

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Paul Kamienski)	
Plaintiff,)	
v.)	CIVIL NO. 2:02-cv-03091-SRC
Roy Hendricks, et al)	<u>ORDER MODIFYING BAIL</u>
Defendants)	

WHEREAS, judgment was entered on the 28th day of May, 2009 in an action in the United States Court of Appeals for the Third Circuit in the matter of Paul Kamienski, Appellant, v. Roy L. Hendricks, Administrator, et al, Appellees, Docket No. 06-4536, in favor of Appellant (“Kamienski”) and against Appellees (“State of NJ”), which judgment remanded the matter to the United States District Court for the District of New Jersey (the “Court”) with an instruction to issue the writ of *habeas corpus* on behalf of Appellant; and

WHEREAS, on June 1, 2009, Kamienski filed a motion in the Court for release on bail pursuant to Fed.R.App.P. 23(c); and

WHEREAS, on June 9, 2009, the Court denied without prejudice Kamienski’s motion for release on bail pursuant to Fed.R.App.P. 23(c), finding that it lacked jurisdiction because the Appellate Court had not yet issued its mandate; and

WHEREAS, on June 10, 2009, Kamienski filed a motion in the United States Court of Appeals for the Third Circuit for release on bail pursuant to Fed.R.App.P. 23(c); and

WHEREAS, on June 11, 2009, the State of NJ filed a combined motion in the United States Court of Appeals for the Third Circuit for panel rehearing and rehearing en banc pursuant to Fed.R.App.P. 40 and 35, respectively; and

WHEREAS, on June 12, 2009, upon consideration of the parties' written submissions, the United States Court of Appeals for the Third Circuit issued an order pursuant to Fed.R.App.P. 23(c) granting Kamienski's motion to be released forthwith on a personal recognizance bond during all pending applications by the State of NJ for review of the May 28, 2009 judgment, and further remanding the matter to the Court for the District of New Jersey for the limited purpose of setting such terms of release as weekly reporting to the appropriate state authorities during the period of release; and

WHEREAS, on June 12, 2009, Kamienski renewed his application to the Court for the District of New Jersey to be released on bail pursuant to Fed.R.App.P. 23(c); and

WHEREAS, on June 15, 2009, following oral argument, the Court issued a writ ordering Kamienski's release on bail (the "Bail Writ"), which order provided, among other things, Kamienski was to be released on his own recognizance, he would be required to report to the appropriate State supervising agency in a manner as determined by it, but in no event, on a more onerous basis than once weekly in person, and he would be restricted from traveling, as determined by the supervising agency, but in no event would such restrictions prevent him from residing in and/or traveling to the States of New Jersey, Florida and New York; and

WHEREAS, on June 16, 2009, Kamienski was released from custody pursuant to the Bail Writ; and

WHEREAS, on June 30, 2009, Kamienski appeared at the Ocean County Probation Department (“OCPD”) and executed a Personal Recognizance Bond with Conditions (the “Bail Bond”), which bond provides, among other things, Kamienski: (1) must report to the OCPD in person on a weekly basis; and (2) is not permitted to travel to any states other than, New York, New Jersey or Florida, with out prior written approval from the OCPD; and

WHEREAS, on July 2, 2009, the United States Court of Appeals for the Third Circuit summarily denied the State of NJ’s motions for panel rehearing and rehearing en banc pursuant to Fed.R.App.P. 40 and 35, respectively; and

WHEREAS, on July 7, 2009, the Court approved and filed the Bail Bond; and

WHEREAS, on July 8, 2009, Kamienski met in person with his supervising officer at the OCPD; and

WHEREAS, the State of NJ did not seek to stay the issuance of the Appellate Court’s mandate under Fed.R.App.P. 41(d)(2) (i.e., pending petition for certiorari); and

WHEREAS, the United States Court of Appeals for the Third Circuit entered its mandate on July 10, 2009; and

FOR GOOD CAUSE shown.

IT IS HEREBY ORDERED, that Bail Bond is modified in the following two respects, with all other conditions to remain the same:

1. Kamienski 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. Kamienski is not required to report to the OCPD on a more onerous basis than one time per week by telephone.

HON. STANLEY R. CHESLER, USDJ

DATED: _____