

THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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

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

I. IDENTITY OF MOVING PARTY AND RELIEF  
REQUESTED

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

II. GROUND FOR RELIEF

In its supplemental brief the ISRB states that all citations to the record are either to the appendices attached to Mr. Brooks's pleading or the Appendices to the ISRB's Answer. Supplemental Brief of Respondent at 3, n.1. However, on pages 18, 19 and 20 of its brief, the board

includes numerous cites to “Resp. App. 13.” This “Appendix 13” purports to be a psychological assessment completed in 2018. That document, however, appears nowhere in the record in this case. There is “Appendix 13” to the ISRB’s answer.

When the State, or in this case the ISRB, responds to a personal restraint petition and the allegations in the petition can answered by documentary facts, RAP 16.9 requires the ISRB to provide such documents in its first response. While the Court of Appeals did not call for a response to the petition, this Court did direct the ISRB to answer Mr. Brooks’s motion for discretionary review. Appended to that answer were documents comprising 12 Appendices. There was no Appendix 13. None of the remaining 12 appendices include any psychological assessment.

Further, 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.

After this Court granted review, the Court appointed

undersigned counsel. Counsel requested the Court provide him the relevant record. Counsel for the ISRB was included in those communications. This Court forwarded counsel the record on review. That record does not include an Appendix 13 nor any psychological assessment.

For the first time in its supplemental brief the ISRB claims this 2018 psychological evaluation supports the board's refusal to apply RCW 9.94A.730 to Mr. Brooks's sentence. Again, that assessment appears nowhere in the record. There is no Appendix 13 to the ISRB's Answer. Contrary to RAP 16.9 the ISRB never provided such a document to the Court. No such document was ever provided to undersigned counsel as a part of the record following his appointment.

RAP 10.3 limits any factual references to matters within the record. RAP 10.7 permits this court to strike any brief or portion thereof that violates the rules. If it believed the cited document was factually relevant, RAP 16.9 required the ISRB to provide it to the Court with its answer.

This Court should strike Argument section D on pages

18, 19, and 20, because it repeatedly relies on and refers to an evaluation never provided and cites to a non-existent appendix.

### III. CONCLUSION

Pursuant to RAP 10.7, the Court should strike Argument section D from the ISRB's supplemental brief.

DATED this 15<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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Office of the Attorney General - DOC

petitioner

Attorneys for other party



MARIA ANA ARRANZA RILEY, Legal Assistant      Date: September 15, 2020  
Washington Appellate Project

# WASHINGTON APPELLATE PROJECT

September 15, 2020 - 10:35 AM

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