

**DISTRICT COURT OF NASSAU COUNTY  
FIRST DISTRICT CRIMINAL TERM**

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

**INDEX NO. CR-020835-18NA**

against

**Present:**

LAWRENCE SEAMAN,

**Hon. David Goodsell**

Defendant.  
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The following named papers numbered 1 to 3  
submitted on this motion

	Papers Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Affirmation in Opposition	2
Reply Affirmation	3

The defendant moved to "eliminate" an order of protection and to allow reclaiming and use of firearms surrendered in connection with an order of protection issued following sentencing after a conviction for an incident occurring on August 10, 2018. The District Attorney opposed the application. A hearing was ordered to resolve questions of fact surrounding the application by the defendant.

The hearing took place on December 16, 2019. The defendant, Dr. Philip Arena and Assistant District Attorney Sherwyn Safir testified at the hearing.

The defendant entered a plea of guilty to PL §240.26(1) [Harassment in the Second Degree] as a lesser charge on November 2, 2018 after the District Attorney moved to reduce the top count from PL §121.11 [Criminal Obstruction of Breathing] and to dismiss the charge of PL §120.15 [Menacing in the Third Degree]. The District Attorney recommended a conditional discharge. This Court sentenced the defendant on November 2, 2018 to a conditional discharge, fines, surcharges and issued the requested "Stay Away" order of protection. The order of protection issued at the time of sentence for the benefit of the complainant, Linda Baker, included the requirement for the defendant to "surrender any and all handguns, pistols, revolvers, rifles, shotguns, and other firearms owned or possessed...and not to obtain any further guns or other firearms...". The protective order by its statutory terms was to remain in effect until November 1, 2020.

The defendant filed a motion for an order "closing the file as abated by death of the complaining witness on July 31, 2019. The application failed to contain statutory of legal authority for the relief requested and was denied on that basis in an order dated September 18, 2019.

The defendant filed a second motion seeking similar relief but citing applicable law on October 1, 2019. The People opposed the application. Based upon issues of fact, this Court ordered a hearing in a decision dated November 8, 2019.

At the hearing, the defendant established that he is a commercial fisherman who lives in large measure by hunting and fishing. Prior to his arrest in this case, the defendant possessed a license to possess firearms. The defendant surrendered his firearms and firearms license upon the issuance of the order of protection issued at arraignment on August 14, 2018. He learned of the death of the complainant, Linda Baker from social media postings on February 6, 2019. The cause of death was reported to be related to cancer. The defendant sought to have his license to possess firearms restored for hunting purposes.

Philip Arena, a friend who often hunted with the defendant provided testimony about the character of the defendant.

Finally, ADA Sherwyn Safir testified for the prosecution regarding the nature of the charges and the conviction.

The police arrested the defendant on the complaint fo Linda Baker following an argument over money between the couple on August 10, 2018 while the pair rode in the defendant's truck. The complainant stated the defendant choked her for several seconds. The defendant in a statement notice pursuant to CPL 170.30 confirmed the argument but indicated he put his hand on her after she opened the door of the truck while it was moving.

The District Attorney conceded that the complainant has died, but argued that public safety required continuation of the order of protection based upon the harassment conviction.

An order of protection may be issued to a person who is in or has been on an intimate relationship (CPL 510.11[1][e] upon conviction of a defendant for any crime or violation for the benefit of complainant upon a proper showing (CPL §510.12[5]. Further, upon a finding that the conduct which resulted in a physical injury, or the use of a dangerous weapon or the threat the use of a dangerous instrument may occur, the court shall revoke the license to possess firearms, rifles or shotguns and render the defendant ineligible for such a license (*People v. Avery*, 155 AD3d 737 [2<sup>nd</sup> Dept. 2017], CPL §530.13[2]).

Orders of protection may be terminated or modified under the terms of the statute (CPL 530.12[15]). Termination or modification requires showing a "change in circumstances" (*People v. Palmer*, 9 Misc3d 1117(A) [Justice Ct. Town of Tuckahoe 2005]) or "a compelling need is demonstrated which overrides the interest of the protected party in retaining the order" (*People v. Lassiter*, 50 Misc3d 264 [Crim Ct. NY County 2015]).

The court in *Lassiter* while concluding that the authority authorizing the termination of an order of protection under CPL 530.12(5), the requirement for notice to the non-moving party of any application to vacate or modify such an order is inherent authority to entertain

and decide such an application. The court in *Lassiter* determined that the moving party failed to establish the high burden necessary to terminate an order of protection.

The District Attorney fails to establish any legal basis that an order of protection must be enforced for the term stated in the order for the protection of the general public. The order of protection un CPL 530.12 and 530.13 are issued in the names of a protected person or witness as set forth in the enabling statutes.

While the public may benefit indirectly from the issuance of an order of protection, an order of protection cannot be enforced against people who are not named in the order. Therefore, upon the death of a protected party, the order of protection ceases.

The argument made by the district attorney ties the revocation of the license to possess firearms, shotguns and rifles to the continuation of the order of protection. However, the prohibitions or limitations against certain conduct set forth in an order of protection operate separate and apart from the limitations or prohibitions against named individuals in an order of protection. While an order of protection may require the suspension or revocation of a firearms license to render a person ineligible for such a license, separate criteria for the determination is guided by CPL 530.14. However, once suspended or revoked, the right to possess firearms ceases and the license is terminated. (PL §400.00[11]). The statute authorizing suspension of the license to own or possess firearms makes no provision for restoring such a right at the conclusion of the order of protection. Further, the defendant does not as part of an application to terminate an order of protection establish a right under the law to regain a gun license merely upon the ending of the order of protection because the license no longer is valid.

In view of the expiration of the order of protection based upon the death of the protected party by natural causes, the application to terminate the order of protection is granted. However, the granting of the application to terminate the order of protection does not by operation of law restore the license to possess firearms, rifles or shotguns. The application by the defendant fails to establish any legal basis to restore the license to possess firearms, rifles or shotguns. This Court declines to direct *sua sponte* the issuance of such a license for which the appropriate administrative body is charged to investigate and determine whether the defendant is qualified for such a license. The determination of whether the defendant is qualified for or able to possess a firearm, rifle or shotgun is left to the appropriate administrative body.

This constitutes the decision and order of this Court.

SO ORDERED.

  
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DISTRICT COURT JUDGE

Dated: February 13, 2020

cc: Madeline Singas, District Attorney  
Joseph Giaramita, Esq., Attorney for Defendant