

Lt. Calley Is Freed By Judge

By William Claiborne
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Lt. William L. Calley Jr., who has been under house arrest at Ft. Benning, Ga., since his conviction three years ago in the 1968 Mylai massacre, was freed yesterday on his own recognizance pending appeals of his case.

U.S. District Court Judge J. Robert Elliott, observing that President Nixon has promised a personal review of Calley's 20-year sentence for murdering 22 Vietnamese civilians, said that if Calley were not released he might end up serving more time than required under a reduced sentence.

Calley walked out of the Columbus, Ga., federal courthouse, smiling and waving to friends. He was escorted by military authorities back to Ft. Benning, where he has lived in confinement in an apartment since March 29, 1971.

Calley has exhausted his military court appeals in the Mylai case, which became a national controversy at the height of the Vietnam war.

An Army court martial found Calley guilty of the premeditated murder of "not less than 22 Vietnamese" and of assault with intent to murder a Vietnamese child.

Following a public outcry over Calley's conviction and the dismissal of charges against higher-ranking officers who allegedly covered up the incident, Mr. Nixon said he would make the final review of the case as commander in chief of the armed forces.

Judge Elliott, in a telephone

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interview yesterday, said that while it is unusual for a civilian court to order bond release for military prisoners, Calley's case is not unprecedented.

He cited the case of Dr. Howard B. Levy, an Army dermatologist who was convicted in a court martial in 1967 for refusing to obey an order to train members of the U.S. Special Forces at Ft. Jackson, S.C.

After serving two years of a three-year prison sentence, Levy was ordered freed on \$1,000 appeals bond by Supreme Court Justice William O. Douglas during a summer recess of the high court. Justice Douglas' order, which followed bond denials by U.S. District and U.S. Appeals Court judges, was subsequently ordered continued by the full Supreme Court.

Elliott said he was also influenced by evidence showing that Calley had been a "model prisoner" and had made no attempt to escape from his red brick bachelor officer's apartment building at Ft. Benning.

Moreover, Elliott said in the interview, Calley had no criminal record prior to the Mylai conviction, and is not of any danger to himself or others.

The judge noted that Calley was released on his own recognizance during the Mylai court martial, and that there now appears to be little likelihood that he will attempt to flee while Army Secretary Howard H. Callaway and Mr. Nixon review the conviction.

Elliott said he was particularly influenced by a possible injustice that might arise if Calley's 20-year sentence is substantially reduced as a result of the reviews.

"Since it is uncertain when these reviews will be completed, the effect of this situation is that unless released on bail it is possible that he will be confined for a longer pe-

riod than would have been required by the terms of his sentence as it may eventually be reduced," Elliott said in the order.

Since his court martial, Calley has been allowed off base only twice, once to visit his dying father in Gainesville, Fla., and once to testify in the court martial of Capt. Ernest Medina. Medina, Calley's commanding officer, was acquitted.

In yesterday's two-hour bond hearing, Calley was joined in his plea by Anne Moore, his frequent companion, who said Calley "never showed any anger or hostility" in discussing his case. Miss Moore, who said she did Calley's shopping and secretarial duties, described the lieutenant as a "very likeable person."

Calley, 30, testified briefly, saying he planned to seek employment in Columbus because of a "financial need." He said he was receiving no Army pay and needed money to pay for his defense. He also said his release would enable him to consult more freely with his attorneys.

Army officials had no comment following Calley's release, which technically was under a \$1,000, unsecured signature bond. Judge Elliott said Army prosecutors could appeal the bond order, although court sources said that is an unlikely possibility.

["A possible appeal is under study," an Army spokesman told the Associated Press, adding that nothing has been decided. "We are scratching our heads right now" on how to proceed, a senior lawyer said.]

Calley was first sentenced to life imprisonment for the Mylai crimes, but the sentence was later reduced to 20 years. The President subsequently ordered Calley held in confinement to quarters pending appeal.



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Anne Moore and Lt. Calley: he "never showed any anger or hostility," and is "a very likeable person."