

(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

(A) the accused may not be tried for any offense of which the accused was found not guilty by the first military commission; and

(B) no sentence in excess of or more than the original sentence may be imposed unless—

(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

(ii) the sentence prescribed for the offense is mandatory.

(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2602.)

PRIOR PROVISIONS

A prior section 950e, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2621, related to rehearings, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 950f. Review by United States Court of Military Commission Review

(a) ESTABLISHMENT.—There is a court of record to be known as the “United States Court of Military Commission Review” (in this section referred to as the “Court”). The Court shall consist of one or more panels, each composed of not less than three judges on the Court. For the purpose of reviewing decisions of military commissions under this chapter, the Court may sit in panels or as a whole, in accordance with rules prescribed by the Secretary of Defense.

(b) JUDGES.—(1) Judges on the Court shall be assigned or appointed in a manner consistent with the provisions of this subsection.

(2) The Secretary of Defense may assign persons who are appellate military judges to be judges on the Court. Any judge so assigned shall be a commissioned officer of the armed forces, and shall meet the qualifications for military judges prescribed by section 948j(b) of this title.

(3) The President may appoint, by and with the advice and consent of the Senate, additional judges to the United States Court of Military Commission Review.

(4) No person may serve as a judge on the Court in any case in which that person acted as a military judge, counsel, or reviewing official.

(c) CASES TO BE REVIEWED.—The Court shall, in accordance with procedures prescribed under regulations of the Secretary, review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter properly raised by the accused.

(d) STANDARD AND SCOPE OF REVIEW.—In a case reviewed by the Court under this section, the Court may act only with respect to the findings

and sentence as approved by the convening authority. 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. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.

(e) REHEARINGS.—If the Court sets aside the findings or sentence, the Court may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Court sets aside the findings or sentence and does not order a rehearing, the Court shall order that the charges be dismissed.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112-81, div. A, title X, §1034(c), Dec. 31, 2011, 125 Stat. 1573.)

PRIOR PROVISIONS

A prior section 950f, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2621; amended Pub. L. 110-181, div. A, title X, §1063(a)(6), Jan. 28, 2008, 122 Stat. 322, related to review by Court of Military Commission Review, prior to the general amendment of this chapter by Pub. L. 111-84.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81 substituted “judges on the Court” for “appellate military judges” in second sentence.

§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court

(a) EXCLUSIVE APPELLATE JURISDICTION.—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review) under this chapter.

(b) EXHAUSTION OF OTHER APPEALS.—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) TIME FOR SEEKING REVIEW.—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed in the Court of Appeals—

(1) not later than 20 days after the date on which written notice of the final decision of the United States Court of Military Commission Review is served on the parties; or

(2) if the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the United States Court of Military Commission Review, not later than 20 days after the date on which such notice is submitted.