

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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PAUL KAMIENSKI,	X	
	X	
	X	
Petitioner,	X	
	X	<b>Civil Action No. 02-3091</b>
v.	X	
	X	<b>ORDER</b>
ROY HENDRICKS, et al.,	X	
	X	
Respondents.	X	
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**CHESLER, U.S.D.J.**

**THIS MATTER** having come before the Court on Petitioner Paul Kamienski’s motion pursuant to Federal Rule of Appellate Procedure 23(c) for an order immediately releasing him from the custody of the State of New Jersey Department of Corrections [docket entry 64]; and

**IT APPEARING** that Federal Rule of Appellate Procedure 23(c) provides that, “[w]hile a decision ordering the release of a prisoner is under review, the prisoner must – unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise – be released on personal recognizance, with or without surety;” and it further

**APPEARING** that this Court denied Petitioner’s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by Order dated July 25, 2006; and it further

**APPEARING** that Petitioner appealed this Court’s order of July 25, 2006; and it further

**APPEARING** that this Court was divested of jurisdiction over this action upon Petitioner's filing of his notice of appeal;<sup>1</sup> and it further

**APPEARING** that it is well-established that a district court does not re-acquire jurisdiction over an action until the Court of Appeals issues its mandate;<sup>2</sup> and it further

**APPEARING** that in an Opinion issued on May 28, 2009, the United States Court of Appeals for the Third Circuit stated that it will reverse this Court's order denying habeas relief and remand the action for this Court to issue the writ; and it further

**APPEARING** that the Third Circuit Court of Appeals has not, to date, issued its mandate; and it further

**APPEARING** that this Court therefore lacks jurisdiction over this action and has no authority to consider the instant motion filed by Petitioner; therefore,

**IT IS** on this 9<sup>th</sup> day of June, 2009,

**ORDERED** that Petitioner's motion for an order of release pursuant to Federal Rule of Appellate Procedure 23(c) [docket entry 64] be and hereby is **DENIED WITHOUT PREJUDICE**.

s/ Stanley R. Chesler  
Stanley R. Chesler, U.S.D.J.

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<sup>1</sup> Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam).

<sup>2</sup> Youghioghney and Ohio Coal Co. v. Milliken, 200 F.3d 942, 951-52 (6<sup>th</sup> Cir. 1999), cert. denied, 531 U.S. 818 (2000); United States v. DeFries, 129 F.3d 1293, 1303 (D.C. Cir. 1997); United States v. Cook, 592 F.2d 877, 880 (5<sup>th</sup> Cir.), cert. denied, 442 U.S. 921 (1979); Alphin v. Henson, 552 F.2d 1033, 1035 (4<sup>th</sup> Cir. 1977); see also 16A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3987, at 613-15 (4<sup>th</sup> ed 2008).