by their captors," Quinn wrote. "Conceding . . . that Calley believed the villagers were part of 'the enemy,' the uncontroverted evidence is that they were under the control of armed soldiers and were offering no resistance."

"Instead of proceeding in the usual way (by interrogating them), Calley executed all, without regard to age, condition or possibility of suspicion."

Under orders from President Nixon, Calley is being held under house arrest at his Ft. Benning, Ga., quarters rather than being confined to the military prison at Ft. Leavenworth, Kan. He could not be reached for comment yesterday.

"In this sort of thing," Latimer said, "I suppose he'll stay where he is until the President reviews it."

Judge Quinn, a World War II naval officer, wrote for the majority that the standard presented the military jury—whether "a man of ordinary sense and understanding" could comprehend the illegality—was adequate.

"In the stress of combat," Quinn wrote, "a member of the armed forces cannot reasonably be expected to make a refined legal judgment and be held criminally responsible if he guesses wrong on a question as to which there may be considerable disagreement."

"But there is no disagreement as to the illegality of the