

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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NO. 97689-9

9-29-20:
Motion passed to the
merits.
*Supreme Court Clerk's
Office*

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:

CARL ALONZO BROOKS,

Petitioner.

MOTION TO
SUPPLEMENT THE
RECORD

Respondent Indeterminate Sentence Review Board (the Board) seeks the relief designated in Part I of this motion.

I. RELIEF SOUGHT

The Board requests this Court's permission to supplement the record with Brooks' 2018 psychological evaluation report that the Board relied on when making its non-parolability decision, attached to this motion as Appendix 13 to the Board's supplemental brief.

II. ARGUMENT

In this case, the record was not developed in the court below, because the Court of Appeals did not request the Board's response before dismissing Brooks' petition. In the unusual circumstances of this case, the record is being developed in this Court after this Court requested the Board's response to Brooks' motion for discretionary review and, additionally, authorized submission of supplemental briefs by the Board and Brooks' newly appointed counsel. In his motion for discretionary review, Brooks alleged that the Board had no rehabilitation plans or goals for him,

nor would it find him rehabilitated or allow him to undergo sex offender treatment program (SOTP). Submission of the report is necessary to support the Board's argument that the Board had rehabilitative goals (including attending SOTP) for Brooks, but his evaluation showed that he was not rehabilitated and presented a high risk to reoffend.

III. CONCLUSION

For the reasons, above, the Board requests this Court to allow it to supplement the record with Brooks' 2018 psychological evaluation report.

RESPECTFULLY SUBMITTED this 16th day of September, 2020.

ROBERT W. FERGUSON
Attorney General

s/ Alex Kostin

ALEX KOSTIN, WSBA #29115
Assistant Attorney General
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
360-586-1445
Alexei.Kostin@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the MOTION TO SUPPLEMENT THE RECORD with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant:

GREGORY CHARLES LINK
WASHINGTON APPELLATE PROJECT
1511 3RD AVENUE, SUITE 610
SEATTLE WA 98101-1683

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 16th day of September, 2020, at Olympia, WA.

s/ Amy Jones
AMY JONES
Legal Assistant
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
360-586-1445
Amy.Jones@atg.wa.gov

APPENDIX 13

WASHINGTON STATE DEPARTMENT OF CORRECTIONS
PSYCHOLOGICAL EVALUATION

FOR THE
INDETERMINATE SENTENCE REVIEW BOARD

NAME: Carl Brooks

EXAMINER: Lisa Robtoy, Psy.D.

DOC: 259045

EXAM DATES: 06/12/2018

DOB: 1960

REPORT DATE: 06/15/2018

AGE: 58 years

ERD: 02/10/2049 RESIDES: WSP-Main UNF/FE205

Reason for Referral

Mr. Brooks has been referred for a psychological evaluation by Chief Psychologist Dr. Lou Sowers on behalf of the Indeterminate Sentence Review Board (ISRB) which requires a fully-instrument supported evaluation to be used in Mr. Brooks' upcoming .100 hearing to meet the requirements of ESSB 5064 before the Board. The purpose of this assessment is to provide a written evaluation of the current behavior and risks that may assist the Board in determining the potential for re-offense, violence risk, capacity to function in a less restrictive environment, and/or whether Mr. Brooks' rehabilitation is complete and he may be considered appropriate for parole in terms of his risk to himself, DOC and the community.

Dissemination of Information

This psychological report provides information to be available to the Indeterminate Sentence Review Board, the End of Sentence Review Committee, risk management specialists, and care providers within DOC who have a need to know in order to effectively manage the inmate within the Department Of Corrections. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's written consent or unless otherwise authorized by law.

The data enclosed is part of a psychological evaluation and assessment performed for specific psychological and legal purposes and is intended to be used by persons specifically trained and qualified in psychological assessment techniques including but not limited to clinical interviews, psychological test instruments, psychological raw test data interpretation, meaningfulness of raw test data, and validity and reliability measures. Instruments employed are copyrighted by the publisher and protected by the ethical guidelines of licensed psychologists and may not be released without the consent of the publisher, and or the offender, or in response to a court order, other appropriate legal action, law or statute.

Consent

Mr. Brooks was advised of the purpose of this evaluation and departmental policy regarding information practices in plain language and in writing. I explained that I am not his treating therapist and that the information gathered from this interview would be gathered and reported to the Board for use in his hearing. His written consent to participate was obtained on DOC Form 13-386 and placed in his health care records. He repeated back to the examiner that he understood that his participation is voluntary and that he may ask questions or refuse to answer a question. He understands the limits of confidentiality. The inmate may request to review a copy of this evaluation. BEFORE receiving his copy, the inmate must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee. A treating psychologist or qualified psychological associate may review this report with the offender without giving him or her a copy of the report to keep in his or her possession. This report shall not be disclosed by the offender in a group treatment setting.

