DISTRICT OF COLUMBIA COURT OF APPEALS

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Appeal Nos. 23-CO-355 & 356

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DAVID ANDREW WILLIAMS,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

Appeal from the Superior Court of the
District of Columbia – Criminal Division
2010 CF3 5739, 2011 CF3 16420

BRIEF FOR APPELLANT

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D.C. App. R. 28(a)(2)(A) Statement

Appellant David Andrew Williams and appellee the United States of America were the parties in the trial court. Adrian E. Madsen, Esq., represented Mr. Williams during relevant proceedings in the Superior Court. Assistant United States Attorney Peter Smith, Esq., represented the United States in the Superior Court. Adrian E. Madsen, Esq. represents Mr. Williams before this court. Assistant United States Attorney Chrisellen R. Kolb, Esq., represents the United States before this court. There are no interveners or amici curiae. No other provisions of D.C. App. R. 28(a)(2)(A) apply.

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ISSUES PRESENTED

1. Whether the trial court erred by interpreting D.C. Code § 24-903(c)(2)(H), "the…ability to appreciate the risks and consequences of…conduct," a "hallmark feature" of youth, to mean that the failure at the time of an offense to appreciate such risks and consequences weighs against imposing or setting aside a conviction under D.C. Code § 24-901 *et seq.*
2. Whether the trial court abused its discretion by concluding that D.C. Code § 24-903(c)(2)(K)—"capacity for rehabilitation"—weighed against setting aside Mr. Williams' convictions under the YRA because of the 2020 *ex parte* issuance of a temporary protection order ("TPO") against Mr. Williams based on allegations that Mr. Williams: 1) arrived at a location to retrieve his property, 2) exchanged unspecified words with the petitioner, and 3) called the petitioner to inform her that she would be arrested pursuant to a warrant issued for her arrest where Mr. Williams was not arrested for or charged with any criminal offense, where there was no record evidence that a civil protection order was issued, and where the petitioner was arrested for and charged with an offense under the aforementioned warrant.
3. Whether the trial court abused its discretion by failing to consider whether Mr. Williams' age at the time of the offenses—sixteen and seventeen, respectively—made relevant by D.C. Code § 24-903(c)(2)(A), weighed in

favor of setting aside his convictions and by failing to weigh this factor in his favor.

4. Whether the trial court abused its discretion in 2010 CF3 5739 by failing to weigh D.C. Code § 24-903(c)(2)(C), whether a movant has previously been sentenced under the YRA, in favor of setting aside Mr. Williams' convictions where Mr. Williams has not been sentenced under the YRA outside of 2010 CF3 5739.
5. Whether the trial court abused its discretion in 2010 CF3 5739 by considering under D.C. Code § 24-903(c)(2)(B)—"the nature of the offense, including the extent of the youth offender's role in the offense and whether and to what extent an adult was involved in the offense"—the trial court's decision to depart downward from the Voluntary Sentencing Guidelines when sentencing Mr. Williams.

STATEMENT OF THE CASE

After Mr. Williams, then sixteen (16) years old, pled guilty to armed robbery and attempted robbery in 2010 CF3 5739,[1] the Honorable Ronna Lee Beck imposed a split sentence pursuant to the Youth Rehabilitation Act ("YRA"),[2] including five years of unsupervised probation to run concurrently with a period of supervised release imposed in the same case. R. 13.[3] In so doing, the sentencing court departed downward from the District's Voluntary Sentencing Guidelines based on mitigating factors five and seven. R. 20, Ex. 2 at 15-16.

After serving the unsuspended period of incarceration, Mr. Williams, then seventeen (17) years old, was arrested in 2011 CF3 16420 before pleading guilty to one count of robbery and one count of unlawful possession of a firearm and being sentenced to an aggregate fifty-four months' incarceration to be followed by five years of supervised release. 11 R. 6, 13. In this case, Mr. Williams was not sentenced pursuant to the YRA.

Although Mr. Williams' supervised release in 2010 CF3 5739 was revoked on the basis of his conviction in 2011 CF3 16420, his unsupervised probation was not. R. A at 7; *see also* R. 22 at 3 n.3. After his release from incarceration in 2011

[1] R. 5-7.
[2] D.C. Code § 24-901 *et seq.*
[3] "R." refers to the record on appeal in 23-CO-355. "S.R." refers to the sealed, supplemental record in 23-CO-355. "11 R." refers to the record on appeal in 23-CO-356.

CF3 16420, Mr. Williams completed a period of supervised release without revocation.

Following a pro se motion to set aside his conviction and for the appointment of counsel,[4] the United States opposed Mr. Williams' motion. R. 18. Mr. Williams then supplemented his motion in 2010 CF3 5739 through newly appointed counsel and in 2011 CF3 16420 moved for resentencing and set aside pursuant to D.C. Code § 24-906(e-1). Following government opposition in both cases and Mr. Williams' reply thereto, the trial court denied the motions in a consolidated order. R. 24; 11 R. 25. Regarding 2010 CF3 5739, the trial court found four statutory factors to weigh against Mr. Williams and other factors to weigh in his favor. *Id.* Regarding 2011 CF3 16420, the trial court found six factors to weigh against him and others to weigh in his favor. Regarding both cases, the trial court found that D.C. Code § 24-903(c)(2)(H) weighed against setting aside Mr. Williams' convictions because his conviction in 2011 CF3 16420 "seriously calls into question [his] ability to appreciate the risks of, or genuinely accept responsibility, for his conduct,"[5] and that the *ex parte* issuance of a temporary protection order ("TPO") in 2020 weighed D.C. Code § 24-903(c)(2)(K)—"capacity for rehabilitation"—against Mr. Williams.

This timely appeal followed.

[4] R. 14, 17.
[5] R. 24 at 5.

STATEMENT OF FACTS

2010 CF3 5739

On August 6, 2010, following guilty pleas,[6] the Honorable Ronna Lee Beck sentenced Mr. Williams—then sixteen years old and with no prior contacts with the juvenile or criminal justice systems—in 2010 CF3 5739 pursuant to the YRA. More specifically, on the count of armed robbery, the court sentenced Mr. Williams to 18 months' incarceration, to be followed by five years of supervised release, and on the count of attempted robbery, the court sentenced Mr. Williams to 24 months' incarceration, suspended as to all, to be followed by three years of supervised release, suspended in favor of five years of probation. R. 13. All incarceration and probation was imposed pursuant to the YRA. *Id.* The offenses occurred over a two-day period, and no person suffered physical injury during the offenses. R. 6; R. 20, Ex. 2 at 12. In explaining its decision to depart downward from the Voluntary Sentencing Guidelines under mitigating factors five and seven, the trial court considered it especially significant that Mr. Williams "ha[d] absolutely no prior contacts with either the [j]uvenile or adult system, either arrests or convictions," and that "the planning for th[e] [offenses] really was done by [another] juvenile, and that Mr. Williams went along." R. 20, Ex. 2 at 13-16.

[6] R. 5-8.

2011 CF3 16420

After his release to probation in 2010 CF3 5739, Mr. Williams was arrested on suspicion of armed robbery in 2011 CF3 16420 before pleading guilty to one count of robbery and one count of unlawful possession of a firearm (prior conviction). 11 R. 1, 6-8. No person suffered physical injury during the offenses. R. 1. The court sentenced Mr. Williams to an aggregate fifty-four months' incarceration, to be followed by three years of supervised release. 11 R. 13. The sentence was not imposed pursuant to the YRA.

Although Mr. Williams' supervised release in 2010 CF3 5739 was revoked on the basis of his conviction in 2011 CF3 16420, his unsupervised probation was not. R. A at 7; *see also* R. 22 at 3 n.3.

