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SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of Gail Ann Brashear.

**SUPPLEMENTAL BRIEF OF
INDETERMINATE SENTENCE REVIEW BOARD**

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I. INTRODUCTION

The Indeterminate Sentence Review Board is composed of experts in criminal justice appointed by the Governor, and entrusted by the Legislature with making some of the most difficult decisions in our criminal justice system. The Legislature explicitly assigned to the discretion of the Board decisions of whether and under what conditions to release offenders who fall under the Board's jurisdiction. *See* RCW 9.95.009, .420; RCW 9.94A.730. For decades, this Court has recognized that it is the Board itself that must exercise its discretion in making release decisions. *E.g.*, *In re Personal Restraint of Dyer*, 157 Wn.2d 358, 369, 139 P.3d 320 (2006). Thus, even where this Court has found that the Board abused its discretion in denying release, it has remanded to the Board for a new hearing rather than tell the Board what it must decide. *Id.*

The Court should continue its adherence to that principle. Here, the relevant statute limits the Board's discretion by requiring release unless the Board determines that it is likely that the person will reoffend. RCW 9.94A.730(3). But the decision remains explicitly a discretionary decision of the Board. RCW 9.94A.730(3).

The Court of Appeals decision interferes with the Board's discretion in two significant ways. First, it suggests a rule that the Board only gets "one bite at the apple" in deciding whether to release offenders. This approach threatens public safety because if the Board errs in its decision, it

will not be permitted to reconsider the decision even if it might properly determine that the person is likely to reoffend in a new hearing.

Second, the Court of Appeals improperly restricts the sources of information that the Board may consider when making its determination. The Court of Appeals suggested that the nature of the crime, victim statements, and prosecutor statements should not be considered by the Board in making its determination. There is no reason to put such blinders on the Board; it is sufficient to hold that the Board should only consider information relevant to the likelihood of reoffense.

II. STATEMENT OF THE ISSUES

1. The Court of Appeals concluded that the Board abused its discretion by failing to explain its view of certain evidence and by considering improper factors in denying release. Did the court err by directing the Board to order Brashear's release, thus exercising the authority and discretion granted to the Board by RCW 9.94A.730?

2. Did the Board abuse its discretion when it considered the totality of the circumstances, including the facts and impacts of Brashear's crimes, information from the prosecutor and victim, and the portion of the sentence served, as part of deciding whether Brashear could be safely released under RCW 9.94A.730?

III. STATEMENT OF THE CASE

E. The Indeterminate Sentence Review Board

The Indeterminate Sentence Review Board was created in 1986 and has jurisdiction over three types of cases: (1) persons who committed crimes prior to July 1, 1984, and were sentenced to prison; (2) persons who committed certain sex offenses; and (3) persons who committed crimes

prior to their eighteenth birthday and were sentenced as adults.¹ RCW 9.95.009, .420; RCW 9.94A.730. Board members are appointed by the Governor and serve five-year terms. RCW 9.95.003(1).

The Board applies its expertise in what this Court has called the “predictive and discretionary” decisions for releasing offenders under a presumptive release statute like that here, as well as in setting minimum terms under pre-SRA offenders. *In re Personal Restraint of McCarthy*, 161 Wn.2d 234, 244, 164 P.3d 1283 (2007); *In re Personal Restraint of Sinka*, 92 Wn.2d 555, 565, 599 P.2d 1275 (1979).

F. The Superior Court Sentenced Brashear to 51-Years Confinement for Killing a Man When She Was 15 Years Old

In 1996, Gail Brashear brutally killed a man by shooting him in the abdomen and then stabbing him repeatedly in the neck. App. D at 1 (Criminal History Summary).² She was fifteen years old at the time. The murder occurred when Brashear and her friends were camping and decided to steal a car because they had run out of fresh water. *Id.* Brashear flagged down a passing pick-up truck and asked the driver for a ride. After getting in, she shot the driver in the abdomen. *Id.* The gunshot was not fatal, but Brashear later stabbed the victim repeatedly in the neck while she and her

¹ Before enactment of the Sentence Reform Act (SRA), the Board was known as the Board of Prison Terms and Paroles, which was created in 1935. *See* Laws of 1935, ch. 114, § 1; Laws of 1947, ch. 47, § 1.

² Citations to “App.” refer to the Appendices attached to the Board’s Motion for Discretionary Review to this Court.

friends drove the vehicle away. App. D at 1. In addition to the murder, law enforcement suspected Brashear of previously stabbing a juvenile, and burglarizing a residence in which the .380 handgun used in the murder had been stolen. App. B at 3 (Board's Decision and Reasons).

Brashear pled guilty to first-degree murder, first-degree assault, and first-degree burglary, with two firearm enhancements and one deadly weapon enhancement. App. C at 1 (Judgment and Sentence). The Court imposed a total sentence of 614 months, or 51.2 years. *Id.* at 5.

Brashear engaged in serious misconduct during the first ten to eleven years of her imprisonment. During that time, Brashear received 97 serious infractions, which escalated during 2007 and 2008 so much that she was moved to a facility in Arizona that was better equipped to handle her behavior. App. B at 3. Since 2008, she has had no major infractions and few minor infractions. At the time of the Board hearing, her last infraction of any kind was in August 2014. App. E at 4 (OMNI Legal Face Sheet).

G. The Board Denied Brashear Release Under RCW 9.94A.730 After Finding Her Likely to Reoffend

RCW 9.94A.730(1) allows an offender sentenced for certain crimes committed prior to age eighteen to petition for release after serving at least twenty years in confinement. Per the statute, the offender must undergo an evaluation "incorporating methodologies that are recognized by experts in

the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board.” RCW 9.94A.730(3). The statute also requires the Board to consider impact statements provided by the victim or survivors of the victim. RCW 9.94A.730(4).

The Board shall release the person “unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.” RCW 9.94A.730(3). Like other Washington parole statutes, the Board must “give public safety considerations the highest priority” when making release decisions. RCW 9.94A.730(3); RCW 9.95.009(3).

In 2017, the Board considered Brashear’s petition for early release. The Board used a “structured decision-making framework that takes into consideration: the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsivity to programming, demonstrated offender change, release planning, discordant information, and other case specific factors.” App. B at 5. The Board considered a psychological evaluation from Deborah Wentworth, Ph.D. App. B at 5-6; App. F. The evaluation assessed Brashear to be at low to very low risk of reoffending. App. F at 11. The report stressed that “science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual[.]” *Id.* at 3. The report also noted

that due to the less-than-ideal prison setting for conducting psychological tests, those 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.*” App. F at 7. The report also stated that whether Brashear should be released to less restrictive levels was not a scientific/clinical question and was deferred to the Board. *Id.* at 11.

The Board acknowledged the results of the psychological examination and Brashear’s dramatic shift in behavior and participation in programming beginning in 2008. App. B at 6. The Board also considered the nature of the crimes committed, the lasting impact those crimes had on victims, that Brashear had served only a small portion of the original sentence, and that the prosecutor strongly recommended against release. *Id.* Based on all this, the Board found “by a preponderance of the evidence that Ms. Brashear is more likely than not to commit any new criminal law violations if released on conditions” and denied release. App. B at 1. The Board reasoned that it wanted “to see Ms. Brashear continue to demonstrate that her past behaviors are truly in her past and continue to participate in any programming available to her that will prepare her for a future step down to lower levels of custody and eventually release to the community.” App. B at 6.

In November 2018, before the Court of Appeals issued the opinion on review, the Board scheduled a new hearing for Brashear based on

intervening case law stressing the importance of considering efforts toward self-improvement. App. G (Administrative Board Decision) (citing *In re Personal Restraint of Pauley*, No. 76489-6-I, 2018 WL 3844399 (Wash. Ct. App. Aug. 13, 2018) (unpublished)). That hearing is now tentatively scheduled for September 11, 2019.

H. The Court of Appeals Found the Board Abused Its Discretion, and Ordered the Board to Release Brashear

Brashear filed a personal restraint petition challenging the Board's decision. The Court of Appeals concluded that the Board abused its discretion in denying release. Slip op. at 11. The court faulted the Board in several details. A number of the errors concerned the Board's failure to explain its findings or address certain subjects. The court said the Board "did not rely on any direct evidence of Brashear's likelihood to reoffend," and the Board "did not cite evidence refuting Dr. Wentworth's finding that Brashear is at a low risk to reoffend[.]" *Id.* at 8. The court also found the Board erred when it "relied on Brashear's underlying crimes, the impact of those crimes, and the small portion of her sentence served in denying her petition." *Id.* at 9. The court held that these were "not factors that guide the ISRB's decision under RCW 9.94A.730(3)." *Id.*

The court remanded to the Board to enter an order releasing Brashear, rather than remanding for a new hearing. *Id.* at 10-11. It acknowledged that this Court's precedent "usually" required remand when

courts find the Board abused its discretion. Slip op. at 11. But the court reasoned that the more limited discretion given to the Board in the context of RCW 9.94A.730 justified ordering Brashear's release: "In the context of an early release determination pursuant to RCW 9.94A.730, where the record does not establish a likelihood to reoffend, the statute requires a release on appropriate conditions, not a second bite at the apple." *Id.* at 11-12.

IV. ARGUMENT

The Court should reverse the Court of Appeals and remand to the Board to conduct a new hearing in light of the standard for release as clarified by this Court. Breaking from a long line of cases, the Court of Appeals usurped the role of the Board by preventing it from exercising the discretion granted it by the Legislature. Instead, the Court of Appeals improperly held that the Board only has one chance to make a release decision, and if error occurs there is no "second bite at the apple." Slip op. at 12. The Court of Appeals also improperly restricted the sources of information that the Board may consider in making its decision. The Board agrees that in making release decisions, it should rely only on information relevant to whether the offender is likely to commit crimes if released. But the court improperly suggested that certain information, including the nature of the original crime, is not relevant. *See* slip op. at 9, 10. This Court should clarify that the Board may consider any relevant information.

E. When Appellate Review Finds the Board Abused its Discretion, Courts Remand to the Board for a Proper Exercise of Discretion

In a long and unbroken line of cases, this Court has established that when the Board abuses its discretion in making release decisions, the proper remedy is remand to the Board for a new hearing. *E.g., In re Personal Restraint of Dyer*, 157 Wn.2d 358; *In re Personal Restraint of Ayers*, 105 Wn.2d 161, 713 P.2d 88 (1986). That principle resolves this case.

First, it is beyond question that the Board was exercising its discretion when deciding Brashear's petition for release. When the Legislature enacted RCW 9.94A.730 to allow persons who had committed crimes as juveniles to petition for early release, it explicitly premised release on the Board's discretionary decision:

The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless *the board determines* by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making *all discretionary decisions regarding the ability for release* and conditions of release.

RCW 9.94A.730(3) (emphases added). The Court of Appeals and Brashear agree that the Board decision on review is a discretionary one and that the Court may reverse a Board decision only if it finds an abuse of discretion. Slip op. at 6 (acknowledging application of abuse-of-discretion standard); Personal Restraint Pet. at 7. That is because even under

presumptive-release statutes that limit the Board’s discretion, the Board’s decision remains essentially predictive and discretionary. *See In re Personal Restraint of McCarthy*, 161 Wn.2d at 244 (holding presumptive-release statute applicable to certain sex offenders was more “predictive and discretionary” than parole revocation decisions).

Second, this Court has repeatedly acknowledged that the Board—not the courts—must decide whether to release an offender. In *Dyer*, this Court found that the Board had abused its discretion by disregarding evidence and basing its decision on conjecture unsupported by evidence in the record. *In re Personal Restraint of Dyer*, 157 Wn.2d at 359. The Court found that the evidence from the Board’s hearing did not support any of the reasons given in Board regulations for denying parole. *Id.* at 364. It also commented that the Court’s “review of the evidence and testimony presented at the parolability hearing suggests Dyer met his burden” to obtain release. *Id.* at 369. Yet the Court did not order the offender’s release, recognizing that the court “cannot make this decision in the first instance.” *Id.* (emphasis added). Instead, just like it had in many cases before, the Court remanded to the Board for a new hearing, so that the Board could properly exercise its discretion. *Id.* Numerous cases are in accord.³ *E.g.*, *In re Personal Restraint of Locklear*, 118 Wn.2d 409, 823 P.2d 1078 (1992)

³ In addition to the examples cited here, numerous other cases were cited in the Board’s motion for discretionary review. *See* Mot. Discretionary Review at 13.

(finding Board abused its discretion because it failed to provide written reasons to support new minimum term); *In re Personal Restraint of Shepard*, 127 Wn.2d 185, 191-92, 898 P.2d 828 (1995) (stating that remand to Board is remedy whether abuse of discretion “procedural” (not following legal directives) or “substance” (a decision without basis in the record)).

