



MARLENE LYNCH FORD
Prosecutor

OFFICE OF THE PROSECUTOR

**Courthouse Annex Building
119 Hooper Avenue
P.O. Box 2191
Toms River, New Jersey 08754-2191
(732) 929-2027
Fax (732) 929-2145**

July 24, 2009

Hon. Stanley R. Chesler
M.L.King, Jr. Federal Bldg & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101-0999

Re: Kamienski v. Hendricks, et al
Civil No. 02-3091 (SRC)

Dear Hon. Judge Chesler:

Kindly accept this letter as the State's reply to Paul Kamienski's letter dated July 23, 2009, in response to our objection to his proposed order.

The case cited by Kamienski, Newman v. Metrish (04-cv-74582-DT), is a district court case relying upon a 6th Circuit decision that ordered the vacation and *expungement* of the petitioner's judgment of conviction. In theory and in practice, such relief is different from that sought by Kamienski in this case, i.e., that the State issue a judgment of acquittal and that it be prevented from further incarcerating him.

Additionally, the Newman Court did not order that the government "take all steps necessary" to advise future information seekers that petitioner was acquitted of murder; it ordered instead that a copy of the writ be forwarded to "any person or agency that **was notified** of petitioner's arrest or conviction involved with these offenses."

Notably, there was no pending petition for writ of certiorari in the Newman case, as there is in this case.

The State never claimed its facts were the same as those in the cases it cited in its opposition letter. The State simply proffered the holdings of those courts regarding the effect of a writ of habeas corpus, including the one from the 3rd Circuit, which is more relevant to this Court's analysis than the holding of a district court in the 6th Circuit.

For all the reasons argued above and in our original opposition, the State respectfully requests that this Court decline to sign the order as proposed.

Respectfully submitted,

/s Samuel Marzarella
Samuel Marzarella
Supervising Assistant Prosecutor

Cc Timothy McInnis, Esq.