Pro Se Motion and Opposition

In a motion docketed on December 13, 2021, Mr. Williams, acting pro se, moved to set aside his conviction in 2010 CF3 5739 under the YRA, averring that he had completed his term of supervision. R. 14. After some delay, the United States opposed the motion. R. 18.[7] In explaining the factors it believed should guide the Court's decision, the United States relied on D.C. Code § 24-903(c)(2)(A)-(M). R.

[7] Before the United States opposed the motion, Mr. Williams moved for the appointment of counsel, citing his inability to access much of the information the trial court would need to evaluate his motion and his inability to hire an attorney because of his indigence. R. 17.

18 at 3-5. When addressing these factors individually, the United States largely made factual assertions without argument regarding whether a factor weighed in favor of or against setting aside Mr. Williams' conviction and noted the absence of information regarding certain factors, a point Mr. Williams raised in moving for the appointment of counsel. R. 18 at 5-7; R. 17. However, when addressing the relevance of D.C. Code § 24-903(c)(2)(H),[8] the United States appeared to suggest that the failure to appreciate risks and consequences of conduct weighs against setting aside a conviction—"he failed to appreciate the risks and consequences of his conduct…evident from the fact that, one year after he was sentenced [Mr. Williams] committed a new armed robbery."[9] In closing, the United States argued that the court should deny the motion because of Mr. Williams' subsequent conviction in 2011 CF3 16420 and "because [Mr. Williams] ha[d] not provided information warranting the exercise of the [c]ourt's discretion." R. 18 at 7-8.

[8] "The youth offender's ability to appreciate the risks and consequences of the youth offender's conduct."
[9] R. 18 at 6.

Counseled Motions

After the appointment of counsel in 2010 CF3 5739,[10] Mr. Williams moved to set aside his convictions in 2010 CF3 5739 and 2011 CF3 16420 pursuant to D.C. Code § 24-906(e)[11] and D.C. Code § 24-906(e-1),[12] respectively.

In 2010 CF3 5739, Mr. Williams argued that eleven of the thirteen statutory factors[13] weighed in favor of setting aside his conviction and that two others, subsections (c)(2)(I)[14] and (c)(2)(L),[15] were neutral where neither the government nor Mr. Williams submitted reports of examinations of Mr. Williams and where no victim impact statements were submitted. R. 20 at 5-12. Regarding factors (A)-(C),

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[10] R. 19.

[11] "If the sentence of a youth offender who has been placed on probation by the court expires before unconditional discharge, the court may, in its discretion, set aside the conviction."

[12] "A youth offender, regardless of whether the youth offender was sentenced under this subchapter, may, after the completion of the youth offender's probation or sentence of incarceration, supervised release, or parole, whichever is later, file a motion to have the youth offender's conviction set aside under this section. The court may, in its discretion, set aside the conviction."

[13] Mr. Williams noted the United States' concession that, although the YRA references the factors in § 24-903(c)(2) only as relevant to whether to impose a sentence under the YRA and whether to set aside a sentence not originally imposed under the YRA, the factors in subsection (c)(2) similarly guide trial courts' analysis of whether to set aside a sentence imposed under the YRA where the sentence expires prior to unconditional discharge. R. 20 at 4 n.5 (citing D.C. Code § 24-906(e-1)(2)).

[14] "Any reports of physical, mental, or psychiatric examinations of the youth offender conducted by licensed health care professionals."

[15] "Any oral or written statement provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense, or by a family member of the victim if the victim is deceased."

Mr. Williams argued that his very young age at the time of the offenses—sixteen—the use of an imitation firearm (a bb gun) in the offenses, the absence of physical harm to the complainants, the trial court's finding that "the planning for this really was done by the juvenile, and…Mr. Williams went along," and that Mr. Williams had not been sentenced under the YRA in any other case weighed in favor of setting aside his conviction. R. 20 at 5-7.[16] When addressing subsections (E)-(G), Mr. Williams argued that his community activities, including participation in an apprenticeship program, a support group for returning citizens, and legislative advocacy, the absence of any prior contacts with the juvenile or criminal justice system, and his father's alcoholism weighed in favor of setting aside his convictions. R. 20 at 7-8. Responding to the United States' apparent argument that the *inability* to appreciate the risks and consequences of conduct because of youth weighed against setting aside his conviction, Mr. Williams cited *Miller v. Alabama*'s discussion of the "hallmark features of youth," including the failure to appreciate risks and consequences, and D.C. Code § 24-403.03, another statute, like the YRA,

[16] Inartfully, Mr. Williams asserted that he had in 2010 CF3 5739 successfully completed a period of supervision without incident. R. 17 at 7. While this was true with respect to Mr. Williams' supervised release in 2011 CF3 16420 and the aggregate period of supervised release that followed Mr. Williams' release from incarceration in 2011 CF3 16420, and Mr. Williams' *probation* in 2010 CF3 5739 was not revoked, Mr. Williams' supervised release in 2010 CF3 5739 was revoked based on his convictions in 2011 CF3 16420. Mr. Williams corrected this oversight in replying to the United States' opposition.

animated by the diminished culpability of youth, which provides that the failure to appreciate risks and consequences counsel *against* sentencing young people to lengthy terms in prison. R. 20 at 9-10. Thus, Mr. Williams argued, his failure to appreciate the risks and consequences of his conduct as a child weighed in favor of setting aside his convictions. *Id.*

Mr. Williams further argued that the absence of any history of substance abuse or use of controlled substances, his positive contributions to the community, including raising awareness of youth violence, the founding of a clothing business, a history of employment, and community advocacy, his assistance to law enforcement in 2010 CF3 5739, and difficulty obtaining employment because of his conviction weighed factors (J), (K), and (M) in favor of setting aside his convictions. R. 20 at 10-12.

2011 CF3 16420

In moving to set aside his convictions in 2011 CF3 16420 pursuant to D.C. Code § 24-906(e-1), Mr. Williams relied on similar information that he argued supported setting aside his convictions in 2010 CF3 5739. 11 R. 17. Mr. Williams acknowledged that he had previously been sentenced under the YRA (2010 CF3 5739), but argued that where he was only seventeen years old at the time of the offenses in 2011 CF3 16420, completed supervised release without revocation, has

no criminal history since his 2011 convictions in this case, and has shown substantial rehabilitation, factor (C) nonetheless weighed in his favor. 11 R. 17 at 5.[17]

United States' Oppositions

The United States opposed the motions. R. 22; 11 R. 21. Its opposition in 2010 CF3 5739 largely mirrored its opposition to Mr. Williams' pro se motion, differing in that it noted that Mr. Williams' was convicted of armed robbery while on probation and supervised release in 2010 CF3 5739, acknowledged Mr. Williams' participation in rehabilitative programming, information not previously before the court, referenced the absence of mention of Mr. Williams' father's alcoholism in the Presentence Report, and conceded that Mr. Williams had never been charged with or convicted of possessing or using controlled substances. R. 22 at 5-8. When addressing D.C. Code § 24-903(c)(2)(H), the United States, without addressing Mr. Williams' argument regarding the proper interpretation of this factor, again argued that the inability to appreciate risks and consequences weighed against setting aside a conviction under the YRA—"[t]hough he accepted responsibility by pleading guilty, [Mr. Williams] subsequently committed a robbery…indicating that he did not learn from the consequences of his conduct in this case." R. 22 at 7. The United States also modified its argument regarding subsection (c)(2)(K), appearing to argue

[17] Mr. Williams acknowledged the relevance of his arrest and conviction in 2010 CF3 5739 to D.C. Code § 24-903(c)(2)(F). 11 R. 17 at 6-7.

that the *ex parte* issuance of a temporary protection order against Mr. Williams in 2020 suggested a lack of capacity for rehabilitation. R. 22 at 8.

