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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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JOHN OLIVER SNOW,

Case No. 2:03-cv-00292-MMD-CWH

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Petitioner,

ORDER

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v.

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WILLIAM GITTERE, *et al.*,

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Respondents.

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This capital habeas corpus action was initiated on March 13, 2003. With appointed counsel, Petitioner John Oliver Snow filed a second amended habeas petition on March 9, 2012. (ECF No. 137.) Respondents filed a motion to dismiss (ECF No. 146), and on September 12, 2013, the Court granted that motion in part and denied it in part and dismissed certain of the claims in Snow's second amended habeas petition. (ECF No. 173.) The Court denied a motion for reconsideration on November 5, 2013. (ECF No. 177.) Respondents then filed an answer (ECF No. 183), Snow filed a reply (ECF No. 193), and Respondents filed a response to the reply (ECF No. 194). On September 25, 2015, the Court denied the claims then remaining in Snow's second amended petition (ECF No. 201), and judgment was entered (ECF No. 202). The Court denied a motion to alter or amend judgment on May 24, 2016. (ECF No. 213.) Snow appealed, and on July 17, 2020, the Ninth Circuit Court of Appeals affirmed in part and reversed in part and remanded the case to this Court for further proceedings. (ECF No. 222.)

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In its July 17, 2020, order, the Court of Appeals reversed this Court's dismissal of Claims 2, 10A, 10C, 10E, 10H and 10K, and remanded for adjudication of Claim 2 on its merits, and Claims 10A, 10C, 10E, 10H and 10K under *Martinez v. Ryan*, 566 U.S. 1 (2012). (See ECF No. 222.) Therefore, this Court will set a schedule for further

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1 proceedings with respect to Claims 2, 10A, 10C, 10E, 10H and 10K, consistent with the
2 order of the Court of Appeals.

3 It is therefore ordered that the following schedule will govern further proceedings
4 in this case:

5 1. Answer. Respondents will have 90 days from the date of this order to file an
6 answer, responding to Claims 2, 10A, 10C, 10E, 10H and 10K of Petitioner's Second
7 Amended Petition for Writ of Habeas Corpus (ECF No. 137).

8 2. Reply and Response to Reply. Petitioner will have 60 days following the
9 filing of an answer to file a reply. Respondents will thereafter have 45 days following the
10 filing of a reply to file a response to the reply.

11 3. Discovery. If Petitioner wishes to move for leave to conduct discovery,
12 Petitioner must file such motion concurrently with, but separate from, his reply to
13 Respondents' answer. Any motion for leave to conduct discovery filed by Petitioner before
14 that time may be considered premature and may be denied without prejudice on that
15 ground. Respondents must file a response to any such motion concurrently with, but
16 separate from, their response to Petitioner's reply. Thereafter, Petitioner will have 20 days
17 to file a reply in support of the motion for leave to conduct discovery.

18 4. Evidentiary Hearing. If Petitioner wishes to request an evidentiary hearing,
19 Petitioner must file a motion for an evidentiary hearing concurrently with, but separate
20 from, his reply to Respondents' answer. Any motion for evidentiary hearing filed by
21 Petitioner before that time may be considered premature and may be denied without
22 prejudice on that ground. The motion for evidentiary hearing must specifically address
23 why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. §
24 2254(e). The motion must state whether an evidentiary hearing was held in state court,
25 and, if so, state where the transcript is located in the record. If Petitioner files a motion for
26 evidentiary hearing, Respondents must file a response to that motion concurrently with,
27 but separate from, their response to Petitioner's reply. Thereafter, Petitioner will have 20
28 days to file a reply in support of the motion for evidentiary hearing.

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It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d), William Gittere is substituted for Timothy Filson as the Respondent warden of Ely State Prison. The Clerk of Court is directed to update the docket to reflect this change.

DATED THIS 21st day of October 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE