



**UNITED STATES
COURT OF MILITARY COMMISSION REVIEW**

IBRAHIM AHMED MAHMOUD)	
AL QOSI,)	ORDER
)	
Petitioner)	
)	
v.)	
)	CMCR Case NO. 17-001
UNITED STATES,)	
)	
Respondent)	March 11, 2017

BEFORE:

**POLLARD, PRESIDING JUDGE
HERRING, CELTNIKS, JUDGES**

Counsel appointed by the Office of Military Commissions (OMC) Chief Defense Counsel seek to appeal Ibrahim al Qosi’s conviction. In accordance with his pretrial agreement, al Qosi pleaded guilty to one specification of conspiracy to commit terrorism and conspiracy to provide material support for terrorism, and one specification of providing material support to al Qaeda, an international terrorist organization, in violation of 10 U.S.C. §§ 950t(29) and 950t(25).

On February 3, 2011, the Convening Authority approved al Qosi’s sentence, and, in compliance with his pretrial agreement, suspended execution of all confinement in excess of two years. In 2012, al Qosi was released from confinement and transferred to his native Sudan. The Convening Authority did not refer al Qosi’s conviction to this Court for review because as part of the disposition of the charges against him al Qosi had waived his right to that appeal. Counsel now contends that al Qosi’s appeal is properly before the Court for plenary review as provided by 10 U.S.C. § 950f, and has filed a brief on his behalf seeking to overturn and vacate his conviction.

One of the attorneys, Mary R. McCormick, Esq., previously sought interim relief in this Court on behalf of al Qosi requesting, among other things, that we exercise our jurisdiction under the All Writs Act, 28 U.S.C. § 1691, and issue five writs of mandamus and prohibition principally seeking funds for Ms. McCormick’s travel

to the Sudan with an interpreter to consult with al Qosi regarding his post-conviction and appellate rights and seeking an extension of the time by which al Qosi would be required to file a motion for a new trial. Ms. McCormick also appealed the Convening Authority's denial of a motion for a new trial that she had filed.

This Court "den[ied] each of the writ applications and affirm[ed] the denial of the petition for a new trial. Our decision principally turn[ed] on the ground that the record contains no evidence that an attorney-client relationship exists between CAPT McCormick and Al Qosi. Without such a relationship, CAPT McCormick may not initiate litigation, file any pleading or seek any relief on behalf of Al Qosi." *United States v. Al Qosi*, 28 F. Supp. 3d 1198, 1201 (USCMCR 2014), The United States Court of Appeals for the District of Columbia Circuit dismissed the appeal to its Court. *In re Al Qosi*, 602 Fed. Appx. 542 (D.C. Cir. 2015) (unpub.). It held, "There is no evidence that al Qosi authorized Captain McCormick to pursue these petitions [under the All Writs Act]. . . . Without authorization [to act as counsel in prosecuting an appeal], we lack a justiciable case or controversy." 602 Fed. Appx. 542 at *2-*3.

Joining Ms. McCormick as counsel on the instant appeal is Suzanne Lachelier, Esq. She was assigned by the OMC Chief Defense Counsel as assistant appellate counsel. Previously, Ms. Lachelier was one of al Qosi's trial attorneys. *See* Appellant's Br. at 5, n 3. Counsel, however, has not provided the Court with any evidence that al Qosi has consented to be represented by either of them in appellate matters, or that he has authorized them to proceed with this appeal.

Accordingly, once more, there is a threshold issue that must be addressed: To wit, is the appeal before this Court duly authorized by al Qosi. The answer to this question includes whether al Qosi has consented to Ms. McCormick and Ms. Lachelier acting as his attorneys for the appeal before the Court.

There is another issue that may bear upon this appeal. For several years there have been reports that since his release in 2012, al Qosi has joined Al-Qaida of the Arabian Peninsula and has urged attacks on the United States. *See, e.g., Miami Herald*, "Freed Guantánamo Convict Returns to the Fight," Dec. 10, 2015, <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article49022855.html>. Last accessed March 11, 2017. Whether this is true needs to be answered, and the Government will be directed to do so. What impact any post-release participation in hostilities against the United States or its coalition partners, if any, may have on the instant appeal is for another day.

ORDER

Therefore, it is hereby

ORDERED that, on or before March 23, 2017, Ms. McCormick and Ms. Lachelier shall file with the Court a statement signed by both in which they shall state whether one or both of them has personally communicated with al Qosi since his release and return to the Sudan in 2012, and, if so, did they obtain his informed consent, expressly or impliedly, to act as his attorney in the instant appeal before this Court and the factual basis for that conclusion. Counsel may submit any additional factual information that bears upon the existence of any attorney client relationship between one or both of them and/or any other defense counsel and al Qosi that exists or existed after his return to the Sudan. Counsel may file *ex parte* and under seal any privileged communication between al Qosi and them and/or any other defense counsel regarding any authorization to act on his behalf and to prosecute the instant appeal. It is hereby further

ORDERED that, on or before March 23, 2017, the Government shall file with the Court a statement signed by counsel for the Government stating whether the Government contends that al Qosi is an enemy belligerent, privileged or unprivileged, currently or at any time since his 2012 release and repatriation, and the factual basis for the Government's contention. The Government may file under seal any information that has been classified. However, any such filing shall be served upon Ms. McCormick and Ms. Lachelier. If defense counsel does not have the appropriate security clearances, the Government shall promptly initiate the process for counsel, upon proper approval, to obtain such clearance. If the Government files a response under seal, at the same time it shall file an unclassified response that can be docketed on the public record that states its position and, to the extent practicable, the basis for it. It is hereby further

ORDERED that, no argument may be made and no other pleadings may be filed by any party regarding the matters raised by this Order without the prior consent of this Court. It is hereby further

ORDERED that, the February 15, 2017 scheduling order is vacated and all further briefing of al Qosi's appeal is adjourned until further order of this Court.

FOR THE COURT:


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