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28UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ZACHARY KELSEY,

Petitioner,

v.

RENEE BAKER, *et al.*,

Respondents.

Case No. 3:18-cv-00174-MMD-CLB

ORDER

Petitioner Zachary Kelsey filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 on May 16, 2018. (ECF No. 6.) This Court denied Kelsey's petition and a certificate of appealability on August 22, 2019. (ECF No. 27.) Kelsey appealed on September 4, 2019, and the United States Court of Appeals for the Ninth Circuit granted a certificate of appealability with respect to the following issue: whether Kelsey's trial counsel provided ineffective assistance, including whether his counsel was ineffective for (a) waiving closing argument, or (b) failing to consult with or retain an expert regarding the victim's cause of death. (ECF Nos. 29, 31.) The United States Court of Appeals for the Ninth Circuit thereafter granted Kelsey counsel, and Kimberly Sandberg of the Federal Public Defender, District of Nevada appeared on March 16, 2020. (See ECF No. 32.)

Following the filing of his opening brief, Kelsey moved for a full remand because important documents—namely, the deposition testimony of John Ohlson and an expert report—from the state court record were not reviewed by this Court when it denied his petition. The United States Court of Appeals for the Ninth Circuit granted the motion on July 12, 2021, pursuant to *Nasby v. McDaniel*, 853 F.3d 1049, 1054 (9th Cir. 2017), and remanded the case for further proceedings. Based on this order, this action needs to be reopened.

It is therefore ordered that the Clerk of Court shall reopen this action.

1           It is further ordered that, within seven (7) days, Kimberly Sandberg shall file a  
2 notice of appearance.

3           It is further ordered that, within seven (7) days, the Respondents shall file the  
4 deposition testimony of John Ohlson and the expert report as supplemental exhibits. A  
5 hard copy (courtesy copy) of the exhibits shall not be provided.

6           It is further ordered that, within forty-five (45) days, Kelsey shall file supplemental  
7 briefing addressing the sole issue upon which the United States Court of Appeals for the  
8 Ninth Circuit granted a certificate of appealability: whether Kelsey's trial counsel provided  
9 ineffective assistance, including whether his counsel was ineffective for (a) waiving  
10 closing argument, or (b) failing to consult with or retain an expert regarding the victim's  
11 cause of death.

12           It is further ordered that the Respondents shall respond to Kelsey's briefing within  
13 forty-five (45) days after being served with that briefing. Kelsey may then file a reply within  
14 thirty (30) days of the response.

15           DATED THIS 15<sup>th</sup> Day of July 2021.

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MIRANDA M. DU  
19 CHIEF UNITED STATES DISTRICT JUDGE