

Appeal No. 23-CO-802



DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court
Received 06/28/2024 12:44 PM
Filed 06/28/2024 12:44 PM

ERVIN ROGERS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the Superior Court of the District of
Columbia
Criminal Division
Case No. 1992-FEL-005718

BRIEF FOR APPELLANT

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DISCLOSURE STATEMENT

Ervin Rogers is Appellant before this Court and is represented by Anne Keith Walton, Esq. Mr. Rogers was represented in the Superior Court of the District of Columbia by Justin A. Okezie, Esq.

The United States of America is Appellee before this Court and is represented by the United States Attorney's Office for the District of Columbia and Assistant United States Attorney Chrisellen R. Kolb, Esq. In Superior Court, the government was represented by Assistant United States Attorney Christopher Macomber, Esq.

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STATEMENT OF THE ISSUES

- I. Whether the trial court erred by misapplying factor ten of the IRAA statute.
- II. Whether the trial court abused its discretion by failing to consider and weigh several relevant factors in its dangerousness analysis.

STATEMENT OF THE CASE

In April 1992, when he was 19 years old, Mr. Rogers shot and killed a man during the commission of a drug-related robbery. In August 1993, Mr. Rogers pled guilty to first degree murder (felony murder) and was sentenced to 20 years to life in prison. R. at 17.¹ He is now over 50 years old and has been incarcerated for over 30 years. S.R. at 208. In November 2022, Mr. Rogers, through counsel, filed a Motion for Relief Pursuant to the Incarceration Reduction Amendment Act ("IRAA") along with numerous exhibits. *Id.* at 135-279. The government filed an opposition, and Mr. Rogers filed a reply. R. at 481-

¹ "R." refers to the record. "S.R." refers to the sealed record. Citations are to the pages of the record and sealed record PDFs. "Tr." refers to the transcript of the April 6, 2023, IRAA hearing.

96; 544-59. A hearing on Mr. Rogers's IRAA motion was held on April 6, 2023. On September 18, 2023, the Honorable Alfred S. Irving, Jr. issued an order denying Mr. Rogers's IRAA motion. *Id.* at 566-83. Mr. Rogers filed a timely notice of appeal. *Id.* at 584-85.

STATEMENT OF THE FACTS

Mr. Rogers's IRAA motion

Mr. Rogers argued in his IRAA motion that, after applying the statutory factors enumerated in D.C. Code § 24-403.03, it is clear that he merits a sentence reduction that grants immediate release from prison. First, Mr. Rogers's age at the time of the offense (19 years old), coupled with the diminished culpability of persons under the age of 25, weigh in favor of granting a sentence modification. S.R. at 225-29. Next, Mr. Rogers's family and community circumstances, including suffering abuse and extreme trauma as a child, weigh in his favor. *Id.* at 229-30. The abuse and trauma negatively impacted his ability to thrive as an adolescent and greatly contributed to his involvement with the criminal

justice system. *Id.* at 233-35. Despite the abuse and early exposure to drug use and addiction as a teenager, as well as abuse he has suffered in prison (for example, being wrongly labeled as a sex offender by other inmates), Mr. Rogers has managed to remain drug-free in prison, decreasing the chance of recidivism. *Id.* at 235-26; 257-60.

Turning to his disciplinary record, Mr. Rogers argued that he has substantially complied with institutional rules that apply to the dangerousness determination, and that the trial court should not rely on his masturbation infractions when determining his fitness to reenter society. *Id.* at 236-41. Mr. Rogers also asked the trial court to consider the discrimination he has faced as a District of Columbia inmate at the BOP when considering his disciplinary record. *Id.* at 241-42. Significantly, despite having been placed in high-security, violent penitentiaries, Mr. Rogers has never been cited for armed violence, and has not been cited for any form of violence for over 9 years. *Id.* at 243-46. Furthermore, a number

of infractions are regulatory in nature and are not relevant to whether Mr. Rogers has substantially complied with institutional rules. *Id.* at 246. As an additional matter, Mr. Rogers was found guilty of introducing drugs into a BOP facility, but he did not commit that offense. *Id.* at 247-49.

