



UNITED STATES
COURT OF MILITARY COMMISSION REVIEW

DAVID M. HICKS,)	SPECIFIED ISSUE
)	
Appellant)	
)	
v.)	
)	
UNITED STATES,)	CMCR Case No. 13-004
)	
Appellee)	November 20, 2014

BEFORE:

KRAUSS, PRESIDING Judge
SILLIMAN, WEBER, Judges

The Court specifies the following issue:

Appellant signed and submitted a waiver of appeal in accordance with his pretrial agreement after the sentence was announced; however, it was not refiled within 10 days after the Convening Authority’s action was served on the accused or on defense counsel as required by 10 U.S.C. Sec. 950(c)(b)(3) (2006), Manual for Military Commissions (2007), Rule for Military Commissions 1110(f)(1), and Regulation for Trial by Military Commissions (Apr. 27, 2007), Sec. 25-7.a.2. Appellant did not request, and the Convening Authority did not grant an extension. Appellant did not object to his case not being referred for appeal until 2013.

In 2009, Congress expanded the scope of review for the Court of Military Commission Review. Title 10 U.S.C. § 950f(d) (2009) provides, “The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.”

Applying the 10 U.S.C. § 950f(d) (2009) standard of review, should our Court affirm Appellant’s finding of guilty of providing material support to terrorism, in violation of 10 U.S.C. § 950v(b)(25) (2006), in light of *United States v. Al Bahlul*, 767 F.3d 1 (D.C. Cir. 2014)?

It is, therefore, **ORDERED** that:

The Convening Authority shall provide electronic copies of the “entire record” to Appellant and Appellee and four copies to the Court for review under 10 U.S.C. § 950f(d) (2009) not later than five days after the date of this Order. This requirement should not be construed that the Court has decided that the waiver of appeal is invalid.

The abeyance ordered on September 2, 2014, is ended effective November 20, 2014.

Appellant is ordered to address the specified issue not later than 30 days after the date of this order.

Appellee’s response brief is due not later than 30 days after the date Appellant’s response is received.

Any reply brief is due not later than five days after the date Appellee’s response is received.

FOR THE COURT:


Mark Harvey
Clerk of Court, U.S. Court of Military
Commission Review