

Third Circuit Court of Appeals  
Habeas Corpus Victory  
Legal NEWS

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Federal Appeals Court Orders Rare Writ of Habeas Corpus  
For Businessman Unjustly Convicted By Ocean County New Jersey Prosecutor  
In Connection With A 1983 Jersey Seashore Double Homicide

No Evidence Ever Was Produced That Paul Kamienski, Who Has Been Imprisoned For 20 Years, Had Any Role In The Murders Or Knowledge They Would Be Committed, Third Circuit Rules Unanimously In Stern Rebuke To Prosecutor And New Jersey Appellate Court

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Philadelphia, PA — Saying that “rank speculation” and “misleading” recitations from the trial transcript by the Ocean County New Jersey Prosecutor’s Office - not evidence beyond a reasonable doubt - helped unjustly convict a yacht-owning North Jersey businessman of murder for an alleged role in a highly publicized 1983 Jersey shore double homicide, the U.S. Court of Appeals for the Third Circuit has ordered a writ of habeas corpus for Paul Kamienski who has been imprisoned since 1989 under a 30-years-to-life sentence, Attorney Timothy J. McInnis announced.

McInnis, who has represented Kamienski for a decade, hailed yesterday’s victory as the first habeas of its kind in the Circuit, made even more rare since the imposition of tough new federal appeal standards requiring deference to be given to state courts under the Antiterrorism and Effective Death Penalty Act (“AEDPA”) which was passed five years before the 911 attacks.

The unanimous three-judge Circuit Court panel sternly criticized the N.J. (State) Appellate Division of Superior Court for failing to understand Kamienski’s case to begin with. The N.J. Supreme Court and the U.S. District Court in Trenton also were criticized in the opinion.

Even though it had the trial transcript, from the beginning the Appellate Division assumed incorrectly that Kamienski’s trial judge had reversed his jury conviction for inconsistent verdicts when the judge did so for insufficiency of evidence, the Third Circuit noted. This erroneous assumption was perpetuated in its decision and those that followed. Insufficiency of evidence again was the basis on which the Circuit ruled in Kamienski’s favor, McInnis noted.

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“Although the Appellate Division subsequently reinstated those convictions, our examination of this record convinces us that the Appellate Division’s decision was an unreasonable application of clearly established Supreme Court precedent requiring proof of each element of a crime beyond a reasonable doubt,” the Circuit decision stated.

The key to obtaining a murder conviction in New Jersey is evidence that Kamienski knew that his acquaintances, cocaine dealers who were robbed and murdered by his co-defendants, were to be robbed or killed. But such evidence never was presented at trial. The Ocean County Prosecutor at the time, E. David Millard, who now sits on New Jersey Superior Court, Chancery Division, Family Part, Burlington County, even admitted in closing arguments that Kamienski had no idea that the crimes were planned, the Circuit decision noted.

During oral arguments last month which preceded yesterday’s decision, the Third Circuit pressed Supervising Assistant Ocean County Prosecutor Samuel Mazarella but he could not provide a scintilla of evidence from the trial record that Kamienski was aware the robbery or murders would take place, McInnis said.

“When we asked the state to provide a supplemental brief on appeal identifying the evidence from which a jury could reasonably find Kamienski’s shared intent to rob and/or murder (or assist in those crimes) the state repeatedly directed us to evidence showing his complicity in the drug deal or evidence showing his involvement in the disposal of the bodies after the murders had been committed. Neither is sufficient to sustain Kamienski’s murder convictions,” the Court said. Kamienski has always maintained that he did not dispose of the victims’ bodies, McInnis said.

“However, based on our review of the evidence, the picture is simply not there and its existence can not be inferred absent the kind of guesswork that due process prohibits. Indeed, we can not accept the state’s view of the evidence without choking all vitality from the requirement of proof beyond a reasonable doubt,” according to the opinion. Later in the opinion the Court said, “The government’s arguments to the contrary rely not on inferences but on speculation.”

“Accordingly, we are convinced that the Appellate Division’s conclusion regarding the sufficiency of the evidence underlying Kamienski’s convictions was erroneous,” the appeals court said.

In the opinion, the Third Circuit said there was ample evidence that Kamienski played a role in a drug transaction. “However, the Appellate Division conflated that [drug deal] proof into its inquiry into evidence of murder and felony murder. Doing so was not only error, it was unreasonable; it allowed Kamienski to be convicted on something less than proof of “every element of *the offense*” of conviction beyond a reasonable doubt,” the Court ruled.

Under court rules the Prosecutor’s Office has 14 days to file a petition for reconsideration by the three judges and / or the full Court, McInnis explained.

“Under the law Paul Kamienski cannot be tried again and he’s already served more than the term imposed under the drug conviction. If the prosecutor does not appeal, Paul can walk out of

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South Woods State Prison a free man after all these years. It's a bittersweet victory for him. His parents and many of his friends and relatives are now dead.

Kamienski's co-defendant, Anthony Alongi, remains in prison. Joseph Marzeno, the triggerman, died in New Jersey State Prison in the early 1990's. Kamienski knew them only casually and had met each only a month before the crime.

For more information about Paul Kamienski's case visit <http://www.ReleasePaulNow.com>, a litigation Web site launched after the oral arguments that has been updated to include the opinion, the oral arguments transcript and recordings in addition to recent video of Kamienski in his own words taken at the prison.

The vicinage for the Kamienski case and its filed documents is U.S. District Court in Trenton, New Jersey, Case Number: 3:02 CV 03091 (SRC), Kamienski v. Hendricks, Administrator NJ State Prison. The federal appellate Case Number: 06-4536.

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