There are both practical and constitutional concerns supporting this Court’s longstanding rule requiring remand. Courts have neither the expertise nor the full information that the Board has in making release decisions. Courts do not receive the full record, do not see the offender face-to-face to hear their testimony, and do not have the long experience making these inherently predictive judgments that the Board has.

The release order by the Court of Appeals here also implicates separation of powers concerns. While this Court has not directly addressed this issue, courts around the country have expressly held that separation of powers concerns preclude a court from “direct[ing] the Board to reach a particular result or to consider only a limited category of evidence in making a suitability determination.”⁴ *In re Prather*, 50 Cal. 4th 238, 254, 234 P.3d 541, 121 Cal. Rptr. 3d 291 (2010); *see also Diatchenko v. Dist. Att’y for*

⁴ This Court has not explained its traditional deference to the Board by explicit reference to separation of powers. But it has recognized the separate roles of government in imposing sentences and executing them. *E.g.*, *State v. Mulcare*, 189 Wash. 625, 628, 66 P.2d 360 (1937) (execution of sentence and provisions for mitigation of punishment are properly exercised by administrative body, in manner proscribed by the Legislature); *see also State v. Moreno*, 147 Wn.2d 500, 505, 58 P.3d 265 (2002) (recognizing separation of powers under Washington’s constitution).

Suffolk Dist., 471 Mass. 12, 28, 27 N.E.3d 349 (2015); *Hopkins v. Mich. Parole Bd.*, 237 Mich. App. 629, 637-38, 646-48, 604 N.W.2d 686 (1999).

The parole statute at issue in *Prather*, like the statute at issue here, established a presumption of release “unless” the Board determined the inmate currently posed a threat to public safety. *In re Prather*, 50 Cal. 4th at 251-52. In reversing several lower court decisions that had ordered an offender’s release or limited the Board’s consideration of evidence, the California Supreme Court explained: “A reviewing court should not compromise the Board’s authority by engaging in speculation concerning the type of evidence that might change the calculus of the Board’s parole decision. Instead, a proper judicial review and remand will ensure that the Board retains its full discretion to determine whether a new evaluation by that body is necessary and whether, in light of the court’s findings, the inmate should be released.” *Id.* at 258. The Court of Appeals here certainly had the authority to review the Board’s decision to ensure conformance with the law. But it went much further; it usurped the powers of the Board by dictating the outcome of the Board’s decision and by limiting the sources of information that can be considered by the Board in the future exercise of that discretion.

F. There Is No Reason to Abandon the Court’s Longstanding Remedy of Remand for a New Hearing

In ordering Brashear’s release, the Court of Appeals relied on the more limited discretion granted to the Board when considering release of offenders convicted of certain crimes committed as juveniles. Slip op. at 11-12. But nothing in this Court’s jurisprudence suggests that when the Legislature limits the Board’s discretion, courts may order an offender’s release if it finds an abuse of that discretion.

For example, the Legislature limited the Board’s discretion when setting a new minimum term for pre-SRA offenders that would fall outside the standard range sentence if an offender had been sentenced under the SRA. RCW 9.95.009(2). The Legislature required the Board to make its decisions reasonably consistent with SRA sentences and to provide “adequate written reasons” whenever it sets a minimum term outside the standard sentencing ranges. RCW 9.95.009(2). Yet when this Court determined that the Board had abused its discretion in failing to provide sufficient written reasons, it did not supplant the Board’s discretion and order a minimum sentence within the standard sentencing range. *In re Personal Restraint of Locklear*, 118 Wn.2d at 421. Instead, it remanded for a redetermination by the Board in light of the Court’s opinion. *Id.*

If the Court of Appeals logic were applied, the Court in *Locklear* would instead have held that the Board had failed to make the required

findings justifying an exceptional minimum term, so the court should order a minimum term within the standard range, lest the Board get a “second bite at the apple.” *See* slip op. at 12. Just as the Court in *Locklear* remanded to the Board for a redetermination even where the Board had abused more limited discretion, so should the Court remand here.

