



**UNITED STATES
COURT OF MILITARY COMMISSION REVIEW**

DAVID M. HICKS,)	ORDER
)	
Appellant)	
)	
v.)	
)	
UNITED STATES,)	CMCR Case No. 13-004
)	
Appellee)	December 4, 2013

BEFORE:

**ROAN, PRESIDING Judge
KRAUSS, MODZELEWSKI, WARD, SILLIMAN, Judges**

On November 6, 2013, this Court issued a Briefing Schedule directing the Appellee to “file ... a response to the Respondent’s Appeal in CMCR Case No. 13-004 ... [and] in addition to whatever the Respondent deems pertinent, the Respondent’s Response Brief should address the Court’s authority to consider this appeal.” After review of the Appellee’s November 22, 2013 Motion to Stay and the Appellant’s November 23, 2013 Motion in Opposition to the Stay, it is hereby ordered that:

This Court’s November 6, 2013 Briefing Schedule is WITHDRAWN.

1. The Appellant and the Appellee shall file briefs with supporting documentation which address only matters relevant to this Court’s authority to hear this case including, but not limited to:

a. Statutory and other authority relevant to determining “whether the case [is] properly before [this Court].” *United States v. Shipp*, 203 U.S. 563, 573 (1906).

b. Whether the convening authority complied with the “automatic referral for appellate review” requirements of 10 U.S.C. § 950c(a) and R.M.C. 1111?

c. When were the accused and defense counsel served with the convening authority’s action? *See* 10 U.S.C. § 950c(b)(3); Manual for Military

Commissions, Rules for Military Commissions 1107(h) and 1110(f)(1); and Regulation for Trial by Military Commission (RTMC), paragraphs 23-10 and 24-2.b.

d. Whether the accused “file[d] with the convening authority a statement expressly waiving [his] right” to review by this Court? 10 U.S.C. § 950c.

(1) Was any such waiver of review by this Court: “signed by both the accused and a defense counsel?” 10 U.S.C. § 950c(b)(2).

(2) Was any such waiver of review by this Court “filed . . . within 10 days after notice of the [convening authority’s] action [was] served on the accused or on defense counsel[,]” or filed after the “period for such filing” was extended by the convening authority? 10 U.S.C. § 950c(b)(3).

(3) Was any such waiver of review by this Court the subject of discussion, on the record, between the Appellant and the military commission judge?

(4) What effect, if any, does a negative response to any question posed in 1(d)(1)-(3) have upon the legal sufficiency of any such waiver?

e. Whether “[t]he Legal Advisor to the Convening Authority . . . review[ed] any waivers [of review by this Court] submitted to the Convening Authority for completeness” and the result of any such review? RTMC, paragraph 24-2.b.5 (2011).

f. What effect, if any, does the statement in the RTMC that “[t]he USCMCR should decide the legal sufficiency of waivers” have upon our authority to hear this case? RTMC paragraph § 24-2.b.5 (2011).

2. Briefs on this Court’s authority to hear this case shall be filed by both the Appellant and the Appellee on or before 5:00 PM on December 19, 2013. Each party may file an Answer, not to exceed 15 pages, no later than 5:00 PM on January 10, 2014.

FOR THE COURT:


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