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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 RONALD SORENSEN

10 Petitioner,

11 v.

12 MARGARET GILBERT,

13 Respondent.

CASE NO. 3:16-CV-05227-BHS-

JRC

ORDER TO EXPAND THE
RECORD

14 The District Court has referred this petition for a writ of habeas corpus, filed pursuant to
15 28 U.S.C. § 2254, to United States Magistrate Judge J. Richard Creatura. The District Court's
16 authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules
17 MJR3 and MJR4.

18 Petitioner was convicted of nine counts of child molestation and seeks relief from those
19 state court convictions. Dkt. 4. Respondent argues that this petition be dismissed with prejudice
20 as untimely and that petitioner is not entitled to equitable tolling. Dkt. 33 (answer), 40
(supplemental answer).

21 In his traverse, petitioner argues that actual innocence should excuse him from his
22 untimely petition. Dkt. 36. Petitioner contends that he has met the actual innocence standard by
23 offering previously unavailable evidence demonstrating that he purchased his family home in
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1 2006, which contradicts one of the victim's testimony about her age at the time of the sexual
2 contact. Dkt. 36. Petitioner's actual innocence claim is based on the evidence presented at trial,
3 including the testimony of one the victims. Dkt. 36. However, the trial court transcript is not
4 included in the state court record. *See* Dkt. 34. Respondent did not address petitioner's actual
5 innocence claim in the answer or supplemental answer. *See* Dkt. 33, 40.

6 Under Rule 5(c) of the Rules Governing Section 2254 and 2255 Proceedings, the answer
7 must:

8 [I]ndicate what transcripts (of pretrial, trial, sentencing, or post-conviction
9 proceedings) are available, when they can be furnished, and what proceedings have
10 been recorded but not transcribed. The respondent must attach to the answer parts
11 of the transcript that the respondent considers relevant. The judge may order that
the respondent furnish other parts of existing transcripts or that parts of
untranscribed recordings be transcribed and furnished. If a transcript cannot be
obtained, the respondent may submit a narrative summary of the evidence.

12 28 U.S.C. § 2254, Rule 5.

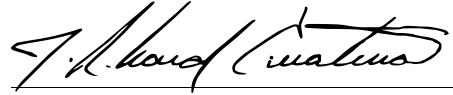
13 Accordingly, the Court orders respondent to expand the state court record with the trial
14 transcript. *Id.* If the trial transcript cannot be obtained, respondent may submit a narrative
15 summary of the evidence. *See id.* Respondent may file a second supplemental answer with up to
16 seven pages of additional briefing addressing petitioner's actual innocence claim.

17 Respondent shall file the additional state court documents by May 17, 2019.

18 Respondent's second supplemental answer will be due on or before May 24, 2019. Petitioner
19 may file and serve a reply no later than May 31, 2019.

1 The Clerk's office is directed to re-note this petition for consideration on May 31, 2019.

2 Dated this 2nd day of May, 2019.

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5 J. Richard Creatura
6 United States Magistrate Judge
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