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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JAMES PHILIP DOUGLAS,
11 Petitioner,

12 v.

13 MARGARET GILBERT,
14 Respondent.

CASE NO. 3:16-CV-06060-BHS-DWC
ORDER

15 The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate
16 Judge David W. Christel. On August 9, 2017, the undersigned entered a Report and
17 Recommendation (“R&R”) recommending Petitioner James Philip Douglas’s federal habeas
18 Petition be denied. Dkt. 16. After Petitioner filed Objections (Dkt. 17), the Honorable Benjamin
19 H. Settle, the District Judge assigned to this case, adopted in part the R&R and “Petitioner’s
20 claims for a speedy trial violation, an ex post facto violation, and ineffective assistance of
21 counsel [were] dismissed.” Dkt. 18, p. 3 (emphasis omitted). Judge Settle, however, remanded
22 this action “for further proceedings to determine whether the petition may be amended to add the
23 claim raised in Petitioner’s reply.” *Id.*

1 The Court, therefore, interprets Petitioner’s Reply (Dkt. 12) as a Motion to Amend the
2 Petition and the Reply is hereby re-named “Motion to Amend the Petition.” To ensure the parties
3 have an opportunity to respond the Motion to Amend the Petition, the Court orders:

- 4 1. Respondent to file a response to the Motion to Amend the Petition on or before
5 November 3, 2017. The response should specifically address whether the Petition
6 may be amended to add the Sixth Amendment claim.¹
- 7 2. If Plaintiff wishes to file a reply to Respondent’s response to the Motion to
8 Amend the Petition, he must do so on or before December 1, 2017.

9 The Clerk is directed to re-name Docket 12 to “Motion to Amend the Petition” and note it
10 for consideration on December 1, 2017.

11 Dated this 5th day of October, 2017.

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13 _____
14 David W. Christel
15 United States Magistrate Judge
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22 ¹ In his Reply, Petitioner alleges, for the first time, his counsel was ineffective for failing to argue for a
23 lesser included offense on the assault charges. Dkt 12. Petitioner also alleges the state court violated Petitioner’s
24 rights by failing to appoint counsel during the sentencing phase of his second trial. *Id.* In his Objections to the R&R,
Petitioner alleges only that the state court violated his rights by failing to appoint counsel during the sentencing
phase of his trial. *See* Dkt. 17. Judge Settle’s Order only discusses Petitioner’s assertion that he was denied his Sixth
Amendment right to counsel during the second phase of his trial. *See* Dkt. 18.