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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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10 KYLE J. RODNEY,

Case No. 3:13-cv-00323-RCJ-VPC

11 Petitioner,

v.

ORDER

12 WILLIAM GITTERE,¹ et al.,

13 Respondents.
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16 On March 1, 2019, the United States Court of Appeals for the Ninth Circuit issued an
17 opinion vacating this court's final order denying habeas relief and remanding the case for
18 additional proceedings. *Rodney v. Filson*, 916 F.3d 1254 (9th Cir. 2019). The order denying relief
19 was vacated because the court of appeals determined this court erred by not conducting an
20 analysis of the substantiality of Rodney's ineffective-assistance-of-counsel (IAC) claims
21 pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012). *Id.* at 1259-60.

22 The court of appeals also determined that this court's current record "is insufficiently
23 developed for [the court] to be able to conclusively evaluate the substantiality of Rodney's IAC
24 claims." *Id.* at 1261. Accordingly, the court stated that, to further develop the record, "the district
25 court may allow discovery upon a showing of good cause under Rule 6 of the Rules Governing

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27 ¹ William Gittere, warden of Ely State Prison, is substituted as respondent for Timothy Filson, former warden. See
28 Fed. R. Civ. P. 25(d).

1 § 2254 Cases in the United States District Courts, may hold an evidentiary hearing as warranted,
2 and may consider Monko's medical records and any other evidence relevant to the issue of the
3 substantiality of Rodney's IAC claims.” *Id.* at 1262.

4 Rodney’s procedurally defaulted IAC claims are that counsel: (1) failed to investigate or
5 challenge the prosecution's medical evidence at trial, (2) failed to timely object to the lay medical
6 testimony of the victim, Monko, (3) failed to use medical records to impeach Monko’s medical
7 testimony, and (4) failing to call any medical experts or treating medical providers to testify
8 regarding the Monko’s injuries. The court of appeals opined as follows:

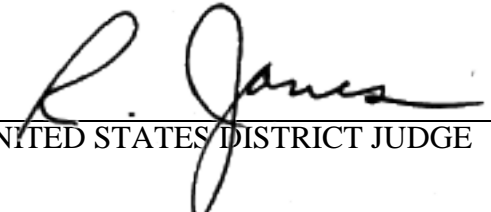
9 The severity of Monko's injuries was potentially relevant to elements of
10 several of the charges of which Rodney was convicted. The district-court record
11 contains excerpts of Monko's medical records; however, in arguing whether there
12 is a reasonable probability that the jury's verdict would have been different if not
13 for counsel's alleged deficiencies, both parties refer extensively to additional
14 medical records that were not before the district court.

13 *Id.* at 1261. Thus, at a minimum, it is clear that this court would benefit from the record being
14 supplemented with these “additional medical records.”

15 As a starting point, however, the court will permit either party to file, within 60 days of
16 the date of this order, any motion relevant to, or in furtherance of, the remand of the court of
17 appeals. Responses to any such motions will be due within 30 days of the date the motion is
18 filed. The moving party will then have 20 days within which to file a reply.

19 IT IS SO ORDERED.

20 DATED THIS 23rd day of December, 2019.

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UNITED STATES DISTRICT JUDGE