

**SUPREME COURT OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

CARL ALONZO BROOKS,

Petitioner.

RESPONSE TO MOTION  
TO STRIKE PARTS OF  
RESPONDENT'S BRIEF

Respondent Indeterminate Sentence Review Board (the Board) responds to Brooks' motion to strike part of its brief. For the reasons, below, this Court should deny the motion. The Board is simultaneously filing its motion to supplement the record with the Appendix mentioned in its supplemental brief. The Board has no objection to Brooks, should he seek the Court's leave to do so, filing a response to the argument Respondent presented in Section D of its supplemental brief.

**I. ARGUMENT**

**A. Under the Circumstances of This Case, the Board Is Authorized to Present Arguments Addressing Brooks' Claims and Submit Records in Support in its Court-Authorized Supplemental Brief**

The circumstances of this case are somewhat unusual because the Board had no opportunity to develop the record or present any argument in the Court of Appeals, because that court did not request the Board's response before dismissing Brooks' petition. Consequently, the Board's responses addressing the issues Brooks raised and the record supporting those arguments are being presented for the first time in this Court. In his

motion for discretionary review, Brooks, among other arguments, claimed that the Board not releasing him showed it had no rehabilitation goals or plans for him (Motion at 13, 20, 24), that the Board would never find his rehabilitation complete (*id.* at 10), that he needed to undergo Sex Offender Treatment Program (SOTP) that would show his low risk to re-offend (*id.* at 14), and that the Board did not make SOTP available for him (*id.* at 17). Submission of Appendix 13 is necessary to support the Board's argument that the Board had rehabilitative goals for Brooks and wanted Brooks to undergo SOTP, but his high reoffend risk and lack of rehabilitation prevented the Board from finding him releasable on his current count.

Apparently based on the absence of record below, this Court, in its original January 6, 2020, order requesting a response and its July 8, 2020, order authorizing supplemental briefing, did not limit Respondent's argument it could present in its response. Under the circumstances of this case, the record is being developed in this Court since, as admitted by Brooks, no record was developed below. Assuming that the Court's order authorizing supplemental briefing/assigning counsel for Brooks indicated that the Court was seeking additional information and argument in order to appropriately resolve this case, RAP 16.9 should not be read to preclude the Board from submitting Brooks' 2018 evaluation to refute additional argument Brooks made in his motion for discretionary review. *See In re*

*Higgins*, 152 Wn.2d 155, 160, 95 P.3d 330 (2004) (the Court has inherent authority to consider issues raised in a supplemental brief when such consideration is necessary to a decision on the merits).

Finally, in the interest of full development of record in this Court, the Board has no objection to Brooks, should he seek leave to respond to the argument raised by the Board, providing a response to the Board's argument.

## II. CONCLUSION

For the reasons, above, this Court should deny Brooks' motion to strike a portion of Respondent's brief.

RESPECTFULLY SUBMITTED this 16th day of September, 2020.

ROBERT W. FERGUSON  
Attorney General

*s/ Alex Kostin*  
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**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the RESPONSE TO MOTION TO STRIKE PARTS OF RESPONDENT'S BRIEF 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  
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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  
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**CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE**

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