Description of Risk Assessment and limitations

A risk assessment involves a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred. This review is combined with assessment tools specifically for evaluation of past behavior and its impact on future behavior. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance. Mental health professionals often over predict aggression and statements concerning an individual's potential for future risk become less valid over time and must be revisited periodically to consider dynamic or changeable factors. Recently, there are research based instruments that use structured professional judgment to review risk reducing or mitigating factors which are included in this report. Despite these limitations, it is possible to consider available current and historical clinical data to identify and form an opinion regarding risk of future violence and make recommendations on ways in which risk may be reduced.

Sources of Information

Interviews:

Mr. Brooks was interviewed and tested by Dr. Lisa Robtoy in a private office in the Health Services Building at the Washington State Penitentiary for approximately three hours of face to face time. Additional time was spent scoring instruments and for preparing this report. His most recent psychological evaluation was completed on 8/21/2013 and was completed by Dr. Gerry Weber at the Washington State Penitentiary. This evaluation will be written as an update to previous reports.

Review of Records

Review of DOC Electronic Files (OMNI)
Review of DOC Mental Health Files
Review of Previous Psychological Evaluations

Psychological Tests Used:

MOCA (Montreal Cognitive Assessment)
PAI-CS (Personality Assessment Inventory-Normed on Corrections Sample)
PCL-R (Hare Psychopathy Checklist-Revised 2nd Edition), per embedded assessment in clinical interview)

Risk Assessment Instruments Used:

VRAG-R (Violence Risk Assessment Guide-Revised)
HCR-20v3 (Historical-Clinical-Risk Management Guide-Version 3)
SAPROF (Structured Assessment of Protective Factors)

Criminal History/Offense Behavior:

Cause Information

Cause Number:	State:	County:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:	
84744	WA	King	05/23/1978	Adult	OMNI-SSTA	OMNI-SSTA	Active	OnBase

Description: See Description under the Rape 1st Conviction. Crime Information

RCW: 9A.40.02A	Crime Title: Kidnapping 1
DV: No	Modifier: None Anticipatory: None Offense Date: 01/27/1978
Enhancement(s): None	

Cause Information

Cause Number:	State:	County:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:	
84744	WA	King	05/23/1978	Adult	OMNI-SSTA	OMNI-SSTA	Active	OnBase

Description: Thirty hours after the Bekemeyer robbery, rape and kidnappings, on January 29, 1978 at approximately 12 midnight, Val and Ann Painter were returning to their home that they had lived in since 1941 after a party. Painter a former SPD police officer retired who immediately thereafter continued to work as a warrants officer for the SPD. As such, Painter was required to carry a gun and up to this time did so at all times. The Painters pulled up in their car in front of their garage and parked it in the street. Mrs. Painter exited the car to turn on the light in the garage. Painter retrieved his coat from the back seat. He looked over the top of the car to see a young black male run to Mrs. Painter and fall in immediately behind her. The last thing he was to hear his wife say was to scream (Oh God, No, No, No). Painter observed a revolver in Brooks' hand. He then saw both his wife and Brooks fall back into the darkness of the garage. On the instincts of a police officer, Painter ran to the outside wall of the garage and removed the gun from his belt. He yelled, (Police officer, halt). Within seconds a shot was fired from within the garage, but Painter could not see the muzzle flash. His immediate thought was that, seeing no flash, Brooks had turned the gun on his wife and had shot her. Painter waited for another tense second, heard a second shot, and this time saw the flash of a muzzle aimed directly at him. A third shot was returned by Brooks over the hood of the pickup truck and Painter was suddenly aware that he had been hit in the chest. Painter returned his second shot to the flash and Brooks fired a fourth time in response. Painter fired a third shot and Brooks fired a fifth time. Painter became immediately aware that he had been shot again in the chest, only this time harder. Brooks emptied his revolver and fled from the garage with Mrs. Painters' purse. Painter tried again to fire at the fleeing defendant but was out of bullets. He saw Brooks run to meet a second black male, Painter pulled himself into the garage and turned on the light. He saw his wife lying face up on the garage floor with blood coming out of her mouth and nose. She did not appear to be alive and Painter pulled himself over to a phone in the basement workshop area of the garage and dialed 911. Crime Information

RCW: 9A.32.050	Crime Title: Murder 2
DV: No	Modifier: None Anticipatory: None Offense Date: 01/29/1978
Enhancement(s): None	

Cause Information

Cause Number:	State:	County:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:	
84744	WA	King	05/23/1978	Adult	OMNI-SSTA	OMNI-SSTA	Active	OnBase

