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Short Form Order MOTION DEPT.

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART B - QUEENS COUNTY
Jamaica, New York 11435

PRESENT: HON. JOSEPH G. GOLIA
Justice

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NATALE CARBONE,

Defendant.

Ind. No. 1821/91

Motion: Recusal to set aside sentences

Submitted: July 1, 2009

Hearing:

Trial:

The following papers numbered 1 to 5 submitted on these consolidated motions.

Defendant - Pro Se

For the Motion
Jennifer S. Michael ADA

Opposed

	Papers Numbered
Notice of Motion and Affidavits/Affirmations Annexed	1-4
Answering and Reply Affidavits/Affirmations	5
Exhibits	
Minutes	

Upon the foregoing papers, and in the opinion of the Court herein, defendant's motions are denied in according with the decision annexed.

The Clerk of the Court is directed to mail a copy of this decision and Order thereupon to the defendant at his place of incarceration and to the District Attorney.

DATED: July 15, 2009

JOSEPH G. GOLIA, J.S.C.

MEMORANDUM

HON. JOSEPH G. GOLIA, J.S.C.
SUPREME COURT, STATE OF NEW YORK
CRIMINAL TERM -QUEENS COUNTY
PART B

THE PEOPLE OF THE STATE OF NEW YORK

-against-

NATALE CARBONE,

Defendant.

IND. NO: 1821/91

DATED: July 15, 2009

Defendant, Natale Carbone, filed a pro se motion (as modified) to set aside the sentence; a second motion seeking this Court's recusal from any further proceedings in this case; and a third motion to vacate the judgment.

The three motions are consolidated for the purpose of this decision and Order.

In view of defendant's assertion that I should recuse myself from deciding these motions based upon my alleged "deeply-seated antagonism toward defendant", it is appropriate to briefly present the history and circumstances of this case. It is also important to appreciate that this defendant admitted killing one young man and attempting to kill another all because of his belief that his son was swindled in the purchase of a used car.

In any event, on July 9, 1990 defendant took his gun, placed his son (co-defendant) in his car and drove off to confront Mr. Vito Vulpis who had sold this used car to Mr. Carbone's son. Prior to seeing Mr. Vulpis, they stopped and got into a confrontation with Mr. Vito Ruggiero. During the course of that confrontation Mr. Carbone pulled out his gun and shot Mr. Ruggiero in the head and killed him. He then got back into the car with his son and drove over to Mr. Vito Vulpis and shot at him four times, striking him once in the arm.

This defendant's son was arrested shortly thereafter while Mr. Carbone remained in hiding from the police. Sometime later, Mr. Carbone arranged to surrender to the police after making a statement to a television news reporter. Mr. Carbone was arrested and indicted on two counts of Murder in the Second Degree, one count of Attempted Murder in the Second Degree, two counts of Assault in the First Degree, one count of Assault in the Second Degree, and one count of Criminal Possession of a Weapon in the Second Degree.

At trial this defendant presented a defense of not guilty by reason mental disease or defect as well as the defense of extreme emotional disturbance. At the conclusion of the trial, the jury found Mr. Carbone guilty of Manslaughter in the First Degree, Attempted Manslaughter in the Second Degree, and Criminal Possession of a Weapon in the Second Degree. The jury also found his son not guilty of any of the crimes charged against him.

On August 10, 1992, I sentenced Mr. Carbone to a prison term of 8 1/3 to 25 years for Manslaughter in the First Degree, 5 to 15 years for Attempted Manslaughter in the Second Degree, and 5 to 15 years for Criminal Possession of a Weapon in the Second Degree with all terms to run consecutively to one another.

Thereafter on January 18, 1994 Mr. Carbone moved to vacate his judgment of conviction under CPL§440.10 on the grounds that he was not provided with the audiotape that was produced during the autopsy upon the claim that such tape constituted Rosario material. On April 11, 1994 I denied that motion upon a finding that it did not constitute Rosario material.

Mr. Carbone sought leave to appeal that decision and the Appellate Division denied defendant's request.

Thereafter in August of 1994, Mr. Carbone filed a direct appeal of his conviction and also claimed that his sentence was illegal in that the sentence for Criminal Possession of a Weapon in the Second Degree can not run consecutively to his sentence for the Manslaughter counts. He also claimed that the length of this Court's sentence for the Manslaughter convictions were excessive and must be reduced.

Although the Appellate Division modified this Court's sentence to the extent of directing that the sentence relating to the Criminal Possession of a Weapon in the Second Degree run concurrently with the other two sentences, they unanimously affirmed Mr. Carbone's conviction on all three counts and they also specifically held that the length of the "defendant's sentence is not excessive."

Mr. Carbone then filed an application to the Court of Appeals seeking review of the holding of the Appellate Division. That application was denied on September 1, 1995.

Approximately two years later on July 22, 1997, Mr. Carbone filed a pro se motion before me seeking to set aside his sentence pursuant to CPL§440.20(1) on the grounds that his sentence, as modified by the Appellate Division's ruling constituted an illegal sentence.

I denied that motion on September 22, 1997.

Mr. Carbone then sought redress in the Appellate Division which denied his application for leave to appeal by Order dated December 19, 1997.

Subsequently, this defendant also filed a petition for a Writ of Habeas Corpus in the United States District Court, Eastern District which was denied on October 20, 1997. His application on March 5, 1998 for leave to appeal that denial was rejected by the U.S. Court of Appeals for the Second Circuit.

It is the denial of my Order of September 22, 1997 which constitutes the grounds for Mr. Carbone's current motion. His present motion to vacate his judgment of conviction is based upon the somewhat convoluted claim that I did not have the authority (subject matter jurisdiction) to review a determination of the Appellate Division. In other words, Mr. Carbone appears to be arguing I should have simply refused to entertain this motion to vacate his sentence inasmuch as the Appellate Division had previously ruled on it.

Mr. Carbone is not reading my decision of September 22, 1997 carefully. In that Order, I specifically found that "In view of the holding of the Appellate Division, it is clear that the defendant's modified sentence is proper, legal and not excessive." This, I believe, should have satisfied Mr. Carbone that I did not overrule the Appellate Division.

For the reasons stated above, Mr. Carbone's motion to vacate his judgment of conviction on the grounds that this Court exceeded its "subject matter jurisdiction" is denied. Indeed, my Order specifically refers to the Appellate Division's ruling as controlling authority.

As regards the two remaining motions filed by the defendant;

The first motion seeks my recusal from this case on the grounds that I imposed the maximum sentence because I harbor a "deeply-seated antagonism" toward defendant for having successfully presented a defense of extreme emotional disturbance. I can simply state that such is not the case. The sentences that I imposed were predicated upon the nature and circumstances of the crimes for which this defendant was convicted as well as upon the information that was contained in the probation report.

Accordingly, defendant's motion seeking my recusal is denied.

The remaining motion (as modified) which is to set aside the sentencing as unduly harsh is similarly denied. To the extent that defendant argues that the sentences which I imposed were in any way predicated by my feeling of animus toward him, is simply not true. To the further extent that the motion seeks to set aside the sentences as being excessive, I once again reference the holding of the Appellate Division which found that they were "...not excessive".

Accordingly, the defendant's motions are denied and there are insufficient grounds to warrant a hearing.

The Clerk of the Court is directed to mail a copy of this decision and Order thereon to the defendant at his place of incarceration and to the District Attorney.

JOSEPH G. GOLIA, J.S.C.