In 2011 CF3 16420, the United States largely repeated arguments made in its opposition to Mr. Williams' (counseled) motion in 2010 CF3 5739,[18] except to state that, as relevant to factors (C), (D), and (F), Mr. Williams had been sentenced under the YRA in 2010 CF3 5739, completed supervised release without revocation, and had one prior contact with the criminal justice system. 11 R. 21 at 4-5.

Mr. Williams' Replies

In replying to the United States' opposition in 2010 CF3 5739, Mr. Williams noted that, while the United States acknowledged his age at the time of the offenses—sixteen—it failed to acknowledge the degree to which this remarkably young age at the time of the offenses weighed in favor of setting aside Mr. Williams' convictions. R. 23 at 3. Mr. Williams highlighted that the United States' position regarding subsection (c)(2)(B)—in part, "the extent of the youth offender's role in the offense"—significantly understated its position at the time of sentencing.

> And I understand, and I don't know whether it's -- I can't remember now the source of it, whether it's the Government's memo or the pre-sentence investigation, suggests that the planning for this really was done by the juvenile, and that Mr. Williams went along. Is that you understanding?
> MR. SCHWARTZ: That's my understanding.

[18] The United States' opposition incorrectly indicated that Mr. Williams was eighteen years old at the time of the August 2011 offenses. 11 R. 21 at 4, 6. Mr. Williams was seventeen years old as of August 2011. 11 S.R. 2, Ex. 3 at 1.

> THE COURT: Okay.
> MR. SCHWARTZ: My understanding is also that the weapon was provided by the juvenile.

R. 23 at 3 (quoting R. 20, Ex. 2 at 13 (10-19)).

Mr. Williams further emphasized that although the United States acknowledged many facts relevant to statutory factors, it failed to acknowledge that these undisputed facts weighed in Mr. Williams' favor, including not having been sentenced under the YRA in any other case, his participation in rehabilitative programs, the absence of any prior contacts with the criminal or juvenile justice systems at the time of the offenses, and the absence of any history of using unlawful substances. R. 23 at 4, 5-6, 7-8. Mr. Williams also clarified the procedural history of probation and supervised release[19] and noted the United States' failure to respond to his argument regarding the proper construction of § 24-903(c)(2)(H). *Id.* at 6.

Responding to the United States' argument that the *ex parte* issuance of a TPO against him in 2020 suggested a lack of "capacity for rehabilitation,"[20] Mr. Williams argued that even the unsubstantiated allegations of the petitioner did not in any way reflect negatively upon Mr. Williams or suggest any lack of rehabilitation or capacity therefor.

> In the case in question, the conduct of which the petitioner appears to have complained was Mr. Williams arriving to retrieve his property, exchang[ing] unspecified words with the petitioner, and calling the

[19] R. 23 at 4-5.
[20] D.C. Code § 24-903(c)(2)(K).

> petitioner to tell her that she would be arrested pursuant to a warrant issued for her arrest. Mr. Williams was not arrested for or charged with any offense related to the petitioner's allegations and the United States has not alleged that any civil protection order was issued. Moreover, the complainant *was* in fact arrested and charged by the United States with simple assault and attempted possession of a prohibited weapon—one day before the petitioner sought a TPO and on the date on which the petitioner alleged that Mr. Williams called to inform the petitioner that she would be arrested pursuant to a warrant. Put simply, the issuance of an *ex parte* TPO on these facts simply does not negatively reflect upon Mr. Williams' capacity for rehabilitation in any way.

R. 23 at 8-9 (citing R. 23, Ex. R1).

Finally, Mr. Williams, citing *Federal Maritime Commission v. Seatrain Lines, Inc.*, 411 U.S. 726, 734 (1973), urged the trial court to reject the United States' effort for the court to consider information relevant to specific statutory factors under the statute's catchall provision—"any other information it deems relevant to [its] decision." R. 23 at 9-10. Mr. Williams' reply in 2011 CF3 16420 closely tracked his reply in 2010 CF3 5739. 11 R. 23.

The Trial Court's Ruling

In a consolidated order, the trial court denied the motions by written order on April 3, 2023, also considering its analysis in both cases to be guided by D.C. Code § 24-903(c)(2). R. 24; 11 R. 25.

In 2010 CF3 5739, when addressing the relevance under § 24-903(c)(2)(A) of Mr. Williams' age at the time of the offenses—sixteen—the trial court (correctly) considered this to make Mr. Williams eligible to have his conviction set aside, but

did not otherwise appear to weigh whether Mr. Williams' age within the range of eligibility (15-24) in favor of or against setting aside his conviction. R. 24 at 3.[21] When next considering factor (B)—"[t]he nature of the offense, including the extent of the youth offender's role in the offense and whether and to what extent an adult was involved in the offense,"—the trial court acknowledged that Mr. Williams "was not the principal planner, but rather a participant who 'went along' with the armed robbery to which he pled guilty" but weighed this factor against Mr. Williams based on the trial court departing downward in sentencing Mr. Williams and the "violent nature" of the offenses. R. 24 at 3. Without further explanation, the court considered it "of no moment" that a bb gun, rather than a firearm, was used in the offense and that no person suffered physical injury in the offenses. R. 24 at 3 n.2.

While acknowledging that Mr. Williams had not been sentenced under the YRA outside of 2010 CF3 5739, the trial court did not expressly weigh § 24-903(c)(2)(C) in favor of setting aside Mr. Williams' convictions. R. 24 at 3. Where Mr. Williams was on supervision in 2010 CF3 5739 at the time of the offenses in 2011 CF3 16420, the trial court found that § 24-903(c)(2)(D)—"compliance with the rules of the facility to which the youth offender has been committed, and with supervision and pretrial release"—weighed against him. By contrast, the court

[21] As noted, *supra*, Mr. Williams had already been sentenced under the YRA in 2010 CF3 5739. R. 13.

concluded that § 24-903(c)(2)(E)-(F) & (J) weighed in favor of setting aside Mr. Williams' convictions in 2010 CF3 5739 based on his participation in rehabilitative programs, the absence of any prior involvement with the juvenile or criminal justice systems, and the absence of use of unlawful controlled substances. R. 24 at 4, 6. The court found that § 24-903(c)(2)(G), (I), & (L) weighed neither in favor of or against Mr. Williams based largely on the absence of information. R. 24 at 5-6.

When addressing factor (H), "the youth offender's ability to appreciate the risks and consequences of [his] conduct," the trial court considered the *inability* or failure to appreciate such facts to weigh against a YRA movant and found that Mr. Williams' conviction in 2011 CF3 16420 weighed this factor against him in 2010 CF3 5739.

> Defendant has accepted responsibility for his criminal conduct in both cases as evidenced by his pleading guilty in both. However, the fact that defendant committed the 2011 crimes less than two years after a prior conviction for nearly identical conduct while on supervised release in 2010 CF3 5739 seriously calls into question defendant's ability to appreciate the risks of, or genuinely accept responsibility, for his conduct. Therefore, this factor weighs against granting defendant's Motions.

R. 24 at 5.

The court did not address Mr. Williams' argument regarding the proper construction of this factor—that the failure to appreciate such risks and consequences at the time of the offense, a "hallmark feature of youth," weighs in favor of a YRA movant.

When considering Mr. Williams' "capacity for rehabilitation," the trial court considered Mr. Williams remaining conviction-free since 2011 to weigh in his favor, but nonetheless weighed factor (K) against him based on the temporal relationship between the 2010 and 2011 offenses and "the recent TPO issued against him." R. 24 at 6. The court did not explain why it found that the *ex parte* issuance of a TPO or any of the allegations underlying its issuance suggested a lack of capacity for rehabilitation. *Id.*

The court's analysis with respect to 2011 CF3 16420[22] tracked its analysis in 2010 CF3 5739 except to note that, with respect to the former, Mr. Williams had been sentenced under YRA and had a previous contact with the criminal justice system. 11 R. 25.

This timely appeal followed. R. 25; 11 R. 26.

[22] As did the United States, the trial court incorrectly stated that Mr. Williams was eighteen (rather than seventeen) years old at the time of the offenses in 2011 CF3 16420. *See* n.18, *supra*.

SUMMARY OF THE ARGUMENT

In both 2010 CF3 5739 and 2011 CF3 16420, the trial court erred by interpreting D.C. Code § 24-903(c)(2)(H) the mean that the failure to appreciate the risks and consequences of conduct at the time of the offenses, a "hallmark feature"[23] of youth, weighs against setting aside a conviction under the YRA, an issue of statutory interpretation this court reviews de novo. *See, e.g.*, *Holloway v. United States*, 951 A.2d 59, 60 (D.C. 2008) ("As this appeal raises a question of statutory interpretation, our review is de novo.") (citing *United States v. Crockett*, 861 A.2d 604, 607 (D.C. 2004)).

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Id*. (quoting *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64-65 (D.C. 1980) (en banc)). "The first step in statutory interpretation is to determine if the statute's 'language is plain and admits of no more than one meaning.'" *Lee v. United States*, 276 A.3d 12, 16 (D.C. 2022) (quoting *Odumn v. United States*, 227 A.3d 1099, 1102 (D.C. 2020)). "If the plain language of a statute 'is clear and unambiguous and will not produce an absurd result, [this court] will look no further.'" *Larracuente v. United States*, 211 A.3d 1140, 1143 (D.C. 2019) (quoting *Pixley v. United States*, 692 A.2d 438, 440 (D.C. 1997)). If this court "find[s] ambiguity, [its] 'task is to search for an interpretation

[23] *Miller v. Alabama*, 567 U.S. 460, 477 (2012).

that makes sense of the statute and related laws as a whole,'" a task which may be guided by "legislative history to ensure that [this court's] interpretation is consistent with legislative intent." *Aboye v. United States*, 121 A.3d 1245, 1249 (D.C. 2015) (quoting *Richardson v. United States*, 927 A.3d 1137, 1139 (D.C. 2007)). "[W]hen a legislative body uses words or terms that have appeared in other legislation enacted by the same legislative body…then it is presumed, absent a contrary indication, that the words or terms incorporated into the new statute will have the same meaning as those words or terms had in the existing statute." *Thomas v. United States*, 650 A.2d 183, 186 (D.C. 1994) (quoting *Lorillard v. Pons*, 434 U.S. 575, 581(1978)).

D.C. Code § 24-903(c)(2)(H) is silent regarding whether a young person's "ability to appreciate the risks and consequences of…conduct" weighs in favor or against setting aside a conviction under the YRA. However, the D.C. Council's use of the same phrase in D.C. Code § 24-403.03(c)(10),[24] a statute similarly animated by the diminished culpability of young people,[25] demonstrates that the Council

[24] "The diminished culpability of juveniles and persons under age 25, as compared to that of older adults, and the hallmark features of youth, including immaturity, impetuosity, and *failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison*, despite the brutality or cold-blooded nature of any particular crime, and the defendant's personal circumstances that support an aging out of crime." (emphasis added).

[25] *Williams v. United States*, 205 A.3d 837, 841 (D.C. 2019) ("The IRAA permits a defendant who has served at least 20 years of imprisonment for an offense committed before his 18th birthday to apply to the court (instead of to a parole board) for relief from his sentence in light of his lesser culpability as a juvenile and his maturation and rehabilitation in prison.").

intended for § 24-903(c)(2)(H)—"the ability to appreciate the risks and consequences of…conduct"—to mean that the *failure* to appreciate the risks and consequences of the offense conduct weighs in favor of sentencing and set aside under the YRA. This interpretation is further confirmed by *Miller*, which the Council repeatedly referenced when enacting D.C. Code § 24-403.03 before amending D.C. Code § 24-906 to, *inter alia*, include the nearly identical phrase. *Miller*, 567 U.S. at 477 ("Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and *failure to appreciate risks and consequences*.") (emphasis added); D.C. Council, Report on Bill 21-683 at 12 (Oct. 5, 2016). The trial court thus abused its discretion by finding that Mr. Williams' failure to appreciate the risks and consequences of his conduct at ages sixteen and seventeen weighed against setting aside his convictions. *See, e.g.*, *In re Ko. W.*, 774 A.2d 296, 303 (D.C. 2001) ("A [trial] court by definition abuses its discretion when it makes an error of law.") (quoting *Koon v. United States*, 518 U.S. 81, 100 (1996)).

The trial court likewise abused its discretion in both cases by finding that the *ex parte* issuance of a TPO against Mr. Williams, without any record evidence that Mr. Williams committed or threatened to commit any criminal act, suggested a lack of capacity for rehabilitation. *See, e.g.*, *In re K.C.*, 200 A.3d 1216, 1233 (D.C. 2019) ("Moreover, its determination must 'be based upon and drawn from a firm factual

foundation… It is an abuse of discretion if the stated reasons do not rest upon a sufficient factual predicate.'") (quoting *Ko.W.*, 774 A.2d at 303).

The trial court likewise abused its discretion in both cases by failing to weigh Mr. Williams' age at the time of the offenses—sixteen and seventeen, respectively—in favor of setting aside his convictions. More specifically, the trial court, citing D.C. Code § 24-901(6),[26] concluded only that Mr. Williams' age at the time of the offenses made him eligible to be sentenced under the YRA without weighing whether Mr. Williams' age at the time of the offenses weighed in favor of setting aside his convictions or weighing that factor in his favor. R. 24 at 3. Because a trial court abuses its discretion by "fail[ing] to consider a relevant factor,"[27] the trial court abused its discretion by failing to consider whether D.C. Code § 24-903(c)(2)(A) weighed in favor of setting aside Mr. Williams' convictions.

In 2010 CF3 5739, the trial court similarly abused its discretion by failing to weigh D.C. Code § 24-906(c)(2)(C), whether Mr. Williams had previously been sentenced under the YRA, in favor of setting aside Mr. Williams' convictions. *See Johnson*, 398 A.2d at 364 ("[T]he body of facts in the record may foreclose some or most of the options either as a matter of law or because the facts themselves are so extreme."). Likewise in 2010 CF3 5739 alone, the trial court abused its discretion

[26] R. 24 at 3 n.1.
[27] *Johnson v. District of Columbia*, 163 A.3d 746, 753 (D.C. 2017) (quoting *Johnson v. United States*, 398 A.2d 354, 365 (D.C. 1979)).

by considering information not legally relevant to D.C. Code § 24-903(c)(2)(B),[28] that the trial court departed downward from the Voluntary Sentencing Guidelines when sentencing Mr. Williams because another person principally planned the offense, including applying the imitation weapon.

> Because defendant was not the principal planner, but rather a participant who "went along" with the armed robbery to which he pled guilty in 2010 CF3 5739, the court mitigated defendant's sentence in 2010 CF3 5739. Despite this leniency, defendant committed a strikingly similar offense less than two years later in 2011 CF3 16420.

R. 24 at 3-4 (internal citations omitted).

See, e.g., *Tiger Steel Eng'g, LLC v. Symbion Power, LLC*, 195 A.3d 793, 803 (D.C. 2018) ("[A] trial court abuses its discretion by…relying upon an improper factor…or failing to provide reasons that support the trial court's conclusions.") (quoting *In re Estate of McDaniel*, 953 A.2d 1021, 1023–24 (D.C. 2008)).

