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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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9 TRACY PETROCELLI,

3:94-cv-00459-RCJ-VPC

10 Petitioner,

11 vs.

ORDER12 TIMOTHY FILSON, *et al.*,

13 Respondents.

14 _____/

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16 In this capital habeas corpus action, in an order entered on October 9, 2013, the Court denied
17 the petitioner, Tracy Petrocelli, habeas corpus relief (ECF No. 246). Judgment was entered on the
18 same date (ECF No. 247). Petrocelli filed a “Motion to Alter or Amend Judgment Pursuant to Fed.
19 R. Civ. Proc. 59(e)” (ECF No. 248), and the Court denied that motion on April 9, 2014 (ECF No.
20 255). Petrocelli appealed, and the Ninth Circuit Court of Appeals ruled on July 5, 2017 (ECF No.
21 264), and then filed an amended opinion on August 23, 2017 (ECF No. 265). The Court of Appeals
22 filed its mandate on September 1, 2017 (ECF No. 266). On September 21, 2017, this Court ordered
23 the mandate spread upon the record (ECF No. 268).

24 The Court of Appeals affirmed this Court’s denial of relief with respect to Petrocelli’s
25 conviction, but reversed this Court’s denial of relief with respect to his death sentence; the Court of
26 Appeals remanded the case to this Court with the instruction that Petrocelli be granted relief with

1 regard to his sentence. *See* Order and Amended Opinion (ECF No. 265). The instruction of the
2 Court of Appeals is as follows:

3 We affirm the district court's denial of Petrocelli's petition for a writ of
4 habeas corpus with respect to the conviction, but reverse with respect to the death
5 sentence. We remand with instructions to grant the writ as to the penalty unless,
6 within a reasonable time, the State grants a new penalty phase trial or imposes a lesser
7 sentence consistent with the law.

8 *Id.* at 40.

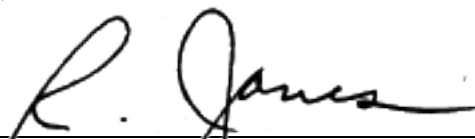
9 The Court will entertain briefing from the parties with respect to the form of the order to be
10 issued in compliance with the mandate of the Court of Appeals.

11 **IT IS THEREFORE ORDERED** that the Clerk of the Court shall administratively reopen
12 this case.

13 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure 25(d), the
14 Clerk of the Court shall substitute Timothy Filson for Renee Baker, on the docket for this case, as the
15 respondent warden, and shall substitute Adam Paul Laxalt for Catherine Cortez Masto as the
16 respondent Attorney General of the State of Nevada, and shall update the docket to reflect these
17 changes.

18 **IT IS FURTHER ORDERED** that, within **14 days** from the date of this order, the petitioner
19 shall file a proposed order granting habeas corpus relief as mandated by the Court of Appeals, along
20 with any necessary briefing in support of the proposed order. The respondents shall then have
21 **14 days** to file a response if they deem it necessary. Petitioner will then have **7 days** to file a reply if
22 he deems it necessary. The Court will not look favorably upon any motion, by any party, to extend
23 this briefing schedule.

24 **DATED: This 28th day of September, 2017.**

25 
26 UNITED STATES DISTRICT JUDGE