Description: On January 27, 1978 at approximately 6 p.m. Maureen Bekemeyer and her seven year old son Cohn were returning to their Madrona home. She pulled her car into the garage of the residence and before she could exit the vehicle, the defendant Carl Alonzo Brooks opened the driver's door, shoved a gun at her neck and ordered her to move over. Ozie Whitfield climbed into the back seat. Brooks discovered that he could not drive the car and ordered her to exchange seats with him. He then took the front passenger seat and put Cohn on the front floor board. She was ordered to drive southbound on Lake Washington Boulevard past Leschi Park and Frink Park. Whitfield threw the contents of her purse out the car window, commenting that she did not have money. She was ordered at gunpoint to drive to Lake Washington Boulevard, Colman Park, and park the car. Brooks started to unbutton her blouse. Realizing what Brooks wanted to do, she pleaded with him not to rape her in front of her son. Brooks then dragged her from the car at gunpoint and left Cohn in the vehicle with Whitfield. In the park Brooks ordered her to undress. When she was not fast enough for him he ripped off her skirt. When she was completely naked he ordered her to lie down on the ground. He then unzipped his pants and had sexual intercourse with her and in addition ordered her to put her mouth on his penis. At his command she then got partially dressed but, in the defendants hurry was forced to leave her stockings, shoes, panties and skirt in the area where she had been raped. Brooks dragged her back to the car where he then gave the gun to Whitfield and remained in the car with Cohn as Whitfield took her back to the park where she was again raped, ordered to put her mouth on his penis and to french kiss him. At his command she hastily dressed herself and was dragged back to the car. She was then ordered to drive northbound back to the Madrona area. The defendant lived just a few blocks south of the Bekemeyer residence. She drove through several alleys at the command of the defendant without headlights on and stopped near a yellow house, which is the defendant Brooks home. They then ordered her and Cohn into the trunk and resumed driving again. The car made several brief stops, at one point she could hear her groceries being unloaded and taken into a house. After further driving the car was finally abandoned. Crime Information

RCW: 9.79.170	Crime Title: Rape 1		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/27/1978
Enhancement(s): None			

Cause Information

Cause Number:	State:	County:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:	
84744	WA	King	05/19/1978	Adult	OMNI-SSTA	OMNI-SSTA	Active	OnBase

Description: See Description for the Assault 1 under Murder 2. See Description for Robbery 1 under Rape 1. Three hours after the shootout, on January 29, 1978 at approximately 3 a.m. JoAnn Kelly was returning home to her residence in the Madrona area, approximately two blocks south of the Bekemeyer residence. Her car doors were locked and windows rolled up as she waited in her car while two black males walked past. However they both returned to her car and the defendant Brooks pointed a gun at her through the driver's window and said to roll it down. They then unlocked her door and Whitfield climbed into the back seat, unlocking the passenger door for Brooks who got into the passenger seat. Brooks ordered Kelly to start the car and as she was driving Brooks said again, (we are going to have to do something to you, bitch, it makes me mad you do not know that number). Brooks then ordered her to get in the back and Kelly complied. The tire was unscrewed from its well and thrown out of the car. Brooks again said, (Come on bitch, you know that number). He cocked the gun and put it to her forehead and said (You are going to die). Mrs. Kelly replied, (Look, I do not know that number, my life is not worth \$50 and yours is not either). She looked him directly in the eyes and Brooks put the gun down. At this point Brooks

tore off her eye glasses and threw them out of the window. Thirty six hours after the robbery of Mrs. Kelly, on January 30th at approximately 6 p.m. Virginia Chappell was returning home to her residence in the Madrona area. She parked her car and entered her home. Brooks came out from a back bedroom with a gun and said, (Shut up or I will blow your brains out). He grabbed her by the neck and the first thing he asked her was (what's your transaction number). He pushed her into the bedroom with the gun against her head. The gun was to the back of her head and she heard him cock it. He shoved her face down to the floor with the gun against her head and said, (Bitch, you better hold still or you will have a .38 bullet through your head). As she began to remember it she wrote it down for him. He threatened her again with a (bullet through your head if it was not the right number). Brooks found her Mastercard, wanted the transaction number. She said she did not know it, Brooks kicked her in the head, knocked her around, grabbed her hair and swore at her. See Liberty. Crime Information

RCW: 9A.52.020	Crime Title: Burglary 1		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/30/1978
Enhancement(s): None			
RCW: 9A.56.200	Crime Title: Robbery 1		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/27/1978
Enhancement(s): None			
RCW: 9A.36.020	Crime Title: Assault 2		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/27/1978
Enhancement(s): None			
RCW: 9A.56.200	Crime Title: Robbery 1		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/27/1978
Enhancement(s): None			
RCW: 9A.56.200	Crime Title: Robbery 1		
DV: No	Modifier: None	Anticipatory: None	Offense Date: 01/27/1978
Enhancement(s): None			

Mr. Brooks was 17 when the above crimes took place and per his PSI (Watson, 1978), at the time of these offenses Mr. Brooks was considered AWOL from the Central Area Group Home in Seattle. Mr. Brooks had previous juvenile history to be aware of as well. According to his PSI, Mr. Brooks was first referred to the juvenile court in September of 1974 for strong armed robbery. He was not convicted of the crime as the victims declined to prosecute. Mr. Brooks was again referred in January of 1976, where he was convicted of third degree assault and sentenced to probation. In September 1976, Mr. Brooks was referred for burglary and served 10 days in detention. Weber (2013) also lists a 1974 larceny, a 1975 assault and loitering, and a 1977 auto theft.

Relevant Personal History:

Parents:

Parental influence is a behavioral control that inhibits anti-social behavior and is a source of pro-social modeling.

Mr. Brooks did not benefit from a stable home life. Previous records indicate that Mr. Brooks' father was abusive to him on at least one occasion, his mother has been described as "unstable," and Mr. Brooks' grandparents were apparently unable to manage him. As a result Mr. Brooks was referred on both an incorrigible and delinquent petition and removed from the home. During that time he went AWOL, and the instant offenses took place shortly thereafter.

Other Family:

Mr. Brooks reported that he has two brothers and one sister. He stated that both brothers have payees due to developmental difficulties which impairs their cognitive abilities and their ability to care for themselves. Brooks stated that he intends to "take over their care" once he is released from prison. Apparently one of his brothers is "institutionalized" but again, Brooks intends to "have him placed in my care" upon his release.

Mr. Brooks' PSI references his crime partner as Ozzie Davis Witfield. In the present interview Mr. Brooks described Witfield as being his uncle, however Brooks' family has described Witfield as being a cousin to Brooks in previous documents (Watson, 1978). Previous reports (Page, 2010) state that this man was a role model to Brooks, and had an extensive criminal history. During the present interview, Mr. Brooks stated to writer that while he (Brooks) is described as having been the "leader" in the crimes listed above, that Witfield was actually the leader and "the adult" in the situation. Brooks was focused on describing the unfairness involved in his sentencing, as apparently Brooks sentence was much longer than Witfield's. In describing this, Brooks stated that he should not have to do SOTP "because they didn't make my co-defendant do it. He raped her for a half an hour, so he enjoyed himself more than once. Mine didn't take that long because I rushed." Brooks further stated that Witfield "made" him rape the victim.

Mr. Brooks has been married three times. He began living with a woman who was about 10 years his senior in 1977 or 1978. She apparently suggested that they marry "to make him appear more stable" while he was in jail for the index offenses (Pereira, 2008). He was married from 1978 to 1985 and has one son from that marriage (and apparently now four grandchildren), from 1990 to 1996, and from 1999 to 2007. Pereira (2008) states that Mr. Brooks divorced his third wife because she didn't trust him and comply with his request to search things on the internet for him.

Education:

Overall academic achievement is related to stability and a crime free lifestyle.

When asked about education and behavior in school Mr. Brooks stated, "I thought I was fine." He did reference some uses of "corporal punishment" for fighting with other students and otherwise disrupting class. Mr. Brooks admitted that he was expelled once for fighting, but stated that he only fought the kid because the kid had been "picking on my little brother." Previous reports stated that Brooks was a special education student, and dropped out of school in the 9th grade. Brooks later earned his GED in 1981 while incarcerated.

Work:

Employment is a primary socialization structure in our culture. Lack of consistent employment reflects a higher risk for or return to criminal behavior. A history of poor job performance and attitude signifies a disregard for pro-social reinforcement.

Mr. Brooks has no work history prior to incarceration. Previous reports state that Brooks has held institutional positions in food service, laundry, custodial, and Correctional Industries. At the time of the present evaluation he was listed as unassigned to any job or program.

Military:

No known history.

Medical:

Mr. Brooks has been treated for several minor health conditions. He does not appear to have any medical complications that would significantly impact release planning.

Mental Health:

Mr. Brooks has received previous treatment for Delusional Disorder, but at the time of the present evaluation was listed as an S1, indicating that he is not currently experiencing any symptoms and/or impairment related to his mental health. During the present evaluation Mr. Brooks denied current issues related to mental health, nor were any evident.

According to a Mental Health Appraisal dated 7/23/13, Mr. Brooks' delusional thoughts at the time had "several themes including his right to be released from prison to work 40 hours per week, a possible DOC plot to kill him to cover up his "illegal incarceration," and the obligation on the part of the state of Washington to give him a portion of the proceeds from the sale of agricultural products sold in the state." When this evaluator questioned Mr. Brooks about his mental health history he stated, "Everything I've been treated for were related to not being treated fairly." He went on to say that previous reports of him appearing psychotic were related to situational factors. For example, Mr. Brooks stated that one of his "episodes" was the result of his cellmate at the time, who he referred to as Jeremy, "lying on me and having me put in the hole. I had a job, and was working on my case." Mr. Brooks stated that Jeremy accused him (Brooks) of trying to rape him, which is what led to his placement in segregation. Mr. Brooks described another example of mental health issues where he stated he was accused by a CUS "of raping inmates". Mr. Brooks explained that he was placed in segregation as a result and began thinking that he was going to be murdered due to "some conspiracy." Mr. Brooks stated that he has been prescribed psychotropic medication in the past but that he does not find it helpful. In fact, he stated that taking Prozac led to another "episode" as he experienced insomnia which he felt led to paranoia.

Substance Abuse:

A history of substance abuse is a high risk factor for criminal behavior. Substance abuse erodes significant pro-social bonds that contribute to an increased criminal risk to recidivate. It may facilitate or instigate criminal behavior.

Mr. Brooks denied substances ever being a problem in his life during the present interview stating that he was "locked up before I could develop a problem." He did acknowledge that he was drinking alcohol and smoking marijuana regularly at the time of the instant offense, which he stated he used regularly from the age of ten years old. Mr. Brooks also reported a short period of time where he used Valium regularly, which he received from his wife who had a prescription at the time. It should be noted that Mr. Brooks self-report of past substance use has varied across different evaluations making it difficult to know the true extent of his use.

Finances:

Savings/Spending: Financial Stability and self-sufficiency are pro-social. Poor money management are considered stressors which may be indicative of anti-social attitudes or precipitators of inappropriate ways to obtain money.

Mr. Brooks has held intermittent employment within DOC, though he did not have a job at the time of this evaluation. Mr. Brooks stated that he receives about \$10 per month from one of his brothers, but denied any other income at this time. He stated that he is in "debt" due to requesting several hundreds of pages worth of legal work and is considered indigent. He referenced having been able to manage money in the past, as he saved his income to purchase a key board at one point in time.

Current Functioning/Behavior

Programming:

Since Mr. Brooks most recent psychological evaluation in 2013, he has been assigned as a food service worker, and participated in fitness management though was not able to complete the program due to transfer related to a custody promotion. Previous reports (Weber, 2013) indicate that Mr. Brooks has completed Victim Awareness and Family Dynamics however this could not be verified in OMNI as these programs were not listed.

Infractions:

According to his infraction summary, Mr. Brooks has received 81 infractions over the course of his incarceration. Of those 81 infractions, 80 of them were considered serious. Infractions over the course of his incarceration have included strong-arming, sexual harassment of staff, failure to comply with administrative or post-hearing sanctions, sexual assault on his cellmate, possession of narcotics, possession of weapon, and theft. Since the previous evaluation in 2013, Mr. Brooks has received 3 infractions. In 2015 Brooks was found to have unauthorized property in his cell, and in 2017 he was found guilty of sexually harassing a staff member, as well as refusing a cell assignment. In discussing these events, Mr. Brooks described each event as being outside of his control, and/or his being misunderstood in some way. For instance, he stated that he was infraacted for sexual harassment because he was mistaken for another offender, and minimized his interactions with the female staff member stating, "I was set up to make a comment." He described the staff member as having her "breasts out" and dressing "like a prostitute."

Peer Relationships/Community Support:

A satisfying family or marital relationship indicates pro-social relationships and ties that are negatively correlated with criminal risk. Uncaring, negative, or hostile relationships with relatives who have contact indicate poor social and problem solving skills and a lack of pro-social modeling. A lack of pro-social companions means a diminished opportunity to observe pro-social models and no reinforcement for pro-social behaviors. The presence of criminal acquaintances and/or friends is associated with an opportunity for pro-criminal modeling which is considered a major risk factor.

Mr. Brooks reports that his primary community support network consists of his two brothers, whom Brooks described as having cognitive limitations. He denied current contact with anyone else in the community. In terms of peers, Mr. Brooks has been implicated in committing sexual violence within the prison system on more than one occasion, and reported having issues with offenders in the general population at CRCC which Mr. Brooks stated led to his being infraacted for refusing housing and ultimately resulted in his demotion back to close custody and transfer back to WSP in 2017. His most recent ONE assessment states that Mr. Brooks associates with STG affiliated and/or assaultive peers, and Mr. Brooks has been described in previous evaluations as an aggressive and dangerous individual with some mental health concerns who preys on others.

Strengths/Weaknesses:

Mr. Brooks appears to take care of himself as he presented as being physically fit and in good shape, and he was able to express his concerns clearly in the interview. These can be seen as strengths.

In terms of weaknesses, Mr. Brooks is a man who has spent most of his life incarcerated, and appears to have adopted an institutionalized way of thinking and relating to others. Mr. Brooks tends to focus on his wants and needs, and based on the instant offenses as well as his institutional behavior, is willing to satisfy

his desires at the expense of others. He presents as a person with a somewhat paranoid belief system which is likely exacerbated when Mr. Brooks is stressed, and generally has limited insight in terms of understanding how his behavior effects not only his situation but his environment and other people. According to his ONE assessment, Mr. Brooks is unwilling and/or has difficulty understanding others' point of view; cannot identify triggers for negative behavior; uses aggression, conflict, arguments, and fights in dealing with people; has limited problem solving skills; lacks skills for developing realistic goals; demonstrates repeated failure to fulfill or honor obligations and commitments; is resentful and/or defiant towards authority; has no respect for the personal property of others; minimizes, justifies, makes excuses, and blames others for his behavior; is not compliant with institutional rules; is currently hostile toward supervision; and does not see a need for change.

Goals and Plans for the Future:

According to OMNI, Mr. Brooks' stated goal is to "win my appeal." During the present evaluation Mr. Brooks stated that his plan for the future is to get out of prison. He stated that he is "entitled to a halfway house and not to be jerked around by the Board." His stated plan is to be granted furlough to look for a job, transition to a halfway house where he can work and save money until he is off parole. At that point Mr. Brooks stated that he intends to take over the care of his two brothers, who Brooks reports both receive state benefits for some kind of cognitive limitation, and become their payee. Brooks stated that he would not need a job at that point because he would be receiving money from the state to care for his brothers, which he referred to as "a paycheck in itself." He also reported that he is a musician and would like to upload his music to the internet.

Leisure and Recreation: *An excess of idle time or discretionary time presents an added dimension of risk. Recent, regular involvement in a group of pro-social individuals is considered risk reductive. Hobbies and other leisure activities that are service oriented are also ameliorating to risk.*

Mr. Brooks reported that he spends most of his free time playing music and working on various legal cases. While Mr. Brooks did not endorse exercise as a leisure activity, he presents as fairly muscular particularly for his age, making it reasonable to assume he spends time exercising as well.

Clinical Interview

Mental Status Examination:

Mr. Brooks is a 58 year old African American male. According to OMNI, he stands 5'9" and weighs 218 lbs. His body type appeared muscular. He presented with good hygiene as his facial hair was groomed and his clothing appeared free of stains and/or wrinkles. His mood was somewhat irritable. Mr. Brooks was fairly guarded when this examiner explained the purpose of our meeting. For example, he stated, "I don't want to do any written tests. Last time the results said I just wanted out of prison," and went on a lengthy diatribe about what he perceives to be unfair about the length of his sentence and flaws in the evidence used to convict him. He did finally acquiesce to take the PAI, however qualified his cooperation by stating, "I'll do it. I feel like I have to given the situation." While he agreed to take the PAI and indicated understanding of the instructions, Mr. Brooks invalidated the test by choosing more than one answer for nearly half the test items, sometimes choosing all four options, and took approximately 2 hours to complete the measure, seemingly to control the interview and passively refuse the test. Mr. Brooks was difficult to keep on task, as he was highly focused on convincing writer that his sentence is unfair, and that the expectations placed on him are unfair. He did not appear to demonstrate much insight, and showed poor judgement and poor impulse control as well. His boundaries were poor with writer. For example, he commented that had writer conducted the present evaluation in the 70s, "You could have taken me out to Black Angus," and

commented that writer reminded him of another female MH staff he knew at one point stating, "You will look just like her in 20 years." Mr. Brooks added that he was not allowed to interact with that particular female staff for reasons he stated he did not know. When describing his musical abilities, Mr. Brooks invited this examiner to an event being held next month in the visiting room where Mr. Brooks will apparently be performing.

He was oriented x4, and was hyper aware of his surroundings. For example, he commented that writer "was unprepared," as the pencil he was given to complete the PAI was not freshly sharpened, and at that point he pointed out that writer also did not have a radio. His thought process had somewhat paranoid themes, however this seemed most prevalent when discussing topics that resulted in Mr. Brooks getting in trouble. It was difficult to tell if the paranoid ideas were psychotic in nature, or further evidence of Mr. Brooks' tendency to displace blame. It was this examiner's impression that Mr. Brooks works hard to justify his behavior and avoid taking responsibility for negative outcomes in his life, even when denial requires him to resort to flawed or skewed logic that may appear delusional to others. After years of displacing blame, it seems possible that Mr. Brooks has become entrenched in a thought process that clears him of responsibility and at this point he may even believe that he is somehow being targeted when in reality he is being held accountable for his behavior.

