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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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RENE F. FERNANDEZ,

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Petitioner,

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vs.

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JAMES GREG COX, et al.,

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Respondents.

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Case No. 2:13-cv-02158-GMN-VCF

AMENDED ORDER

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Petitioner has filed a request for a certificate of appealability (ECF No. 59). The court will not wait for a response by respondents. A recent decision in the court of appeals leads this court to decide that it will grant relief from the judgment if the court of appeals remands this action.

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In Nasby v. McDaniel, ___ F.3d ___, 2017 WL 1314938 (9th Cir. April 10, 2017) (No. 14-17313), the court of appeals reversed and remanded this court's denial of a habeas corpus petition because it neither obtained the transcripts of the trial and evidentiary hearing in the state court, nor did it hold an evidentiary hearing on its own. The court of appeals based its decision upon Jones v. Wood, 114 F.3d 1002 (9th Cir. 1997).¹

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In petitioner's case, the state district court held a jury trial and an evidentiary hearing on his post-conviction habeas corpus petition. The transcripts of the trial and the evidentiary hearing were not filed with this court. Petitioner did not dispute any of the facts in the decisions of the Nevada

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¹To the extent that Jones holds that a habeas corpus petitioner under 28 U.S.C. § 2254 is entitled to an evidentiary hearing, that case arose before the enactment of restrictions on evidentiary hearings in 28 U.S.C. § 2254(e).

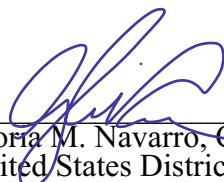
1 Supreme Court, nor does he now, and his surviving claims all were for ineffective assistance of
2 counsel. Nonetheless, Nasby requires an independent review of the record for the purposes of the
3 deferential standard of review of § 2254(d).

4 The action is on appeal, and petitioner has not filed a motion for relief from the judgment.
5 However, the court foresees such a motion. Petitioner just would need to re-title his request for a
6 certificate of appealability and make the same arguments. The court sees no need to prolong a
7 process when the outcome is certain.

8 IT IS THEREFORE ORDERED that the court would grant relief from the judgment (ECF
9 No. 54) pursuant to Federal Rules of Civil Procedure 60(b) and 62.1 if the court of appeals remands
10 for that purpose.

11 IT IS FURTHER ORDERED that the clerk of the court shall forward a copy of this order to
12 the United States Court of Appeals for the Ninth Circuit, Case No. 17-15657.

13 DATED: April 13, 2017

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Gloria M. Navarro, Chief Judge
United States District Court