

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of November, two thousand and seventeen,

Present:

Amalya L. Kearse,
José A. Cabranes,
Richard C. Wesley,
Circuit Judges,

United States of America,

Appellee,

ORDER
Docket No. 17-1126

John Gotti, Salvatore Gravano, Thomas Gambino,
Guiseppe Gambino, AKA Joe, AKA Joey, Philip
Loscalzo, AKA Skinny Phil,

Defendants,

Frank Locascio,

Defendant - Appellant.

Appellant Frank Locascio filed a motion for reconsideration and the panel that determined the motion has considered the request. IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court




MANDATE

E.D.N.Y.-Bklyn
90-cr-1051
Glasser, J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of October, two thousand seventeen.

Present:

Amalya L. Kearse,
José A. Cabranes,
Richard C. Wesley,
Circuit Judges.

United States of America,

Appellee,

v.

17-1126

Frank Locascio,

Defendant-Appellant,

John Gotti, et al.,

Defendants.

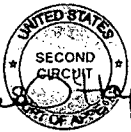
Appellant moves for recall of the mandate in his direct criminal appeal and for vacatur of his conviction and sentence on the ground that the district judge should have recused himself, or alternatively for a remand to determine whether there should have been such a recusal. Upon due consideration, it is hereby ORDERED that the motion is DENIED. Because Appellant challenges the legality of his conviction and made a prior motion to vacate his conviction pursuant to 28 U.S.C. § 2255, which was denied on the merits, his present motion to recall the mandate may not properly be granted unless he satisfies the criteria set forth in § 2255 (h) for the filing of a successive § 2255 motion. *See Bottone v. United States*, 350 F.3d 59, 63 (2d Cir. 2003) (a prisoner challenging the legality of his conviction “cannot evade the successive petition restrictions of 28 U.S.C. § 2255 . . . by framing his claims as a motion to recall the mandate”). A second or successive § 2255 motion is not permissible unless it is based on either “(1) newly

MANDATE ISSUED ON 11/16/2017

discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” 28 U.S.C. § 2255(h). Appellant’s motion does not satisfy these criteria. It does not rely on a new rule of constitutional law; and recusal of the district judge would in no way establish Appellant’s innocence.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit