

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARLOW TODD EGGUM,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

Case No. C14-1328-RAJ-MAT

ORDER ON PETITIONER’S MOTION  
TO FILE SUPPLEMENTAL BRIEF  
AND SET BRIEFING SCHEDULE

This is a 28 U.S.C. § 2254 habeas action. Petitioner filed a *pro se* habeas petition in September 2014 that raised 26 grounds for relief, some of which included sub-claims. Dkt. 13. During briefing on the merits of the petition, it became apparent that petitioner had pending state court proceedings that were relevant to his federal habeas claims. *See, e.g.* Dkts. 37, 40. Accordingly, on July 30, 2015, the Court stayed the action. Dkt. 42. On February 22, 2016, the Court lifted the stay and ordered supplemental briefing. Dkt. 53. On April 26, 2016, the Court stayed the action again because petitioner still had pending state court proceedings. Dkt. 63. On January 18, 2017, petitioner filed a motion to appoint counsel, which the Court referred to the Office of the Federal Public Defender (“FPD”) for review. Dkts. 82-83. On May 12, 2017, the FPD filed a notice of intent to seek appointment, and the Court subsequently appointed the FPD

ORDER ON PETITIONER’S MOTION TO  
FILE SUPPLEMENTAL BRIEF AND SET  
BRIEFING SCHEDULE - 1

1 to represent petitioner. Dkts. 91, 92. On July 31, 2017, petitioner, now proceeding through  
2 counsel, filed an amended habeas petition that raised the same number of claims as his original  
3 petition. Dkt. 100. On August 10, 2017, the Court stayed the action for a third time so that  
4 petitioner could return to the state courts, this time with the benefit of counsel, to attempt to exhaust  
5 some of his federal habeas claims. Dkt. 103. On January 2, 2019, the parties filed a joint motion  
6 to lift the stay, which the Court granted. Dkts. 108, 111.

7 Currently before the Court is petitioner's motion for leave to file a supplemental brief that  
8 provides additional argument regarding his First Amendment claims that were recently before the  
9 state courts. Dkt. 109; *see also* Dkt. 109-1 (proposed supplemental brief). He also asks the Court  
10 to expedite the briefing schedule because he is eligible for immediate release if he obtains habeas  
11 relief on his First Amendment claims. *See id.*

12 Respondent does not object to petitioner's request to file a supplemental brief, but he asks  
13 the Court to provide him sufficient time to review the extremely voluminous record in this case  
14 (the amended habeas petition contains 1595 pages of briefing and exhibits, and the proposed  
15 supplemental brief includes an additional 623 pages, although most of those are exhibits to the  
16 State's briefing in the state courts). Dkt. 110.

17 In reply, petitioner acknowledges that the case has a complicated procedural posture and  
18 voluminous records, but argues that "there is a relatively simple dispositive question that could be  
19 briefed and analyzed first, namely, whether the recent decision of the Washington Supreme Court  
20 finding Mr. Eggum's intimidating a public servant convictions constitutional was contrary to or  
21 an unreasonable application of the United States Supreme Court's First Amendment precedent."  
22 Dkt. 112 at 2. Petitioner suggests that the Court stagger the briefing schedule so that this issue is  
23

1 addressed first; then, only if necessary, would the Court direct the parties to brief petitioner's  
2 remaining habeas claims. *Id.*

3 Having considered the foregoing, the Court GRANTS petitioner's motion to file his  
4 proposed supplemental brief, Dkt. 109. Petitioner shall file his supplemental brief within 14 days  
5 of the date of this Order. The Court RESERVES RULING on petitioner's request to set a briefing  
6 schedule. The Court is open to petitioner's suggestion of bifurcating the briefing, but respondent  
7 has not had an opportunity to weigh in on this proposal. Thus, within 14 days of the date of this  
8 Order, the parties shall meet and confer and then file a joint status report proposing a briefing  
9 schedule. If the parties do not agree, they may present their individual positions in their filing.  
10 After reviewing the parties' joint status report, the Court will set a briefing schedule.

11 The Clerk is directed to send copies of this order to the parties and to the Honorable Richard  
12 A. Jones.

13 Dated this 24th day of January, 2019.

14  
15   
16 Mary Alice Theiler  
United States Magistrate Judge