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July 22, 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 opposition to Paul Kamienski's proposed order effecting the Third Circuit's mandate filed in this court on July 10, 2009.

The State submits that Kamienski's proposed order seeks inappropriate relief and that he offers no support for his claim of entitlement to such relief.

Specifically, in paragraph 2, Kamienski seeks reversal of the judgment of conviction on the murder charges and a judgment of acquittal on those charges with prejudice to the prosecution. The Third Circuit Court of Appeals' opinion reversed this Court's order denying habeas relief and remanded the matter for issuance of the writ. The writ emanates from a civil proceeding, not a criminal one, and simply allows a petitioner his freedom from confinement, notwithstanding the jury's verdict of guilt and its affirmance by the state courts. It is not a judgment of acquittal, it is a mandate for release. See, e.g., Smith v. Spina, 477 F.2d 1140 (C.A.3, 1973) (Jurisdictional effect of granting writ of habeas corpus is to release relator from

custody; it does not have the force and effect of avoiding a conviction.) See also, People v. Green, 66 Cal. App. 3d 801, 136 Cal. Rptr. 241 (1<sup>st</sup> Dist. 1977)(Federal habeas corpus action is a collateral action in which relief is limited to acting on the person of a state prisoner; on finding a constitutionally infirm state conviction, the federal court has no power to order a state court to take any specific action.); Matter of Hackett, 190 N.J. Super. 300, 308 (App. Div. 1983) citing Fay v. Noia, 372 U.S. 391 (1963)(Federal habeas court cannot revise state court judgment but can act only on the body of the petitioner).

As to paragraph 4 wherein Kamienski demands that the judgment of conviction be corrected and amended to reflect an acquittal on counts one, two and five of the indictment, the State makes the same argument.

As to paragraph 3 wherein Kamienski demands that the State shall not further incarcerate him with respect to the murder charges, the State objects because it will be entitled to, and will in fact, further incarcerate him if the Third Circuit's decision is reversed by the U.S. Supreme Court. The State reiterates its prior advice to this Court and the Court of Appeals that it shall seek a writ of certiorari, and it has until the end of September 2009 to do so.

As to paragraph 5 wherein Kamienski demands that the State "take all steps necessary to ensure" that anyone seeking information about him - from this office or "any national data base or source" - is informed of his acquittal of the murder charges, the State repeats its argument above that he has not been acquitted but has succeeded in a collateral attack on his judgment of conviction. Moreover, the demand that the State "take all steps necessary" to ensure that information-seekers nationally are advised that Kamienski has been acquitted is vague, overly burdensome, and not within the realm of relief to which he is entitled. Kamienski has offered no grounds for seeking such vague and onerous relief, and his proposal to make the State perform such a task is extremely unreasonable. This

For all the reasons argued above, 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.