

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL KAMIENSKI,)	
)	
Plaintiff,)	
v.)	Civil 02-3091 (SRC)
)	
ROY HENDRICKS, etc.)	
)	
Defendant.)	

AFFIRMATION OF TIMOTHY J. MCINNIS

I, Timothy J. McInnis, Esq., affirm under penalty of perjury as follows:

1. I am an attorney in good standing in the State of New York and am admitted *pro hac vice* counsel to petitioner Paul Kamienski in this Court and am also his attorney of record in the related appeal at the Third Circuit.

2. This affirmation is submitted in support of Kamienski's application to modify two terms in the Personal Recognizance Bond with Conditions (the "Bail Bond") that the Court approved and filed on July 7, 2009. The conditions which he seeks to modify are that Kamienski: (1) must report to the Ocean County Probation Department ("OCPD") in person on a weekly basis; and (2) is not permitted to travel to any state other than New York, New Jersey or Florida, with out prior written approval from the OCPD.

3. Kamienski proposes that the two above conditions be modified so that he: (1) is permitted to freely travel to any State in the continental United States without having to first obtain prior written or oral approval of the OCPD; and (2) is not required

to report to the OCPD on a more onerous basis than one time per week by telephone. A proposed order with these modifications is submitted herewith.

4. The bases for the requested modifications are follows. The Third Circuit summarily denied the State of New Jersey's motions for panel rehearing and rehearing en banc pursuant to Fed.R.App.P. 40 and 35. The State of New Jersey did not file a motion to stay the issuance of the Appellate Court's mandate under Fed.R.App.P. 41(d)(2) (i.e., pending petition for certiorari), which would have required it to show the petition "present[s] a substantial question and that there is good cause for a stay," and the mandate was issued on July 10, 2009.

5. Accordingly, since the State did not seek to stay the mandate (which is likely the opposite of what the Appellate Court contemplated when it granted Kamienski's Rule 23(c) motion and remanded the matter to the Court to set bail in its discretion through the period that may result if a cert. petition is filed) there is now no legal basis to prevent the Court from issuing of a writ of habeas corpus vacating Kamienski's murder convictions. (A proposed order for granting the writ will be submitted separately.) The only potential legal proceeding on the horizon that could alter Kamienski's status as fully exonerated of the murder convictions is a possible petition for certiorari by the State of New Jersey. (The State has until on or about September 30, 2009 to file it with Supreme Court.) The likelihood of such a petition even being granted is extremely remote, if for no other reason than the large number of filed petitions and the tiny number of cases taken. The likelihood is even smaller for a case such as this that is fact driven and where the appellate ruling was unanimous, non-precedential/unpublished and where there was not even a request for a reply from Kamienski before denying the

motions for panel rehearing and en banc review. Thus, there is no meaningful justification for unnecessarily burdening Kamienski, who has now been exonerated, while the State considers its dwindling legal options.

6. Additionally, Kamienski has already traveled to Florida. He has obtained a driver's license there and intends to begin the process of seeking residency in that state. It is unfair to expect him to travel from Florida to New Jersey every week while the case is in its current posture.

7. Kamienski would also like to travel to other states freely to, among other things, personally thank people across the United States who assisted in his defense and to visit long lost friends and family members.

8. There is no need or requirement for in person reporting. It should be noted that when the Appellate Court remanded the matter for bail to be set in the Court's discretion, the order mentioned the possibility of "weekly reporting," but it did not state that such reporting should be in person as opposed to by telephone.

9. Finally, Kamienski has been a model releasee since he was released from custody.

10. For the foregoing reasons, Kamienski's request to modify the Bail Bond should be granted.

11. Given the nature of this application, I respectfully request that it be treated as filed pursuant to Local Civil Rule 7.1 and that the Court execute and enter the attached proposed order within seven (7) days from the filing of this application.

12. I contacted the Ocean County Prosecutor's Office before making this application and it refused to agree to the proposed modifications.

Dated: July 14, 2009

/S Timothy J. McInnis
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