

6-25-2012: At the direction of the assignment justice, the motion to strike is passed to the merits.

Sum L Carter, Deputy Clerk

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jun 21, 2012, 3:35 pm
BY RONALD R. CARPENTER
CLERK



RECEIVED BY E-MAIL

SUPREME COURT
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE
PERSONAL RESTRAINT OF

CHARLES WEBER,

Petitioner.

No. 85992-2

MOTION TO STRIKE
SUPPLEMENTAL ARGUMENTS
AND EVIDENCE

1. IDENTIFY OF MOVING PARTY:

Appellant Charles Weber.

2. STATEMENT OF RELIEF SOUGHT:

For this Court to strike three sections of Appellee's supplemental brief. The sections asked to be struck are the sections titled as follows:

Section C.1. Summary of Argument.

Section C.2. The Evidence submitted by Weber Does Not Meet the "newly Discovered Evidence" Standard and Thus Is Not a Basis for Relif Under RCW 10.73.100(1).

Section C.3. The Evidence submitted by Weber Is Insufficient to Demonstrate "Actual Innocence" Such That His Time-Barred Claim of Ineffective Assistance of Counsel May be Considered.

Appendices E-I

MOTION TO STRIKE SUPPLEMENTAL ARGUMENTS
AND EVIDENCE - 1

Kahrs Law Firm, P.S.
5215 Ballard Ave. NW, Suite 2 Seattle, WA 98107
Ph: (206) 264-0643 Fax: (206) 237-8555
mkahrs@kahrslawfirm.com

ORIGINAL

3. FACTS RELEVANT TO MOTION:

This case was properly briefed by both parties. Subsequent to the initial briefing and after acceptance by this Court, this Court decided *In re Pers. Restraint of Carter*, 172 Wn.2d 917, 263 P.3d 1241 (2011). In response to this new decision, and in support of supplemental briefing, the State argued that this decision of “this Court left open the question of what showing is required to employ the actual innocence doctrine in a particular case.” It then said that “[t]he State believes that the Court in this case would benefit from additional briefing from the parties on this question.”

Mr. Weber did not object. This Court sent a letter to the parties on June 5, 2012, granting the motion for supplemental briefing. This letter stated that “[a]ny supplemental brief as to the scope and application of the actual innocence doctrine should be served and received for filing by June 19, 2012.”

4. GROUNDINGS FOR RELIEF AND ARGUMENT:

RAP 16.9 and RAP 16.10 sets forth what briefs may be filed. It permits an opening brief by Petitioner, an answering or response brief by Respondent and, if desired, a reply brief again by Petitioner. Further briefing may be permitted, by permission of the appellate court. RAP 16.10(c). However, this rule does not give a party carte blanche to discuss anything under the sun. For example, this Court in the past has explicitly asked for a more detailed statement of the facts when the situation warrants it. *See In re Pers. Restraint of Rice*, 118 Wn.2d 876, 882, 828 P.2d 1086 (1992). Respondent neither asked for permission for supplemental briefing on the issues in the sections listed above nor was supplemental briefing asked for by this Court.

Instead of focusing on that issue and address strictly legal issues raised by the decision in Carter, the State has sought an unfair advantage to bolster its case by bringing in new evidence on the background of some of the witnesses and then argue why the facts properly presented by Petitioner to not prove his case. This not only provides the State with an additional opportunity to try to persuade this Court but goes way beyond what it is permitted to do. Below, Petitioner will explain why each section must be struck.

Section C.1. must be struck because it purports to present additional evidence, evidence which should have been produced during the State's initial response. One can only believe that this evidence was preferred because the State failed to make the case about the witnesses being gang members. Of course, the State again failed to make this case but that is not the point. The point is, there are rules and parties must play by the rules. At the same time, the documents attached to this brief must be struck as being non-responsive to this Court's order.

Section C.2 contains argument based in part on the evidence in Section C.1. and on what has already been presented in the State's initial Response. The argument on what is new evidence in accordance with RCW 10.73.100 has absolutely nothing to do with the actual innocence doctrine. Again, the State had not asked for nor was did this Court ask for more discussion on this issue. This section must be struck because it is patently unfair to Weber for the State to get a second chance to try to make their case.

Section C.3 must be struck because the State previously raised a factual argument against a gateway claim in its Response brief and should not be permitted to argue it again.¹ That the State

¹The State argued the evidence starting on the bottom of page 14.

chose to focus on examining the evidence for the new evidence claim in its Response and did not fully address this claim is not Mr. Weber's concern.

5. CONCLUSION

For the reasons stated above, Charles Weber asks this Court to strike the sections and evidence cited from the State's Supplemental Brief.

DATED THIS 21st day of June, 2012.


MICHAEL C. KAHRS, WSBA #27085
Attorney for Mr. Weber

CERTIFICATE OF SERVICE

I further certify that on the June 21, 2012, I caused this document to be mailed by first class mail, postage pre-paid, copies of this document to:

Ann Summers
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney
W. 554 King County Courthouse
516 Third Ave.
Seattle, WA 98104

Todd Maybrow
Allen, Hansen & Maybrow, P.S.
600 University St., Ste. 3020
Seattle, WA 98101

James Lobsenz
Carney Bradley Spellman, P.S.
701 Fifth Ave., Ste. 3600
Seattle, WA 98104



Michael Kahrs

OFFICE RECEPTIONIST, CLERK

To: Mike Kahrs
Subject: RE: Motion to Strike, 85592-2

Rec'd 6/21/2012

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Mike Kahrs [<mailto:mike@kahrslawfirm.com>]
Sent: Thursday, June 21, 2012 3:34 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Motion to Strike, 85592-2

In re the Personal Restraint of Charles Weber, No. 85992-2 Michael Kahrs, WSBA #27085
(206) 264-0643
mike@kahrslawfirm.com