These errors, independently and cumulatively, were not harmless where the trial court, its errors aside, found that multiple factors weighed in favor of setting aside Mr. Williams' convictions under the YRA. This court should remand for the trial court to consider under correct legal principles and with a firm factual foundation whether to set aside Mr. Williams' convictions under the YRA.

[28] "The nature of the offense, including the extent of the youth offender's role in the offense and whether and to what extent an adult was involved in the offense."

ARGUMENT

I. THE TRIAL COURT ERRED BY INTERPRETING D.C. CODE § 24-903(c)(2)(H) TO MEAN THAT THE FAILURE TO APPRECIATE THE RISKS AND CONSEQUENCES OF CONDUCT AT THE TIME OF THE OFFENSES, A "HALLMARK FEATURE" OF YOUTH, WEIGHS AGAINST SETTING ASIDE A CONVICTION UNDER THE YRA.

a. Standard of Review.

This court reviews issues of statutory interpretation, including the proper interpretation of D.C. Code § 23-903(c)(2)(H), de novo, and reviews the denial of a motion to set aside a conviction under the YRA for abuse of discretion. *Holloway*, 951 A.2d at 60; *Ferguson v. United States*, 157 A.3d 1282, 1290 (D.C. 2017) ("[W]e vacate the trial court's jurisdictional order and remand this case to the trial court so that it may exercise its discretionary authority to determine whether Mr. Ferguson's motion to set aside his convictions should be granted or denied.").[29]

[29] As discussed, *supra*, although Mr. Williams was convicted of felonies in these matters, his probation in 2010 CF3 5739 was not revoked, giving the trial court discretionary authority to set aside his convictions in that matter under the YRA. R. A at 7; R. 22 at 3 n.3. The trial court also had discretion to set aside Mr. Williams' convictions in 2011 CF3 16420 under D.C. Code § 24-906(e-1), where he was not sentenced under the YRA in that matter. ("A youth offender, regardless of whether the youth offender was sentenced under this subchapter, may, after the completion of the youth offender's probation or sentence of incarceration, supervised release, or parole, whichever is later, file a motion to have the youth offender's conviction set aside under this section. The court may, in its discretion, set aside the conviction.").

b. D.C. Code § 24-903(c)(2)(H), on Its Face, is Ambiguous.

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Holloway* (quoting *Varela*, 424 A.2d at 64-65). "The first step in statutory interpretation is to determine if the statute's 'language is plain and admits of no more than one meaning.'" *Lee*, 276 A.3d at 16 (quoting *Odumn*, 227 A.3d at 1102). "If the plain language of a statute 'is clear and unambiguous and will not produce an absurd result, [this court] will look no further.'" *Larracuente*, 211 A.3d at 1143 (D.C. 2019) (quoting *Pixley*, 692 A.2d at 440). D.C. Code § 24-903(c)(2)(H) makes relevant to a sentencing court's determination of whether to impose or set aside a conviction pursuant to the YRA "[t]he youth offender's ability to appreciate the risks and consequences of the youth offender's conduct." The statute is silent regarding whether a sentencing court should weigh the ability (or inability) to appreciate the risks and consequences of conduct in favor or against imposing or setting aside a conviction under the YRA, leaving its meaning subject to multiple interpretations; i.e., it is ambiguous.

c. Reading D.C. Code § 24-903(c)(2)(H) to Weigh the Failure at the Time of the Offenses to Appreciate the Risks and Consequences of Conduct in Favor of Imposing or Setting Aside a Conviction Pursuant to the YRA "Makes Sense of the Statute as a Whole."

If this court "find[s] ambiguity, [its] 'task is to search for an interpretation that makes sense of the statute and related laws as a whole,'" a task which may be guided by "legislative history to ensure that [this court's] interpretation is consistent with

legislative intent." *Aboye*, 121 A.3d at 1249 (quoting *Richardson*, 927 A.3d at 1139)). This court has considered it appropriate to consult legislative history when interpreting other provisions of the YRA. *Ferguson*, 157 A.3d at 1290. The legislative history of the YRA makes clear that § 24-903(c)(2)(H) means that the "ability to appreciate…risks and consequences" of conduct weighs against imposing or setting aside a conviction under the YRA or, said another way, that the failure or inability to appreciate the risks and consequences of conduct, "hallmark features of youth,"[30] weighs in favor of or setting aside a conviction under YRA.

The "legislative history [of the YRA] demonstrates that its purpose was threefold: (1) to give the court flexibility in sentencing a youth offender according to his or her individual needs, (2) to separate youth offenders from more experienced offenders, and (3) to give a youth offender the opportunity to start anew through expungement of his or her criminal record." *Holloway*, 951 A.2d at 64 (citing D.C. Council, Report on Bill 6-47 at 2 (June 19, 1985)). More recently, when, *inter alia*, amending the YRA to increase the age of eligibility and "reform[ing] the YRA's sentencing section by providing additional guideposts for the court to consider at sentencing,"[31] the D.C. Council added § 24-903(c)(2)(H)—"[t]he youth offender's ability to appreciate the risks and consequences of the youth offender's conduct." In

[30] *Williams*, 205 A.3d at 848 (quoting D.C. Code § 24-403.03(c)(10)).
[31] D.C. Council, Report on Bill 22-451 at 20.

so doing, the Council noted that the "broad definition" of eligible offenses is generally in keeping with the purpose behind the original act: the recognition that young adults have diminished capacity to evaluate risks and consequences for their actions, but, at the same time, they have great capacity…for change." Report on Bill 22-451 at 11. The Council also cited approvingly a report of the Criminal Justice Coordinating Council noting that "[n]eurological development indicates that…persons cannot gauge risk, understand consequences fully, or delay gratification until well into their 20s, a phenomenon referred to as the 'maturity gap.'" *Id.* at 13.

This legislative history makes clear that the Council intended for the failure or inability at the time of an offense to appreciate the risks and consequences of conduct, a hallmark feature of youth, to weigh in favor of imposing or setting aside a conviction under the YRA, a statute enacted and amended in recognition of the differences—including the very neuropsychological differences codified in § 24-903(c)(2)(H)—between young people and older adults.

d. This Reading of § 24-903(c)(2)(H) is Further Reinforced by the D.C. Council's Use of Nearly Identical Language in D.C. Code § 24-403.03 Before Enacting D.C. Code § 24-903(c)(2)(H) to Indicate That the Failure to Appreciate Risks and Consequences Weighs Against More Severe Punishment.

"[W]hen a legislative body uses words or terms that have appeared in other legislation enacted by the same legislative body…then it is presumed, absent a

contrary indication, that the words or terms incorporated into the new statute will have the same meaning as those words or terms had in the existing statute." *Thomas*, 650 A.2d at 186 (quoting *Lorillard*, 434 U.S. at 581).

"Although the District prospectively abolished parole almost two decades ago, the Council adopted a comparable remedy for unconstitutional [life without parole] sentences in the Incarceration Reduction Amendment Act of 2016 (the "IRAA")," which "permits a defendant who has served at least 20 years of imprisonment for an offense committed before his 18th birthday to apply to the court (instead of to a parole board) for relief from his sentence in light of his lesser culpability as a juvenile and his maturation and rehabilitation in prison." *Williams*, 205 A.3d at 841 (internal citations omitted). In so doing, the Council made relevant "[t]he diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and *failure to appreciate risks and consequences*, *which counsel against sentencing them to a lifetime in prison*." *Id.* at 877 (quoting D.C. Code § 24-403.03(c)(10)) (emphasis added).[32] When subsequently amending the YRA to "provid[e] additional guideposts for the court to consider at sentencing,"[33] the Council enacted § 24-903(c)(2)(H).

[32] The D.C. Council subsequently amended subsection (c)(10) to, *inter alia*, expand the age of eligibility and replace "lifetime in prison" with "lengthy terms in prison."
[33] D.C. Council, Report on Bill 22-451 at 20.

> In using its discretion in sentencing a youth offender under this subchapter, the court shall consider the youth offender's ability to appreciate the risks and consequences of the youth offender's conduct.

While § 24-903(c)(2)(H) refers to the "ability to appreciate the risks and consequences of…conduct" and § 24-403.03(c)(10) refers to the "failure to appreciate risks and consequences," to read these phrases as having different meanings would produce an absurd result. Instead, because there is no contrary indication, and, indeed, every indication that the Council intended the same meaning in both statutes, D.C. Code § 24-903(c)(2)(H) must be read to mean that "the ability to appreciate the risks and consequences of conduct," weighs against imposing or setting aside a conviction under the YRA and that the failure or inability to appreciate such risks and consequences due to youth weighs in favor of imposing or setting aside a conviction under the YRA, the only reading consistent with the Council's clear intent.

This reading is further confirmed by the Council's reliance when enacting D.C. Code § 24-403.03(c)(10) on *Miller*, in which the Court stated that "[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and *failure to appreciate risks and consequences*." 567 U.S. at 477 (emphasis added); D.C. Council, Report on Bill 21-683 at 12. To read § 24-903(c)(2)(H) otherwise, that the ability of a young person at the time of the offense to appreciate the risks and

consequences of his or her conduct weighs in favor of imposing or setting aside a conviction under the YRA would "be an absurd result that neither the statutory language," the legislative history, "nor [this court's] precedents dictate." *Austin v. United States*, 292 A.3d 763, 775 (D.C. 2023) (citing *Murphy v. McCloud*, 650 A.2d 202, 205 (D.C. 1994)).

e. *Copeland v. United States* in Inapposite.

In *Copeland v. United States*, 271 A.3d 213, 226 (D.C. 2022), this court considered a claim that the trial court "unlawfully considered and relied upon [appellant's] decision to proceed to trial and to testify that she acted in self-defense" when declining to sentence Ms. Copeland under the YRA. "As to factor (H), the trial court "found that the parties had presented no evidence of appellant's reflection on the 'risks and consequences' of her conduct and noted that appellant had expressed no remorse in either her YRA motion or at sentencing." *Id.* at 226. In rejecting the claim, this court, without being asked to pass upon or addressing the proper interpretation of § 24-903(c)(2)(H), stated that its "review of the record confirm[ed] that appellant did not express remorse or an appreciation of the risks and consequences of her behavior either during her testimony or during the remarks she made at sentencing" and saw " nothing in the record that indicates that the trial court relied on appellant's decision to go to trial and to testify in her own defense in evaluating factor (H)." *Id.*

"The rule of stare decisis is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question,"[34] and "[a] point of law merely assumed in an opinion, not discussed, is not authoritative." *Id.* (quoting *In re Stegall*, 865 F.2d 140, 142 (7th Cir. 1989)). Where the *Copeland* court did not address the precise question presented by this case—the proper interpretation of D.C. Code § 24-903(c)(2)(H)—instead addressing whether the trial court's factual finding was clearly erroneous and whether the trial court unlawfully considered Ms. Copeland's decision to proceed to trial when declining to sentence her under the YRA, *Copeland* is inapposite.

f. The Trial Court Abused Its Discretion by Weighing Mr. Williams' Inability at the Time of the Offenses to Appreciate the Risks and Consequences of His Conduct Against Setting Aside His Convictions.

"A [trial] court by definition abuses its discretion when it makes an error of law." *Ko. W.*, 774 A.2d at 303 (quoting *Koon*, 518 U.S. at 100). When addressing D.C. Code § 24-903(c)(2)(H), the trial court found with respect to both 2010 CF3 5739 and 2011 CF3 16420 that Mr. Williams did not appreciate the risks and consequences of his conduct, and that this failure weighed factor (H) against setting aside his convictions.

> Defendant has accepted responsibility for his criminal conduct in both cases as evidenced by his pleading guilty in both. However, the fact that

[34] *Murphy v. McLoud*, 650 A.2d 202, 205 (D.C. 1994) (*Fletcher v. Scott*, 201 Minn. 609, 277 N.W. 270, 272 (1938)).

> defendant committed the 2011 crimes less than two years after a prior conviction for nearly identical conduct while on supervised release in 2010 CF3 5739 seriously calls into question defendant's ability to appreciate the risks of, or genuinely accept responsibility, for his conduct. Therefore, this factors weighs against granting defendant's Motions.

R. 24 at 5.

By making this error of law, the trial court "by definition abuse[d] its discretion."

II. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT THE *EX PARTE* ISSUANCE OF A TEMPORARY PROTECTION ORDER AGAINST MR. WILLIAMS, WITHOUT ANY RECORD EVIDENCE THAT MR. WILLIAMS COMMITTED OR THREATENED TO COMMIT ANY CRIMINAL ACT, SUGGESTED A LACK OF CAPACITY FOR REHABILITATION.

a. Standard of Review.

This court reviews the denial of a motion for sentencing or to set aside a conviction under the YRA and the determination that a factor relevant to a discretionary decision weighs in favor of or against a ruling for abuse of discretion. *See, e.g.*, *Veney v. United States*, 681 A.2d 428, 435 (D.C. 1996) (en banc); *see also In re J.J.*, 111 A.3d 1040, 1046 (D.C. 2015). "Moreover," a trial court's "determination must 'be based upon and drawn from a firm factual foundation," and "[i]t is an abuse of discretion if the stated reasons do not rest upon a sufficient factual predicate.'" *K.C.*, 200 A.3d at 1233 (quoting *Ko.W.*, 774 A.2d at 303).

b. The Trial Court Abused Its Discretion by Concluding That the *Ex Parte* Issuance of a Temporary Protection Order Against Mr. Williams, Without Any Record Evidence That Mr. Williams Committed or Threatened to Commit Any Criminal Act, Suggested a Lack of Capacity for Rehabilitation.

D.C. Code § 24-903(c)(2)(K) makes relevant a "youth offender's" "capacity for rehabilitation. When analyzing this factor, the trial court found that certain evidence, including Mr. Williams remaining free of convictions since 2011 (in 2011 CF3 16420), when he was seventeen years old, weighed in favor of setting aside Mr. Williams' convictions. R. 24 at 6. The trial court considered other evidence, including Mr. Williams' conviction in 2011 CF3 16420 while on supervised release (and probation) in 2010 CF3 5739 and the 2020 *ex parte* issuance of a TPO against Mr. Williams to weigh this factor against setting aside Mr. Williams' convictions. *Id.* ("However, more recently in 2020, the Domestic Violence Division of the D.C. Superior Court issued a temporary protective order ("TPO") against defendant. Given defendant's history of repeated convictions, coupled with the recent TPO issued against him, this factor is unfavorable and weighs against defendant."). Because "[i]t is an abuse of discretion if the stated reasons do not rest upon a sufficient factual predicate," the trial court's conclusion that this TPO suggested a lack of capacity for rehabilitation.

