

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID L. DUNSTER,)
)
 Petitioner,)
)
 v.)
)
 FRED BRITTAN, Warden, Tecumseh)
 State Correctional Center,)
)
 Respondent.)
 _____)

4:10CV3006

PROGRESSION ORDER
(§ 2254 Death Penalty Case)

To facilitate progression of this matter,

IT IS ORDERED that:

1. Petitioner shall be given **60 days** from the date of this order to file an amended petition if he so chooses;
2. The parties shall confer and stipulate to and file with the court on or before **May 10, 2010**, those portions of the bill of exceptions from petitioner's state court proceedings, as well as the portions of the transcripts, briefs, and opinions from any proceedings before the Nebraska Supreme Court or other state court which are relevant to the claims raised in the petition for habeas corpus. In the event counsel are unable to agree on the relevance of specific portions of the above materials, all of such records shall be filed by that date.
3. Respondent shall file an answer or other responsive pleading within **60 days of the filing of an amended petition**, or if no amended petition is filed, within **120 days of the date of this order**.

4. The petitioner is given **30 days** to submit a brief regarding the claims raised by **the current petition, or 30 days following** the filing of the amended petition. Respondent is given **30 days after the submission of petitioner's brief** in which to submit his responsive brief. Petitioner is given **14 days after submission of respondent's brief** in which to submit a reply brief, if any. Unless an evidentiary hearing is held, or the record expanded, this matter will be deemed submitted at the close of this briefing schedule on the basis of the pleadings, the state court records, and the briefs. All documents provided to the court by either party shall also be served on the opposing party and a certificate of service filed with the court in cm/ecf.

5. The petitioner must seek leave of court prior to filing any additional amended petitions, other than what is set forth in paragraph 1 of this order.

6. Any request for an evidentiary hearing must be filed by petitioner on or before the date petitioner files his brief or by respondent on or before the date when respondent files its brief. The petitioner/respondent must set forth reasons for the holding of such a hearing, see 28 U.S.C. § 2254(e)(2), the identity of the persons who would testify, the reasons such testimony could not or should not be received by affidavits, and an estimate of the approximate time required for the proposed hearing.

DATED this 8th day of April, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge