

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Paul Kamienski)	
Plaintiff,)	
v.)	CIVIL NO. 2:02-cv-03091-SRC
Roy Hendricks, et al)	<u>WRIT OF HABEAS CORPUS</u>
Defendants)	

TO: Anne Milgram, Attorney General State of New Jersey; Marlene Lynch Ford, Ocean County Prosecutor; George W. Hayman, Commissioner, New Jersey Department of Corrections; and other representatives of the State of New Jersey and Ocean County responsible for the prosecution, custody and supervision of Paul Kamienski (SBI No. 000302652B).

WHEREAS, on October 14, 1987, the Superior Court of New Jersey, Law Division, Ocean County New Jersey docketed indictment number 692-10-87 (the "Indictment"), which indictment had been returned on October 7, 1987 by a grand jury sitting in that court, naming Paul Kamienski ("Kamienski") in five counts. Counts One and Two of the Indictment charged Kamienski with first degree murder, in violation of N.J.S. 2C:11-3a(1),(2). Count Five charged him with felony murder during the commission of a robbery, in violation of N.J.S. 2C:11-3.a(3). Count Six charged him with conspiring to commit the crimes of: (a) possession with the intent to distribute cocaine, contrary to N.J.S. 24:21-19a; (b) robbery in the first degree, contrary to N.J.S.

2C:15-1; and (c) murder in the first degree, contrary to N.J.S. 2C:11-3, all in violation of N.J.S. 2C:5-2. And, Count Seven charged him with a second, related conspiracy to possess with intent to distribute cocaine, contrary to N.J.S. 24:21-19a, and in violation of N.J.S. 2C:5-2; and

WHEREAS, on November 18, 1988, following a trial by jury in the New Jersey Superior Court, Law Division, Ocean County in the matter *State of New Jersey v. Joseph Marzeno, et al*, Kamienski was found guilty on Counts One, Two, Five, Six, in part (conspiracy to possess with intent to distribute cocaine) and Seven, and not guilty on Count Six, in part (conspiracy to commit the crimes of first degree murder and robbery) and remanded to the custody of the State of New Jersey; and

WHEREAS, on December 21, 1988, following post-trial motions, the New Jersey Superior Court, Law Division, Ocean County entered a judgment of acquittal N.O.V. as to Kamienski on Counts One, Two and Five of the Indictment (hereinafter referred to collectively as the "Murder Charges"); and concurrently, a judgment of conviction and order of confinement was filed by Superior Court (the "Initial Judgment of Conviction"), in which Kamienski was sentenced on Counts Six and Seven (hereinafter referred to collectively as the "Drug Charges") to consecutive terms of imprisonment with the New Jersey Department of Corrections of twelve years each, with six years of parole ineligibility on Count Six and four years of parole ineligibility on Count Seven. Whereupon, Kamienski began serving that sentence with credit for the time he had been incarcerated following his trial; and

WHEREAS, on December 30, 1988, Kamienski filed a notice of appeal in the New Jersey Superior Court, Appellate Division, with respect to his convictions on the Drug Charges; and

WHEREAS, on April 3, 1989, the State filed a notice of appeal in the New Jersey Superior Court, Appellate Division with respect to the Superior Court's judgment of acquittal N.O.V. with respect to Kamienski's convictions on the Murder Charges; and

WHEREAS, on February 19, 1992, the New Jersey Superior Court, Appellate Division reversed Kamienski's judgment of acquittal N.O.V. on the Murder Charges (merging Count Five into Counts One and Two); affirmed his conviction on the Drug Charges (vacating the conviction as to Count Six and merging it into Count Seven); and remanded the matter to the Superior Court for resentencing; and

WHEREAS, on April 10, 1992, the New Jersey Superior Court, Law Division, Ocean County docketed a judgment of conviction and order of confinement in which Kamienski was sentenced to two concurrent life sentences on the Murder Charges (with 30 years of parole ineligibility) plus a consecutive sentence of 12 years on the merged Drug Charges (the "Judgment of Conviction"); and

WHEREAS, on June 26, 1992, the Supreme Court of New Jersey denied Kamienski's application for certification; and

WHEREAS, from April 10, 1997 through June 12, 2002, Kamienski pursued, and ultimately exhausted, post-conviction relief in the New Jersey State courts; and