As Mr. Williams explained in the trial court, with support from the petition leading to the issuance of the TPO in question, and without contradiction by the

United States or any record evidence to the contrary, the conduct of which the petitioner in the case in question complained was Mr. Williams arriving at a location to retrieve his property, exchanging unspecified words with the petitioner, and calling the petitioner to inform her that she would be arrested pursuant to a warrant issued for her arrest. R. 23 at 8 (citing R. 23, Ex. R1). It was undisputed that Mr. Williams was not arrested for or charged with any offense related to the petitioner's allegations and the United States did not allege (and there is no record evidence that) any civil protection order was issued. *Id.* at 8-9. Mr. Williams likewise presented undisputed evidence that the complainant *was* in fact arrested and charged by the United States with simple assault and attempted possession of a prohibited weapon—one day before the petitioner sought a TPO and on the date on which the petitioner alleged that Mr. Williams called to inform the petitioner that she would be arrested pursuant to a warrant. *Id.* at 9.

Neither rehabilitation nor capacity are defined by the YRA. "In finding the ordinary meaning, '[t]he use of dictionary definitions is appropriate in interpreting undefined statutory terms.'" *1618 21st Street Tenants' Ass'n v. Phillips*, 829 A.2d 201, 203 (D.C. 2003) (quoting *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 727 (D.C. 1994)). Rehabilitation means "[t]he process of seeking to improve a criminal's character and outlook so that he or she can function in society

without committing other crimes." Rehabilitation, Black's Law Dictionary (11th ed. 2019).[35]

Even before considering the *ex parte* nature of the TPO, the facts underlying the TPO in question, accepted as true, do not allege that Mr. Williams committed or threatened to commit a crime. Indeed, the trial court acknowledged that Mr. Williams had no criminal history after his conviction in 2011 CF3 16420. R. 24 at 6. The *ex parte* issuance of this TPO against Mr. Williams is thus not a sufficient factual predicate for the trial court's conclusion that Mr. Williams lacked rehabilitation, let alone "capacity for rehabilitation." The trial court thus abused its discretion in concluding that the issuance of a TPO weighed D.C. Code § 24-903(c)(2)(K) against setting aside Mr. Williams' convictions.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO WEIGH MR. WILLIAMS' AGE AT THE TIME OF THE OFFENSES IN FAVOR OF SETTING ASIDE HIS CONVICTIONS.

a. Standard of Review.

As discussed, *supra*, this court reviews the decision of whether to weigh a statutory factor in favor of or against imposing or setting aside a conviction under the YRA for abuse of discretion. A trial court abuses its discretion by "fail[ing] to consider a relevant factor." *Johnson*, 163 A.3d at 753 (quoting *Johnson*, 398 A.2d at

[35] Capacity is defined, as relevant here, as the "capability or faculty for executing, considering, appreciating, or experiencing." Webster's Third New International Dictionary 330 (2002).

365). In some cases, "the body of facts in the record may foreclose some or most of the options either as a matter of law or because the facts themselves are so extreme." *Johnson*, 398 A.2d at 364.

b. The Trial Court Abused Its Discretion by Failing to Consider Whether Mr. Williams' Age at the Time of the Offenses Weighed D.C. Code § 24-903(c)(2)(A) in Favor of Setting Aside His Convictions and By Failing to Weigh This Factor in His Favor.

Mr. Williams argued below that his age at the time of the offenses, sixteen and seventeen, respectively, weighed § 24-903(c)(2)(A) heavily in favor of setting aside his convictions.[36] R. 20 at 5-6; R. 23 at 1-3; 11 R. 17 at 4-5; 11 R. 23 at 1-2. For support, Mr. Williams relied on the "'significant data and literature' showing that children and young adults are developmentally and neuroscientifically different than older adults…more impulsive, less emotionally mature, and less cognizant of the consequences of their actions" than adults. R. 20 at 5 (quoting D.C. Council, Report on Bill 23-127 at 15 (Nov. 24, 2020)); R. 17 at 4. Where the YRA applies only to those sentenced as adults, ranging in age from fifteen to twenty-four, Mr. Williams argued that, where he was sixteen and seventeen years old, respectively, at the time of the offenses, D.C. Code § 24-903(c)(2)(A) weighed heavily in favor of setting aside his convictions. R. 23 at 1-3; 11 R. 23 at 1-2.

[36] As noted, *supra*, Mr. Williams was seventeen years old at the time of the offenses in 2011 CF3 16420, not eighteen as stated by the trial court. *See* n.18.

When addressing the relevance of Mr. Williams' age at the time of the offenses, the trial court, citing D.C. Code § 24-901(6), concluded only that Mr. Williams' age made him eligible to have his convictions set aside under the YRA, not, as required by subsection (c)(2)(A), whether his age at the time of the offenses weighed in favor of setting aside his convictions.

> Defendant was sixteen years old at the time of offense in 2010 CF3 5739 and eighteen years old at the time of offense in 2011 CF3 16420, thus he is eligible for sentencing under the YRA.

R. 24 at 3.[37]

Because a trial court abuses its discretion by failing to consider a relevant factor,[38] the trial court abused its discretion in failing to consider this factor as relevant to whether to set aside Mr. Williams' convictions. *See* D.C. Code § 24-906(e-1)(2). In *Copeland,* by contrast, this court found no error where the trial court, "in his discussion of factor (A),…noted that appellant was twenty-one years old at the time of the offense and concluded that her age favored imposition of a YRA sentence,"[39] consideration absent from the court's ruling in the instant case.

While a trial court generally enjoys discretion in determining the weight to give to a particular factor, in some cases, "the body of facts in the record may foreclose some or most of the options either as a matter of law or because the facts

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[37] The trial court did not make any additional findings regarding Mr. Williams' age.
[38] *Johnson*, 163 A.3d at 753 (quoting *Johnson,* 398 A.2d at 365).
[39] 271 A.3d at 226.

themselves are so extreme." *Johnson*, 398 A.2d at 364. As discussed in the trial court, where Mr. Williams was at the time of the offenses in 2010 CF3 5739 barely one year older than the minimum age necessary to be eligible for sentencing under the YRA and more than seven years younger than the greatest age of eligibility,[40] this is such a case, and the trial court additionally abused its discretion by failing to weigh this factor in favor of setting aside Mr. Williams' convictions. While Mr. Williams was slightly older at the time of the offenses in 2011 CF3 16420, seventeen, where the age of eligibility for sentencing under the YRA ranges from 15 to 24, the trial court likewise abused its discretion by failing to weigh factor (A) in favor of setting aside Mr. Williams' convictions in this case.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN 2010 CF3 5739 BY FAILING TO WEIGH D.C. CODE § 24-903(c)(2)(C), WHETHER MR. WILLIAMS HAD PREVIOUSLY BEEN SENTENCED UNDER THE YRA, IN FAVOR OF SETTING ASIDE HIS CONVICTIONS.

a. Standard of Review.

As discussed, *supra*, this court reviews the decision of whether to weigh a statutory factor in favor of or against imposing or setting aside a conviction under the YRA for abuse of discretion. A trial court abuses its discretion by "fail[ing] to consider a relevant factor." *Johnson*, 163 A.3d at 753 (quoting *Johnson*, 398 A.2d at 365). In some cases, "the body of facts in the record may foreclose some or most of

[40] R. 23 at 2 (citing D.C. Code § 16-2307(a)(1)).

the options either as a matter of law or because the facts themselves are so extreme." *Johnson*, 398 A.2d at 364.

b. Where Mr. Williams Had Not Been Sentenced Under the YRA Outside of 2010 CF3 5739, the "Body of Facts…Foreclose[d]" All Options Other Than Weighing This Factor in Favor of Setting Aside His Convictions in 2010 CF3 5739.

