

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-1075

September Term, 2014

FILED ON: MAY 1, 2015

In re: IBRAHIM AHMED MAHMOUD AL QOSI,

PETITIONER

Consolidated with 14-1076

On Petition for Review of a Judgment
of the U.S. Court of Military Commission Review and a Petition for Writ of Mandamus

Before: TATEL and GRIFFITH, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*

J U D G M E N T

We are confronted with both a petition for writ of mandamus and a petition for review of a decision dated April 24, 2014 by the United States Court of Military Commission Review. We have accorded the issues full consideration and have determined that they do not warrant a published opinion. See D.C. Cir. R. 36(d). It is

ORDERED and **ADJUDGED** that the petitions be dismissed for lack of jurisdiction. Al Qosi's appointed appellate defense counsel, Captain McCormick, seeks review of a decision by the Court of Military Commission Review, or alternatively, *inter alia*, mandamus relief invalidating the decision. Because al Qosi has not authorized these actions, we conclude that we lack jurisdiction and dismiss the petitions.

In the decision below, the Review Court denied counsel's request for mandamus relief to compel funding for her travel to Sudan to consult with al Qosi about potentially appealing his conviction, on the ground there was no attorney-client relationship between Captain McCormick and al Qosi. *United States v. Al Qosi*, 28 F. Supp. 3d 1198, 1203 (USCMCR 2014).

There is no evidence that al Qosi authorized Captain McCormick to pursue these petitions. Captain McCormick does not argue to the contrary. Instead, she asserts that al Qosi's conviction is properly before this court due to the confluence of her appointment

by the Chief Defense Counsel, al Qosi's automatic appeal to the Review Court (given the alleged ineffectiveness of his waiver), see 10 U.S.C. § 950c(a)–(b), and the fact that he has not disavowed his appeal. But Captain McCormick cites no authority for the proposition that an attorney derives appeal authorization from this mix of factors. Cf. *United States v. El-Mezain*, 664 F.3d 467, 578 (5th Cir. 2011) (the crucial decision whether to appeal is the province of the defendant, not of defense counsel). Without authorization, we lack a justiciable case or controversy. Section 950c's automatic referral is only to the Review Court, not this court. Whatever the effect of that automatic referral, it has no bearing on our jurisdiction.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate in case number 14-1075 until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk