

circumstances exist here. Mollo requested the virtually identical relief in a September 29, 2011, motion to clarify sentence. The Court denied that relief, indicating that it had no authority to amend its judgment or to grant administrative relief regarding the Bureau of Prisons' calculations. Although I can appreciate what Mollo describes as the "time sensitive" nature of his challenge, since the underlying judgment involved only a thirty-three month sentence that is almost two-thirds completed, nevertheless these are not the sort of extraordinary circumstances that would warrant acting on a section 2255 motion while an appeal raising related issues is still pending.

This case is in the same posture as it was on November 21, 2011, when the trial judge denied this first motion, except that Mollo has obtained some "relief" from the state court in that his two state convictions have been amended to reflect that it was the intent of the state judiciary that his two sentences run concurrent with his federal sentence. (Me. Super. Ct. Order on Am. Pet. for Post-Conviction Relief, ECF No. 90-1.) That order does not alter the terrain in this federal case in that it does not alter or amend the judgment of this Court. Nor does it address the issue of administrative exhaustion of remedies upon which this Court relied in its earlier order denying relief. (See ECF No. 89.) Mollo does not complain that his federal attorney provided ineffective assistance or that his constitutional rights were violated in any other fashion. His complaint in this motion to vacate, as in his earlier motion to clarify sentence, is that he wants this Court to either correct its judgment or send a clarifying memorandum to the Bureau of Prisons so that he will receive additional time as credit on this sentence.

Based upon the fact that Mollo's direct appeal remains pending and the fact that this Court has previously denied a motion seeking the identical relief relying upon Mollo's failure to

exhaust administrative remedies, I recommend summary dismissal without prejudice of this petition pursuant to Rule 4(b) Rules Governing Section 2255 Proceedings.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

May 8, 2012

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Case title: USA v. MOLLO

Related Case: [2:12-cv-00153-DBH](#)

Date Filed: 12/20/2006

Date Terminated: 04/24/2007

Assigned to: JUDGE D. BROCK
HORNBY

Defendant (1)

ARTHUR J MOLLO, III
TERMINATED: 04/24/2007

represented by **ARTHUR J MOLLO, III**
03598-036
FCI JESUP
2680 HIGHWAY 301 SOUTH
JESUP, GA 31599
PRO SE

PETER E. RODWAY
RODWAY & HORODYSKI
30 CITY CENTER
PORTLAND, ME 04104
773-8449
Email: rodlaw@maine.rr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Plaintiff

USA

represented by **DONALD E. CLARK**
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
(207) 780-3257
Email: donald.clark@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARGARET D. MCGAUGHEY
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
(207) 780-3257
Email:
margaret.mcgaughey@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED