

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 NEIL GREENING,

Petitioner,

9 v.
10

11 JAMES KEY,

Respondent.

CASE NO. 16-5983 RJB DWC

ORDER ON RESPONDENT'S
OBJECTION TO AND APPEAL
FROM MAGISTRATE JUDGE'S
ORDER

12
13
14 This matter comes before the Court on the Respondent's Objection to and Appeal from
15 Magistrate Judge's Order. Dkt. 30. The Court has considered the pleadings filed regarding the
16 appeal and the remaining record.

17 Petitioner filed this habeas corpus case, *pro se*, seeking relief from his 116 year sentence
18 for multiple-count convictions of child sex offenses involving two young boys. Dkt. 1. This
19 habeas petition questions, in part, the sufficiency of the evidence.

20 On June 16, 2017, the U.S. Magistrate Judge assigned to this case issued an order
21 requiring the Respondent to file a plan with Court by July 7, 2017 on a way to supplement the
22 record with the photographs, audio recordings, and other evidence which was submitted to the
23 jury and relied on by the state courts for Petitioner's conviction, to the Court and the Petitioner.
24 Dkt. 28.

1 On June 23, 2017, Petitioner filed a letter stating that he did not feel he needed to review
2 any supplemental evidence at this time. Dkt. 29.

3 On June 26, 2017, Respondent filed the instant Objection to and Appeal from Magistrate
4 Judge's Order. Dkt. 30. Respondent points out that the supplements to the record the court
5 requested contain sensitive, sexually explicit materials involving minors, which are under seal
6 and in the custody of the Clerk of the Pierce County Washington Superior Court. *Id.*
7 Respondent notes the difficulty in getting these materials, especially to Petitioner, who is in
8 custody, considering all the materials are considered contraband by the Washington Department
9 of Corrections. *Id.*

10 On July 5, 2017, Petitioner filed a response to the Respondent's Objection and Appeal,
11 again indicating that he did not feel he needed to see the evidence again at this time. Dkt. 31.

12 On July 5, 2017, the Magistrate Judge issued an order giving the parties an opportunity to
13 brief whether Petitioner should be appointed counsel for the limited purpose of resolving issues
14 regarding the requested supplemental record. Dkt. 32. After the parties responded and did not
15 object, on July 25, 2017, a federal public defender was appointed for Petitioner; the federal
16 public defender's "representation is limited to matters related to the production and review of any
17 supplemental record." Dkt. 37. The lawyers for the parties were then ordered to develop a joint
18 plan for production and review of the supplemental evidence. *Id.*

19 The Respondent's Objection to and Appeal from Magistrate Judge's Order (Dkt. 30)
20 should be denied and the appeal dismissed. Respondent acknowledged that the appointment of
21 counsel for Petitioner "moot[ed] most of the concerns Respondent has voiced in response to the
22 Court's [June 16, 2017] Order Directing Respondent to Supplement the Record." Dkt. 36. This
23 Court agrees. To the extent it still applies and has not been superseded by July 25, 2017 order
24


1 that the parties' lawyers develop a plan to supplement the record, the June 16, 2017 Order
2 Directing Respondent to Supplement the Record (Dkt. 36) should be affirmed. The parties'
3 lawyers are encouraged to work together to resolve the evidentiary issues that arise. While the
4 referral was not fully withdrawn, this case should be fully re-referred to Magistrate Judge
5 Christel for further proceedings consistent with this opinion. Magistrate Judge Christel, in a case
6 challenging the sufficiency of the evidence, needs to see and consider the evidence.

7 **ORDER**

- 8 • The Respondent's Objection to and Appeal from Magistrate Judge's Order (Dkt.
9 30) **IS DENIED** and the appeal **IS DISMISSED**;
- 10 • To the extent it still applies and has not been superseded by July 25, 2017 order
11 that the parties' lawyers develop a plan to supplement the record, the June 16,
12 2017 Order Directing Respondent to Supplement the Record (Dkt. 28) **IS**
13 **AFFIRMED**; and
- 14 • This case is fully **RE-REFERRED** to U.S. Magistrate Judge Christel for further
15 proceedings consistent with this opinion.

16 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
17 Christel, all counsel of record, and to any party appearing *pro se* at said party's last known
18 address.

19 Dated this 2nd day of August, 2017.

20 

21 ROBERT J. BRYAN
22 United States District Judge
23
24