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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DANIEL JOHN WILCKEN,

9 Petitioner,

10 v.

11 RONALD HAYNES,

12 Respondent.

Case No. C18-0279-RSL-MAT

ORDER GRANTING PETITIONER'S
MOTION FOR EXTENSION OF TIME
TO FILE A RESPONSE AND
DIRECTING RESPONDENT TO FILE A
REPLY BRIEF

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14 This is a federal habeas action brought under 28 U.S.C. § 2254. Respondent filed his
15 answer to petitioner's federal habeas petition on May 24, 2018, and the answer was noted on the
16 Court's calendar for consideration on June 15, 2018. (*See* Dkt. 13.) Respondent argues in his
17 answer that petitioner's federal habeas petition is untimely under 28 U.S.C. § 2244(d) and should
18 be dismissed on that basis. (*See id.*) On June 1, 2018, petitioner filed a motion seeking an
19 extension of time until June 29, 2018 to file a response to respondent's answer. (*See* Dkt. 15.)
20 Respondent did not file any response to petitioner's request for additional time.

21 On June 22, 2018, petitioner filed a response to respondent's answer and, on June 29, 2018,
22 petitioner filed a corrected copy of his response which he requested be included in the record. (*See*
23 Dkts. 17, 18.) Petitioner argues in his response that this Court should consider his federal habeas

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TO FILE A RESPONSE - 1

1 claim alleging ineffective assistance of trial counsel, notwithstanding the untimely filing of his
2 petition, because he is actually innocent of the underlying charges. (*See* Dkt. 18 at 7-9.) While
3 respondent has made a persuasive showing that petitioner's petition is indeed time-barred,
4 respondent has not weighed in on petitioner's claim of actual innocence. The Court deems it
5 necessary to obtain a response from respondent with respect to petitioner's actual innocence claim
6 before proceeding to disposition of the petition.

7 Accordingly, the Court hereby ORDERS as follows:


8 (1) Petitioner's unopposed motion for extension of time (Dkt. 15) is GRANTED.
9 Petitioner's response to respondent's answer was received on June 29, 2018, and has been made a
10 part of the record. (Dkt. 18.)

11 (2) Respondent is directed to file a reply brief addressing petitioner's actual innocence
12 claim not later than **August 10, 2018**. Respondent should include with his reply brief a copy of
13 the transcript of petitioner's trial to assist the Court in evaluating petitioner's claim of actual
14 innocence, or explain to the Court why production of the transcript is unnecessary.

15 (3) Respondent's answer (Dkt. 13) is RENOTED on the Court's calendar for
16 consideration on **August 10, 2018**.

17 (4) The Clerk is directed to send copies of this Order to petitioner, to counsel for
18 respondent, and to the Honorable Robert S. Lasnik.

19 DATED this 11th day of July, 2018.

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22 Mary Alice Theiler
23 United States Magistrate Judge