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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL 02-3091

PAUL KAMIENSKI,	:	
	:	
Petitioner,	:	
	:	OPPOSITION TO PETITIONER'S
v.	:	MOTION FOR MODIFICATION
	:	OF BAIL ORDER
ROY L. HENDRICKS, et al.	:	
	:	
Respondent.	:	

AFFIRMATION OF SAMUEL J. MARZARELLA

I, *Samuel J. Marzarella, Esq.*, affirm under penalty of perjury as follows:

1. I am an attorney in good standing in the State of New Jersey, and I am attorney of record in this matter.

2. This affirmation is submitted in opposition to petitioner's motion for an order modifying two terms of the Personal Recognizance Bond filed on July 7, 2009. Specifically, petitioner seeks relief from the obligation to personally report to the Ocean County Probation Department on a weekly basis and the restriction of his travel to New Jersey, New York and Florida.

3. The State submits that petitioner's reasons for requesting these modifications are without merit. The denial of the State's request for a rehearing in the Third Circuit is not relevant to this discussion because it was contemplated by petitioner at the time he requested release on bail on these very terms.

4. The Third Circuit Court of Appeals on June 12, 2009, remanded petitioner's motion for release to this Court for the "limited purpose of setting such terms of release as weekly reporting to the appropriate authorities during the pendency of the State's petition for rehearing *and any subsequent period that may result if a petition for writ of certiorari is filed.*"

(Emphasis added)

5. As a result of the remand from the Third Circuit, petitioner submitted a proposed order to this Court which sought "regular reporting to the appropriate State authority, as determined by it, but in no event, on a more onerous basis than weekly in person reporting." Notwithstanding the State's position that petitioner should report on a daily basis, this Court granted him that which he sought, yet he now wants to vacate that provision four weeks later.

6. Petitioner also seeks to modify another provision that he originally requested, involving his inability 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." The State

submits that petitioner's desire to thank people in person - which could be done by phone as he submits his probationary reporting could be done - is an insufficient reason to modify the bond.

7. Petitioner's proposed order contemplated not only the two restrictions that he now seeks to modify, it also contemplated that the bond would "remain in effect during the pendency of the State's petition for rehearing by the United States Court of Appeals for the Third Circuit and any subsequent period that may result if a petition for a writ of certiorari is filed with the United States Supreme Court." Thus, petitioner took the language from the order of the Third Circuit and presented it to this Court for approval, yet he now seeks to change it based on an event that was not unexpected. The specific mention of a possible petition for writ of certiorari to the U.S. Supreme Court indicates that the filing of a request to stay the mandate, or the failure to do so, was not intended to affect the terms of this bond.

8. The "potential legal proceeding on the horizon" to which petitioner refers is the petition for writ of certiorari that will in fact be filed by this office in September 2009. That is not an inordinate amount of time for petitioner to wait - while he is out on personal recognizance and free to live by the terms he proposed - for resolution of an issue that has the potential to return him to prison for another decade or more. Without the restrictions currently in place and with petitioner

living in Florida, the State submits that the risk of flight may be too much for him to resist should the State's petition be granted. Petitioner's assessment of the State's chance of success on its petition to the U.S. Supreme Court is not relevant, particularly because he has not yet read it.

9. The Third Circuit's choice not to reverse itself portends little if anything about the U.S. Supreme Court's future analysis of the State's petition. Until that application is ruled upon by that Court, the State submits that petitioner would not be "unnecessarily" burdened by maintaining the status quo.

10. The State respectfully submits that petitioner has failed to show any reason why the bail bond as accepted and filed by this Court on July 7, 2009, should be modified, and the State respectfully requests that his motion to do so be denied.

Respectfully submitted,

s/ Samuel Marzarella
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July 15, 2009