Mr. Williams was sentenced under the YRA in 2010 CF3 5739. R. 13. Mr. Williams was not sentenced under the YRA in 2011 CF3 16420 or any other case. 11 R. 13; R. 24 at 6. When addressing D.C. Code § 24-903(c)(2)(C)—"whether a youth offender was previously sentenced under" the YRA—the trial court acknowledged that Mr. Williams had not been sentenced outside the YRA in 2010 CF3 5739 but failed to weigh this factor in favor of setting aside his convictions in 2011 CF3 16420. *Compare* R. 24 at 4 ("Defendant had not previously been sentenced under the YRA in 2010 CF3 5739. Defendant had previously been sentenced under the YRA in 2011 CF3 16420.")[41] *with id.* ("Defendant had no previous contacts with the juvenile and criminal justice systems, and 2010 CF3 5739 represents defendant's first conviction. *This factor weighs in favor of granting defendant's 2010 Motion.*") (emphasis added). Where prior sentencing under the YRA is a statutorily relevant factor, where factor (C) presents a dichotomy, and where a trial court abuses its discretion by failing to consider a relevant factor, the

[41] The court did not address factor (C) in any other portion of its order denying Mr. Williams' motions.

trial court abused its discretion by failing to weigh this factor in favor of setting aside Mr. Williams' convictions in 2010 CF3 5739. To be sure, a trial court could permissibly give a factor more or less weight when "thoughtful[ly] and conscientious[ly] discharge[ing]…sentencing responsibilities,"[42] but where the trial court gave factor (C) *no* weight in 2010 CF3 5739, it abused its discretion.

V. THE TRIAL COURT ABUSED ITS DISCRETION IN 2010 CF3 5739 BY CONSIDERING INFORMATION NOT LEGALLY RELEVANT TO D.C. CODE § 24-903(c)(2)(B), THE TRIAL COURT DEPARTING DOWNARD FROM THE VOLUNTARY SENTENCING GUIDELINES WHEN SENTENCING MR. WILLIAMS.

a. Standard of Review.

As discussed, *supra*, this court reviews the decision of whether to weigh a statutory factor in favor of or against imposing or setting aside a conviction under the YRA for abuse of discretion. "[A] trial court abuses its discretion by…relying upon an improper factor…or failing to provide reasons that support the trial court's conclusions." *Tiger Steel Eng'g, LLC*, 195 A.3d at 803 (quoting *In re Estate of McDaniel*, 953 A.2d at 1023–24).

b. The Trial Court Abused Its Discretion by Considering Information Not Germane to D.C. Code § 24-903(c)(2)(B).

D.C. Code § 24-903(c)(2)(B) makes relevant to the decision of whether to set aside a conviction under the YRA "the nature of the offense, including the extent of

[42] *Veney*, 681 A.2d at 435.

the youth offender's role in the offense and whether and to what extent an adult was involved in the offense." Mr. Williams argued that where the trial court found and the United States agreed "that the planning for" the offenses in 2010 CF3 5739 "really was done by the juvenile, "that Mr. Williams went along" and "the weapon" used in the offense, a bb gun, "was provided by the juvenile," this factor weighed in favor of setting aside his convictions in 2010 CF3 5739. R. 20 at 6 (quoting Aug. 5, 2010 Tr. at 13). In recognition of these facts and Mr. Williams' substantial assistance to law enforcement, the trial court, applying mitigating factors five and seven, departed downward from the sentencing range applicable under the Voluntary Sentencing Guidelines, which Mr. Williams argued was evidence of Mr. Williams' lesser role in the offenses. *Id.*

When addressing factor (B), the trial court weighed against Mr. Williams in 2010 CF3 5739 the sentencing court's decision to depart downward and Mr. Williams' subsequent commission of the offenses in 2011 CF3 16420.

> Because defendant was not the principal planner, but rather participant who "went along" with the armed robbery to which he pled guilty in 2010 CF3 5739, the court mitigated defendant's sentence in 2010 CF3 5739.4 Despite this leniency, defendant committed a strikingly similar offense less than two years later in 2011 CF3 16420. The violent nature of the offenses in both cases weighs against granting defendant's Motions.

R. 24 at 3-4.

By considering the sentencing court's "leniency" and Mr. Williams' commission of a subsequent offense (rather than whether the trial court's "leniency" was evidence of Mr. Williams' lesser role in the offenses), the trial court considered information not relevant to factor (B). Because a trial court abuses its discretion by considering an improper factor, this was error.

VI. THE TRIAL COURT'S ERRORS WERE NOT HARMLESS.

a. Standard of Review.

This court "evaluate[s] a showing of nonconstitutional error under the test set forth by the Supreme Court in *Kotteakos v. United States*, 328 U.S. 750, 765 (1946), and consider[s] whether [it] can 'say with fair assurance' that the error did not 'substantially sway the'" judgment. *Jones v. United States*, 263 A.3d 445, 460 (D.C. 2021). "Where more than one error is asserted on appeal" this court considers whether the "cumulative impact of the errors substantially influenced" the verdict or ruling. *Smith v. United States*, 26 A.3d 248, 264 (D.C. 2011).

b. The Trial Court's Errors Were Not Harmless Where Several Statutory Factors Indisputably Weighed in Favor of Setting Aside Mr. Williams' Conviction.

Independently and cumulatively, the trial court's errors were not harmless. In 2010 CF3 5739, Mr. Williams presented undisputed evidence that he was barely sixteen years old at the time of the offenses, that the trial court departed downward at sentencing based on his lesser role in the offense, that he had no prior contacts

with the juvenile or criminal justice system, that he had not been sentenced under the YRA in any other case, that he had no convictions since age seventeen—more than a decade earlier—that he participated in myriad productive activities with the Free Minds Book Club & Writing Workshop,[43] including legislative advocacy, that he was unable at the time of the offenses to appreciate the risks and consequences of his conduct, and that he had no history of using of controlled substances. Many, but not all of these factors also applied in 2011 CF3 16420. Where the trial court, even with errors of law and with an erroneous view of certain evidence, found that several statutory factors weighed in favor of setting aside Mr. Williams' convictions, one cannot say that its ruling was not substantially swayed by its errors, which therefore were not harmless.

Conclusion

The trial court erred by incorrectly interpreting the meaning of D.C. Code § 24-903(c)(2)(K) and additionally abused its discretion by: 1) finding that the *ex parte* issuance of a TPO against Mr. Williams, without any evidence that Mr. Williams committed or threatened a criminal act, suggested a lack of "capacity for rehabilitation," 2) failing to consider whether factor (A), age at the time of the

[43] "Free Minds" is a community organization which "provides critical pre-release support and services while still incarcerated in the Bureau Of Prisons and at the DC jail as well as post-release services." R. 17, Ex. 3; *see also* https://freemindsbookclub.org/.

offenses, weighed in favor of setting aside Mr. Williams' convictions and by failing to weigh this factor in his favor, 3) failing in 2010 CF3 5739 to weigh in Mr. Williams' favor that he had never otherwise been sentenced under the YRA, and 4) considering in 2010 CF3 5739 information not legally relevant to factor (B), the nature and circumstances of the offenses. Where Mr. Williams presented substantial evidence, leading the trial court to find that several statutory factors weighed in favor of setting aside his convictions, these errors were not harmless. This court should thus reverse and remand for reconsideration of whether to set aside Mr. Williams' convictions under correct legal principles and with a firm factual foundation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was electronically served upon the United States Attorney's Office for the District of Columbia on this 3rd day of October, 2023.

/s/ Adrian E. Madsen
Adrian E. Madsen

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed April 3, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, filed April 3, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
(b) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

Initial here

G. I certify that I am incarcerated, I am not represented by an attorney (also called being "pro se"), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.

Adrian E. Madsen, Esq.	23-CO-355-356
Signature	Case Number(s)
Adrian E. Madsen	10/3/23
Name	Date

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