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July 24, 2009

By ECF filing

Hon. Stanley R. Chesler, USDJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: Paul Kamienski v. Roy Hendricks Administrator, NJ State Prison
3:02 CV 03091 (SRC)

Dear Judge Chesler:

In its letter filed earlier this morning, when discussing the *Newman v. Metrish*, case, the State says, “Notably, there was no pending petition for writ of certiorari in the Newman case, as there is in this case.” That statement is false.

On March 16, 2009, the district court in *Newman* issued its order to grant the writ of habeas corpus. (See exhibit to Kamienski letter dated July 23, 2009.) On May 15, 2009, the Supreme Court docketed the *Newman* matter, reflecting that a Petition for a writ of certiorari was filed on May 12, 2009. (See attached printout from the Supreme Court’s official website.) Thus, the district court’s order in *Newman* was issued under the precise procedural posture as currently exists in the Kamienski matter *sub judice*. At the time the district court in *Newman* issued its writ the appellate court had ruled in favor of the defendant; the appellate court had issued its mandate; and the state was considering filing a petition for certiorari (which is subsequently did). That is precisely where this case is now procedurally.

I regret and apologize for having to correct the State’s erroneous submission to this Court.

Respectfully submitted,
/s/
Timothy J. McInnis, Esq.

Enclosures

Cc: Samuel Marzarella, Ass’t County Prosecutor (w/encl)
Jerome Ballarotto (w/o encls)