At the conclusion of the interview, Mr. Brooks thanked writer for her time, but laughed and stated, "Don't do me like Pereira now," referring to a previous psychological evaluation where Mr. Brooks felt he was negatively described.

Psychological Test Findings

It is important to note that this individual was evaluated in a prison setting under conditions that were less than ideal for psychological testing. Therefore, any results from the test scores should be used only as hypotheses about the examinee. No decisions should be made based solely on the information contained in this report. Psychological tests are used to provide one source of information necessary to construct the model.

The psychologist chooses tests depending upon the information needed to complete the clinical and risk assessment. The battery of tests selected and the opinions regarding risk status are based on the training, experience, skill, judgment, and expertise of this licensed psychologist and not on any particular test, historical information, or record.

Cognitive Functioning:

Mr. Brooks performed within the normal limits on the MOCA, indicating that his cognitive abilities fall within the average range of functioning. Results show that he functions adequately for the purposes of this evaluation.

Year	Test	Results
Clinical Assessment		
2018 (Robtoy)	PCL-R	High risk to re-offend. High levels of psychopathy.
2018 (Robtoy)	PAI-CS	Invalidated. See MSE for description of behavior around this measure which led to invalid finding.
2010 (Page)	PCL-R	Low risk to re-offend. Low levels of psychopathy.
2008 (Pereira)	PCL-R	High risk to re-offend. High levels of psychopathy.
2008 (Pereira)	MMPI-2	Valid profile. No psychological distress, so much so profile suggested under-reporting of symptoms. Resentful, rebellious, antisocial attitudes and behaviors, shallow affect, lack of empathy, immature, childish, poor self-control.
Forensic Risk Assessment		
2018 (Robtoy)	VRAG-R	Score falls within Bin 9, indicating that on average 76% of offenders with similar scores re-offend within 5 years, and 87% within 12 years.
2018 (Robtoy)	HCR2-v3	High risk to re-offend.
2018 (Robtoy)	SAPROF	Low in terms of protective factors.
2010 (Page)	VRAG	Score falls within Bin 6, indicating that on average 34% of offenders with similar scores re-offend within 5 years, and 60% within 12 years.
2008 (Pereira)	Static-99	Moderate-high risk to re-offend.

Risk Assessment:

A central feature of this evaluation is to render an opinion regarding Mr. Brooks's risk for future dangerousness in terms of criminal recidivism, violence and/or sexual re-offense. Assessing any individual's risk for engaging in future violent behavior is an inherently difficult task, as the scientific literature attests. This is particularly the case where the information is either incomplete or deliberately concealed. Mental health professionals can make use of a large and growing body of empirical literature for identifying risk-elevating factors.

Because risk-elevating factors, particularly the dynamic factors, change over time with or without intervention, risk assessment updates are necessary to insure accuracy and guard against decision-making based on outdated information.

The Hare Psychopathy List (PCL-R) is currently the gold standard of predicting future risk by using levels of psychopathy as the major predictor. The PCL-R "provides a dimensional score that represents the extent to which a given individual is judged to match the 'prototype psychopath.'" The higher the score, the closer the match, and the confidence that the individual has psychopathic tendencies. The lower the score, the less likely the individual has a personality disorder that might reflect an added risk of re-offending. It is also

considered dynamic and reflects changes in risk levels prior to and subsequent to treatment. Therefore, it is recommended to re-administer periodically. Mr. Brooks scored in the high range for psychopathy. His risk for reoffending is high based upon the psychopathy factors present.

VRAG-R:

The VRAG-R is a well researched 12-item actuarial scale designed to predict violent recidivism. This includes the identification of potential sexual offenses previously assessed separately with a related instrument the Sex Offender Risk Appraisal Guide (SORAG). Scores on the VRAG-R are largely based upon Static information related to major life events (marital status, age at index crime, elementary school maladjustment, criminal history, etc.) at, or prior to, the time of the offender's Index offense in 1975. As such, scores generated by this instrument are unlikely to change significantly when re-administered over time. Also, with the recent revisions of the VRAG to the VRAG-R, the SORAG for sex offenders was combined with the VRAG to obtain one useful instrument. The PCL-R is no longer required to score the VRAG-R which employs only the Facet 4 questions that address antisociality. Mr. Brooks' score fell within Bin 9, which estimates a 76% likelihood he will re-offend within 5 years, and 87% that he will re-offend within 12 years.