Nor does the fact that the statute creates a presumption of release change the proper remedy. As this Court recognized when analyzing the similar parole release statute applicable to certain sex offenders, the Board’s decision remains “more predictive and discretionary” than a purely factual determination. *In re Personal Restraint of McCarthy*, 161 Wn.2d at 244. Like the statute here, the statute considered in *McCarthy* requires release unless the Board determines that the offender is likely to reoffend. RCW 9.95.420(1). In the context of determining the nature of the liberty interest created by this statute, the Court concluded that the presumptive-release statute was more like a typical parole release decision than a parole revocation decision. *In re Personal Restraint of McCarthy*, 161 Wn.2d at 243-44. The Court reasoned that the Board’s decision was “an informed prediction” rather than a factual determination. *Id.* at 244. The Court’s description of the nature of the Board’s decision under the presumptive-release statute tracks closely the nature of the Board’s decision under the general parole release statute. *E.g.*, *In re Personal Restraint of Sinka*, 92

Wn.2d at 564 (stating Board’s expertise in setting a minimum term “is not purely factual, but also predictive and discretionary”).

Because the Board’s decision here is inherently predictive and discretionary, it is not the Court’s role to decide whether an offender should be released. Moreover, the Court does not have the full record before the Board, does not have the opportunity to meet with the offenders, and does not have the expertise of the Board in making these predictive and discretionary judgments. Rather, as this Court has done on so many occasions, the proper remedy where the Court finds the Board abused its discretion is to remand so the Board can properly exercise its discretion.

Brashear argues that the Court of Appeals was merely applying a “sufficiency of the evidence” analysis. *See* Resp. Mot. Discretionary Review at 2. There are two fatal flaws with this argument. First, the Court of Appeals did not have available to it the entire record considered by the Board, so it could not have engaged in a sufficiency of the evidence analysis. *See, e.g.,* slip op. at 3 n.3, 9 (noting lack of entire record for review). Second, this argument misunderstands the nature of the Board’s role in a hearing under RCW 9.94A.730. Unlike a criminal trial, the Board hearing is non-adversarial, and the Board is not a party with a burden of proof. *See* RCW 9.94A.730(3); *In re Personal Restraint of Sinka*, 92 Wn.2d at 568 (Board hearing non-adversarial). The Board is not an advocate urging a particular result. Thus, remand would not result in a second bite at the

apple; it would result in the (corrected) exercise of discretion that the Legislature has granted exclusively to the Board.

G. Persuasive Authority Supports Remand for a New Hearing

Courts across the country remand cases back to parole boards if they find an abuse of discretion, including courts applying presumptive-release statutes. *E.g.*, *Diatchenko*, 471 Mass. at 30-31; *In re Wallman*, 18 A.D.3d 304, 311, 794 N.Y.S.2d 381 (2005) (presumptive-release statute); *In re Prather*, 50 Cal. 4th at 258-59 (presumptive-release statute); *King v. N.Y. State Div. of Parole*, 83 N.Y.2d 788, 790, 632 N.E.2d 1277, 610 N.Y.S.2d 954 (1994); *Hopkins*, 237 Mich. App. at 639-40. As noted by the Massachusetts Supreme Court in addressing a *Miller*-fix statute applicable to those who committed crimes as a juvenile: “A judge may not reverse a decision by the board denying a juvenile homicide offender parole and require that parole be granted. Rather, if the judge concludes that the board’s consideration . . . constitute[d] an abuse of discretion—was arbitrary and capricious—a remand to the board for rehearing would be appropriate.” *Diatchenko*, 471 Mass. at 31. Only under “unique circumstances” have courts ordered release rather than remand, such as a parole board’s failure to follow instructions on remand or the expiration of a sentence within a few months. *See Gambino v. Morris*, 134 F.3d 156, 164-65 (3d Cir. 1998). No such exceptional circumstances exist here; the Court should remand.

H. The Board Should Be Entitled to Consider Relevant Factors

The Court of Appeals also unduly restricted the sources of information that the Board may consider when making its release decision. The Board agrees that under RCW 9.94A.730 it should consider only information that is relevant to whether an offender is likely to commit new crimes when deciding whether to release an offender. *See* RCW 9.94A.730(3). But the Court of Appeals improperly imposed its own judgment on what could be relevant to that decision, rather than allowing the Board to explain its decision. Slip op. at 9. Specifically, the Court of Appeals appeared to hold that the Board may not consider the nature of the crime, prosecutor and victim statements, and the portion of the sentence served. *Id.* at 9-10.