WHEREAS, on June 26, 2002, pursuant 28 U.S.C. § 2254 Kamienski filed a petition for issuance of a writ of habeas corpus in the United States District Court for the District of New Jersey (the "Court"), which petition sought to overturn his convictions on

the Murder Charges on various grounds, including insufficient evidence. Kamienski subsequently filed an amended and supplemental petition for a writ of habeas corpus on October 15, 2003, which augmented the original grounds for relief and added new ones. (Collectively, the original and amended petitions are referred to herein as the “Habeas Petition.”); and

WHEREAS, on July 27, 2006, the Court entered an order dated July 25, 2006, denying in all respects Kamienski’s Habeas Petition; and

WHEREAS, on October 12, 2006, Kamienski filed a notice of appeal in the United States Court of Appeals for the Third Circuit (“Third Circuit”) seeking reversal of the Court’s denial of his Habeas Petition. Paul Kamienski, Appellant, v. Roy L. Hendricks, Administrator, et al, Appellees, Docket No. 06-4536. (“*Kamienski v. Hendricks*”); and

WHEREAS, on November 2, 2006, the Court *sue sponte* issued a certificate of appealability as to the issue of sufficiency of evidence with respect to Kamienski’s convictions on the Murder Charges; and

WHEREAS, on May 28, 2009, following briefing and oral argument, the Third Circuit entered a judgment and order in *Kamienski, v. Hendricks* in favor of Kamienski and against the State of New Jersey as to the sufficiency of evidence for Kamienski’s convictions on the Murder Charges (the “Third Circuit Judgment”), which judgment and order remanded the matter to the Court with instructions to issue the writ of *habeas corpus* on behalf of Kamienski; and

WHEREAS, on June 11, 2009, the State of New Jersey filed a combined motion in the Third Circuit for panel rehearing and rehearing en banc of the Third Circuit

Judgment, pursuant to Fed.R.App.P. Rules 40 and 35, respectively; thereby automatically staying the issuance of the Third Circuit's mandate; and

WHEREAS, on June 16, 2009, Kamienski was released from the custody of the State of New Jersey pursuant to a Bail Bond with Conditions that was approved and filed by the Court on July 7, 2009; and

WHEREAS, on July 2, 2009, the Third Circuit summarily denied the State of New Jersey's motions for panel rehearing and rehearing en banc of the Third Circuit Judgment pursuant to Fed.R.App.P. Rules 40 and 35, respectively; and

WHEREAS, following the denial of its motions for reconsideration, the State of New Jersey did not seek to stay the issuance of the Third Circuit's mandate under Fed.R.App.P. 41(d)(2) (i.e., pending a possible petition for certiorari to the United States Supreme Court); and

WHEREAS, on July 10, 2009, the Third Circuit issued its mandate (the "Mandate") and transmitted it to the Court; and

WHEREAS, on July 10, 2009, the Court received the Mandate and entered it on the Court's docket; and

WHEREAS, the State of New Jersey is precluded on Double Jeopardy grounds from seeking to retry Kamienski on the Murder Charges.

IT IS HEREBY ORDERED, that:

1. Kamienski's Habeas Petition is granted to the extent that he challenges his convictions on the Murder Charges on grounds of insufficient evidence; and further
2. Kamienski's Judgment of Conviction with respect to the Murder Charges is reversed, and he is acquitted on those charges with prejudice to the prosecution; and
3. The State of New Jersey shall not further incarcerated Kamienski with respect to the Murder Charges; and further
4. The State of New Jersey shall correct and amend Kamienski's Judgment of Conviction to reflect that he was acquitted on Counts One, Two and Five of the Indictment and convicted as to only Count Seven (with Count Six being merged into Count Seven and vacated, and with Kamienski not being named in Counts Three and Four) ; and further
5. The State of New Jersey shall to take all steps necessary to ensure that any person or entity seeking information from the State of New Jersey or any national data base or source, including the National Crime Information Center ("NCIC"), as to Kamienski's criminal history is properly advised that Kamienski was acquitted of the Murder Charges and that the only count of the Indictment for which he stands convicted is Count Seven.

HON. STANLEY R. CHESLER, USDJ

DATED: _____