

THE SUPREME COURT OF THE  
STATE OF WASHINGTON

In re the Personal )  
Restraint of: ) No 97689-9  
)  
) REPLY REGARDING  
) MOTION TO STRIKE  
CARL BROOKS, ) PORTION OF  
RESPONDENT'S ) SUPPLEMENTAL  
Petitioner. ) BRIEF AND  
) RESPONDENT'S  
) MOTION TO  
) SUPPLEMENT THE  
) RECORD  
\_\_\_\_\_ )

I. INTRODUCTION

Because it violates RAP 10.3 and RAP 16.9, Petitioner Carl Brooks has asked this Court to strike Argument section D on pages 18, 19, and 20 from the Indeterminate Sentence Review Board's (ISRB or "Board") Supplemental Brief pursuant to RAP 10.7.

Mr. Brooks now adds that the Court should deny the Board's belated Motion to Supplement the Record with a 2018 psychological assessment.

## II. ARGUMENT

As set forth in Mr. Brooks's Motion to Strike, RAP 16.9 required the ISRB to provide the assessment in its Answer if the Board believed it answered the allegations or facts raised in Mr. Brooks's petition. The Board did not do that. RAP 10.3 prohibits the Board from citing facts outside the record. The Board did that nonetheless.

In response, the ISRB does not dispute that the document is not a part of the record in this case. The Board does not dispute that it did not provide the record when it filed its Answer to Mr. Brooks's Motion for Discretionary Review as RAP 16.9 requires. The Board does not dispute that its Supplemental Brief cited to matters outside the record in violation of RAP 10.3. The Board does not dispute it had the document in its possession 18 months before it filed its Answer in this case. The Board does not dispute it did not provide the document to undersigned counsel when the Board was aware he was requesting the record in this case from the Court following his appointment in July 2020. The Board does

not dispute its attorney was included on emails from counsel to this Court in which he made his request for the record known and it did not provide counsel with any additional materials that it had not previously given to this Court.

Instead, the ISRB asks this Court to simply ignore these multiple failings and permit it to supplement the record now, after Mr. Brooks has filed his Supplemental Brief. The ISRB did not even bother to ask this Court to supplement the record before it cited to nonrecord documents in its brief. The Board knowingly relied on a document that was not part of the record in its brief and only provided the document to this Court and counsel after Mr. Brooks filed a motion to strike the Board's improper brief.

Instead, the Board now claims it had no previous opportunity to make the document a part of the record. Of course that does not explain why the ISRB did not even attach the document to its Supplemental Brief wherein it cited to the document. But the Board did have an earlier opportunity. The Board could have attached the document to

its Answer as an appendix as it did with 12 other appendices totaling more than 100 pages. That is in fact what RAP 16.9 required.

The ISRB insists the new record is needed “to refute additional argument [Mr.] Brooks made in his motion for discretionary review.” Response at 2. But if that is true, what possible explanation could the ISRB have for not providing this Court that document when the Court ordered the Board to file an Answer to that motion? None.

The ISRB’s Answer never mentions a psychological assessment of any kind as a basis to refute the claims made in Mr. Brooks’s petition. If the document plays a critical a role in “appropriately resolv[ing]” and “refut[ing]” claims made in the Motion for Discretionary review, as the Board now claims, it is precisely the sort of document RAP 16.9 required the ISRB to provide the Court in its Answer. “If an allegation in the petition can be answered by reference to a record of another proceeding, the response should so indicate and include a copy of those parts of the record that are relevant.” RAP 16.9. The

time to provide this document to the Court was 6 months ago when the Board filed its Answer, not after Mr. Brooks has filed his Supplemental Brief.

In its Answer, the Board did provide the Court more than 100 pages of documents that it believed necessary to answer Mr. Brooks's claims in his petition and Motion for Discretionary. The Board had the assessment in its possession for 18 months at that point. The fact that the Board did not include this document belies its current insistence that proper consideration of the petition requires the Court to consider the psychological assessment.

In fact, the assessment is not necessary nor even relevant to the legal issue before the Court: the ISRB's categorical refusal to apply the *Miller*-fix to any person sentenced prior to 1984. The assessment offers no legal or factual support for the ISRB's view that children may be held to die in prison.

Having failed to comply with several rules, the ISRB now feigns generosity offering it has no objection to allowing

counsel to file an additional brief addressing the newly minted record and arguments. Response at 3. But “not objecting” to allowing Mr. Brooks to respond to what the rules bar it from does not cure the Board’s violation of the rules. Instead, RAP 10.7 provides the remedy, striking the improper portions of the ISRB’s Supplemental Brief and denying the State’s untimely request to add information to the record.

### III. CONCLUSION

Pursuant to RAP 10.7, the Court should strike Argument section D from the ISRB’s supplemental brief. The Court should also deny the ISRB’s belated effort to supplement the record.

DATED this 17<sup>th</sup> day of September, 2020.



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## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 97689-9**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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MARIA ANA ARRANZA RILEY, Legal Assistant      Date: September 17, 2020  
Washington Appellate Project

# WASHINGTON APPELLATE PROJECT

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**Appellate Court Case Title:** Personal Restraint Petition of Carl Alonzo Brooks

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