As discussed above, even under the presumptive-release statute the Board's release decision is predictive and discretionary, and is similar to the Board's other parolability decisions. *See* RCW 9.95.100 ("rehabilitation has been complete and he or she is a fit subject for release"). In either case, the Board must predict future behavior, which this Court has described as "'subjective appraisals' and 'discretionary assessment of a multiplicity of imponderables'". *In re Personal Restraint of Cashaw*, 123 Wn.2d 138, 146, 866 P.2d 8 (1994). As long as the Board explains the relevance of

information it considers, there is no reason to restrict the information the Board considers.⁵

The Court of Appeals' artificial restrictions also conflict with the Board's statutory responsibilities. The statute expressly requires the Board to allow victim and survivor impact statements. RCW 9.94A.730(4). The Board also must give public safety considerations the highest priority when making release conditions. RCW 9.94A.730(3). Thus, the Board must consider all information it considers relevant to determining whether an offender is likely to commit new crimes if released.

The Court of Appeals also overreached in suggesting that the nature and impact of the crime are never relevant. Slip op. at 9. It is common sense that the nature and impacts of the crime may be probative of an offender's likelihood of committing crimes if released.⁶ And this common sense is borne out by the psychological report considered by the Board. The report explains that risk assessment uses "a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as

⁵ The Board acknowledges that the Court of Appeals' finding of abuse of discretion was based in part on the failure of the Board to adequately explain its decision. The Board does not challenge that aspect of the Court of Appeals opinion here.

⁶ The Court of Appeals suggests that because any person subject to RCW 9.94A.730 will have committed a heinous crime that the nature of the crime is irrelevant. Slip op. at 10. This suggestion ignores the wide variation among the circumstances of crimes considered by the Board. Some, like the present case, may involve the premeditated, brutal, and unnecessary killing of a victim. Others may involve participation in a robbery where the evidence was ambiguous as to whether murder was intended. *E.g.*, *Miller v. Alabama*, 567 U.S. 460, 465-66, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

the degree of harm and context in which the behavior occurred.” App. F at 2. The report also includes evaluation of “history” and “past behavior” to assess impact on future behavior. *Id.* Thus, the Board was entitled to consider this information in making its release decision. *See also In re Personal Restraint of Dyer*, 175 Wn.2d at 205 (facts of a crime, time served, and prosecutor’s recommendation were relevant to public safety considerations).

Similarly, the prosecutor and victim impact statements could be relevant to deciding whether an offender is likely to commit new crimes. The Board agrees that sentiments that an offender has not been punished enough are not relevant to this decision. But prosecutor and victim impact statements can include other relevant information, such as describing the nature of the crime and the behavior of the offender at the time of the crime. *E.g.*, Letter from Mark Roe, Snohomish County Prosecuting Attorney, to ISRB (Apr. 10. 2017) (attached to Personal Restraint Petition filed June 26, 2017, providing additional details of crime, criminal history, lack of remorse, and minimization of crime by Brashear’s support group who will be monitoring her behavior). As an example, the prosecutor here described how Brashear explained that she repeatedly stabbed her victim because “the mother ***ker just wouldn’t die”. *Id.* This information could be relevant to the Board’s consideration of whether Brashear’s crime resulted from immature impulse or other motivations that could impact her risk of re-

offense as an adult. In addition, the victim impact letters are provided to the offender, and the offender's response may indicate acceptance of responsibility or remorse. *See In re Personal Restraint of Sinka*, 92 Wn.2d at 568 (offender must have access to materials relied on by the Board).

It is unclear whether the Court of Appeals viewed all victim and prosecutor letters as irrelevant or just the specific letters it reviewed in this case. Slip op. at 9-10. In either case the court erred, but at minimum this Court should clarify that the Board may consider any relevant information—from whatever source—but may need to explain why certain information was relevant.

V. CONCLUSION

This Court should reverse the Court of Appeals' order directing the Board to release Brashear, and remand for a new hearing applying the correct standard for whether Brashear should be released. The Court should also clarify that the Board may consider any information relevant to whether an offender is likely to commit new crimes if released.

RESPECTFULLY SUBMITTED this 29th day of July 2019.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the foregoing to be served via the Court's electronic filing system and via electronic mail to the following:

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DATED this 29th day of July 2019, at Olympia, Washington.

s/ Wendy R. Scharber
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SOLICITOR GENERAL OFFICE

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