

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 102156-9
Petitioner,)	
)	MOTION TO STRIKE
vs.)	
)	
CHRISTOPHER PETEK,)	
)	
Respondent.)	
_____)	

I. IDENTITY OF MOVING PARTY

Respondent Christopher Petek, by and through his attorneys, Nielsen Koch & Grannis, PLLC, seeks the relief stated below.

II. RELIEF SOUGHT

Mr. Petek requests that this Court (1) strike Appendix C and D from the State's petition for review; and (2) strike those portions of the petition that refer to Appendix C and D (pages 27-28 of the petition).

II. FACTS AND ARGUMENT

The State filed a petition for review that contains four appendices. Appendix A is the Court of Appeals decision and Appendix B is the Court of Appeals order denying reconsideration of the decision. Appendix C is a "2021 Washington State Patrol Annual Report: Crime Laboratory Division." Appendix D is described as "United States Census Bureau, 2021 Selected Housing 28 Characteristics."

Appendix A and B are authorized by RAP 13.4(c)(9). Appendix C and D are unauthorized. Neither Appendix C nor D were made part of the trial record. The trial court did not consider them. The State presents the material contained in Appendix C and D for the first time in its petition for review.

It is improper to append material to a petition for review that was not made part of the trial court record and not considered by the trial court. The remedy is to strike the offending material. In re Recall of Hatcher, 196 Wn.2d 797, 834-35, 478 P.3d 1077 (2021) (citing Nelson v. McGoldrick, 127 Wn.2d 124, 141, 896

P.2d 1258 (1995) (granting motion to strike portions of brief that alleged facts unsupported by the record and included evidence not submitted to or considered by the trial court); State v. Krall, 125 Wn.2d 146, 149, 881 P.2d 1040 (1994) (granting defendant's motion to strike the appendices to the State's brief because they were not in the record); State v. Leach, 113 Wn.2d 679, 693, 782 P.2d 552 (1989) (granting motion to strike language from State's brief because cases on appeal are decided only on evidence in the record).

Appendix C and D to the State petition for review should be stricken, as they fall outside of the record for review. Pages 27 and 28 of the petition for review refer to and present argument based on Appendix C and D. The offending portions of pages 27 and 28 should therefore be stricken as well.

IV. CONCLUSION

For the reasons stated, Mr. Petek respectfully requests that this Court grant the motion.

I certify that this document was prepared using word processing software and contains 401 words excluding those portions exempt under RAP 18.17.

DATED this 4th day of August 2023

Respectfully submitted,

~~NIELSEN KOCH & GRANNIS, PLLC~~


CASEY GRANNIS

WSBA No. 37301

Attorney for Respondent

NIELSEN BROMAN & KOCH, PLLC

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,156-9
Appellate Court Case Title: State of Washington v. Christopher Donald Petek
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