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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAMES RAY WALKER,

Petitioner,

v.

WILLIAM GITTERE,¹ *et al.*,

Respondents.

Case No. 2:15-cv-01240-RFB-EJY

ORDER

This capital habeas corpus action has been stayed since March 31, 2016, while the Petitioner, James Ray Walker, exhausted claims in state court. ECF No. 69. On April 21, 2021, Walker, represented by appointed counsel, filed a motion to vacate the stay and reopen these proceedings. ECF No. 94. In that motion, Walker states that his state-court proceedings have concluded. On May 5, 2021, the Respondents filed a notice stating that they do not oppose Walker's motion. ECF No. 97.

The court will grant Walker's motion to vacate the stay and will set a schedule for further proceedings in this action.

IT IS THEREFORE ORDERED that the motion to vacate the stay and reopen these proceedings (ECF No. 94) is GRANTED. The stay of this action is lifted.

IT IS FURTHER ORDERED that the following schedule shall govern the further proceedings in this action:

¹ As the current warden of Ely State Prison, William Gittere is substituted for Timothy Filson as a Respondent. *See* Fed. R. Civ. P. 25(d).

1 **1. Amended Petition.** Petitioner will have 60 days from the date of this order to file a
2 second amended petition for writ of habeas corpus. The second amended petition must specifically
3 state whether each ground for relief has been exhausted in state court; for each claim that has been
4 exhausted in state court, the second amended petition must state how, when, and where that
5 occurred.

6 **2. Response to Petition.** Respondents will have 60 days following the filing of the second
7 amended petition to file an answer or other response to the second amended petition.

8 **3. Reply and Response to Reply.** Petitioner will have 45 days following the filing of an
9 answer to file a reply. Respondents will thereafter have 30 days following the filing of a reply to
10 file a response to the reply.

11 **4. Briefing of Motion to Dismiss.** If Respondents file a motion to dismiss, Petitioner will
12 have 60 days following service of the motion to file a response to the motion. Respondents will
13 thereafter have 30 days following the filing of the response to file a reply.

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

22 **6. Evidentiary Hearing.** If Petitioner wishes to request an evidentiary hearing, Petitioner
23 must file a motion for an evidentiary hearing concurrently with, but separate from, the response to
24 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for an
25 evidentiary hearing filed by Petitioner before that time may be considered premature, and may be
26 denied, without prejudice, on that basis. The motion for an evidentiary hearing must specifically
27 address why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. §
28 2254(e). The motion must state whether an evidentiary hearing was held in state court, and, if so,

1 state where the transcript is located in the record. If Petitioner files a motion for an evidentiary
2 hearing, Respondents must file a response to that motion concurrently with, but separate from,
3 their reply in support of their motion to dismiss or their response to Petitioner's reply. Thereafter,
4 Petitioner will have 20 days to file and serve a reply in support of the motion for an evidentiary
5 hearing.

6 DATED: May 6, 2021

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

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