Historical-Clinical-Risk Management-20 (HCR-20):

Current practice in violence risk assessment involves the consideration of factors frequently associated with future violence. The HCR-20 is an instrument that organizes known risk factors into three categories: Historical, Clinical, and Risk Management.

Using past, present, and future factors, the HCR-20 assesses dynamic risk for recidivism. A total score is obtained from the consideration of these three perspectives. Mr. Brooks' score indicates that he is considered High Risk to recidivate.

Protective or Risk Reducing Factors:

A protective factor is a factor considered to have a reducing or ameliorating effect on certain chronic or acute risk factors have on an individual's behavior. Significant mitigating factors that indicate possible reduction in risk include: increasing age, medical condition, decreased frequency of institutional misbehavior, and criminogenic-related cognitive treatment. While Mr. Brooks in increasing in age, he continues to demonstrate difficulty following institutional rules and he has not participated in any recent offender change programs that would protect him from re-offending.

Summary and Risk Management Recommendations

The risk decisions made in this assessment are based on an anamnestic model (a formulation that takes the offender's clinical and social history, and individual behavioral risk patterns into account), not on tests alone. It is a violation of the Ethical Guidelines Psychologists to base risk decisions solely on test results. The anamnestic model of the offender's behavior is constructed on the basis of the offender's past behavior, current behavior, test results, available collateral information, and presentation on clinical interview.

The current assessment reflects efforts to incorporate measures of static and dynamic factors that the Board may want to consider in their decision making process. It is important to note that science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual; rather observations are offered based on what we have learned about behavior within large

groups of people that we see as having similar characteristics and factors. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance.

Mr. Brooks' scores on the present risk assessment measures indicate that he is high risk to re-offend. His recent behavior demonstrates that he is high risk as well. Mr. Brooks' was promoted to medium custody in 2017, however he did not manage the change in security level well. The day he was transferred to medium security, Mr. Brooks was infraacted for sexually harassing a female staff member, and once his segregation time was over for that offense, he refused to go to general population resulting in his demotion and transfer back to close custody. It appears Mr. Brooks requires the level of security and supervision offered in close custody in order to manage his behavior and impulses. He continues to lack insight into his behavior, feels he is entitled to various things, and is willing to satisfy his wants/needs even if it is at the expense of others. Previous records indicate that Mr. Brooks continues to engage in predatory behavior, and he did not verbalize or demonstrate any remorse or empathy regarding any of his previous actions. Instead he was focused on the fairness involved, such as discussing why he believed his sentence was unfair compared to his co-defendant's, Brooks reasoned that because his co-defendant took longer raping one of the victims, he should have gotten a longer sentence in prison. Despite discussing multiple accusations and references that Brooks has continued to engage in predatory sexual behavior in prison, Brooks denied any interest or a felt need to complete sex offender treatment because his co-defendant didn't have to. There is a pattern of problematic interactions with females spanning from the instant offense to the present interview and his interactions with this examiner. Overall, there is very little to no evidence available to suggest that Mr. Brooks' underlying personality structure, attitudes, or behavior has changed. In addition to his rating high in terms of risk, Mr. Brooks has little to no protective factors in place to offset his level of risk.

Recommendations

It is my professional opinion, based upon my education, training, and experience that Mr. Brooks is not a good candidate for release to the community at this time. He remains high risk for community safety issues.

It is recommended that Mr. Brooks become involved in SOTP, and follow the rules and conditions of that program in order to address patterns in his thinking, feeling and behaving that lead Mr. Brooks to engage in predatory sexual behavior.

While previous reports reference Mr. Brooks having already completed victim empathy classes, this examiner could not find any record of this taking place. Additionally, in the present evaluation Mr. Brooks demonstrated little to no empathy for his past victims or any understanding about the impact his behavior had on his victims, Mr. Brooks' family, or Mr. Brooks himself, aside from being unfairly sentenced. It is recommended that he participate in victim empathy classes.

It is further recommended that Mr. Brooks follow all institutional rules and guidelines in order to demonstrate that he can engage in his daily activities in a prosocial manner and so that he can parole to his next cause and promote through custody levels. Mr. Brooks should work through the custody levels in order to learn appropriate skills and behaviors in unison with a gradual reduction in supervision and control over his environment. This kind of step down program might be most helpful to support Mr. Brooks and aid him in a successful transition if and when he is ready to release to the community.

With the submission of this report, my evaluation of Mr. Brooks is complete. Please do not hesitate to contact me if there are any questions.

A handwritten signature in black ink, appearing to read 'Lisa Robtoy', with a circled 'PSYD' written below it.

Lisa Robtoy, Psy.D.
Psychologist 4, Evaluator for the
Indeterminate Sentence Review Board

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

September 16, 2020 - 5:04 PM

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