Mr. Rogers also asserted that he has participated in significant educational, vocational, and rehabilitative programming, and provided ample evidence. *Id.* at 249-56. He has participated in over 2,000 hours of programming, including the Challenge Program and rehabilitative courses such as drug education, Turning Point, Life Long Wellness, Sexaholics Anonymous, Personal Growth, Parenting, and Anger Management. *Id.* at 249-50. He has also completed components of the Release Preparation Program and has completed educational classes such as Business for Beginners, Nutrition, Memory, Creative Strategic Gaming, Creative Writing, and Cultural Diversity. *Id.* at 250-51. Mr. Rogers also obtained his GED. *Id.* at 252.

Mr. Rogers has also been employed at the BOP in several positions, including as an orderly and in food service. *Id.* at 251. Impressively, Mr. Rogers was chosen to lead a custodial maintenance crew, which was in charge of cleaning, stripping, sealing, buffing, and repainting Hazelton's floors and corridors. *Id.* at 253. Mr. Rogers has also completed employment training courses, such as Computers-Microsoft, Microsoft Office, and Keyboarding. *Id.* Mr. Rogers has a keen interest in game design and even created a game with a gameboard. *Id.* at 253-54.

Furthermore, Mr. Rogers has matured considerably while incarcerated and has demonstrated a fitness to reenter society. *Id.* at 260-61. He has a release plan and the educational and vocational skills necessary to secure employment. *Id.* at 261-62. He has the support of his loved ones, as demonstrated in the many letters of support that he submitted with his IRAA motion. *Id.* at 267-79. This will all ensure that Mr. Rogers thrives in the community upon release.

Government's Opposition

In opposing Mr. Rogers's IRAA motion, the government emphasized his disciplinary record at the BOP. R. at 488-90. The government minimized Mr. Rogers's many accomplishments in terms of educational, vocational, and other programming, stating that "neither the total volume of rehabilitation, nor the specific programs, argue in favor of granting defendant's motion." *Id.* at 491. The government also argued that Mr. Rogers does not demonstrate maturity, rehabilitation and a fitness to reenter society, that the victim's family members oppose release, that his childhood "does not tip the scales in favor of a sentence reduction in this serious case," and that, while he acted with others to effectuate the robbery, Mr. Rogers alone shot and killed the victim. *Id.* at 491-93.

Additionally, the government asserted that factor ten "does not weigh in the defendant's favor," explaining that Mr. Rogers "was a young adult, not a juvenile, when he shot and killed Mr. Sayles," and that, "[a]lthough a

failure to appreciate risks and consequences may have played a role, defendant still chose to engage in the robbery, arm himself, and put himself in the situation that led him [to] shooting and killing Mr. Sayles." *Id.* at 493. Finally, the government criticized and minimized Mr. Rogers's release plan. *Id.* at 494.

Mr. Rogers's Reply

In his reply, Mr. Rogers refuted all of the government's arguments concerning each IRAA factor. With respect to IRAA factor ten, Mr. Rogers explained that the government's conclusion that factor ten "does not weigh in the defendant's favor" was meritless. R. at 555 (citation omitted). Specifically, Mr. Rogers argued that:

But the D.C. Council decided to raise the age of the IRAA to persons under 25 years of age for good reason - science has demonstrated that due to the fact that young people are often still undergoing critical brain development, their ability to suppress inappropriate actions in favor of goal-directed ones is often impaired in comparison to an adult's ability to do so. Specifically, scientists have learned that "the rational part of a teen's brain isn't fully developed and won't be until age 25 or so." Mr. Rogers was 19 when he committed this offense. The premises that underlie the government's conclusion that this factor does not weigh in

Mr. Rogers' favor have all been scientifically proven to be the hallmarks of a brain that has not fully developed: "a failure to appreciate risks and consequences," and putting oneself "in the situation" that can lead to serious consequences. Thus, this factor weighs in Mr. Rogers's favor and the government's conclusion to the contrary is meritless.

Id. (footnotes and citations omitted).

IRAA Hearing

Mr. Rogers testified at his April 6, 2023, IRAA hearing. Regarding his offense, Mr. Rogers stated unequivocally that, "I was wrong. I took actions into my own hands, and I was never supposed to do that." Tr. at 6. Mr. Rogers then testified about the horrible, violent conditions at Lorton and the BOP facilities where he has been incarcerated over the years, including the prevalence of "cars" (prison gangs). *Id.* at 8-12. Mr. Rogers's car disowned him and left him with no protection when it was discovered that the Walsh Act (wrongly suggesting that he was a sex offender) was on his record. *Id.* at 13-16.

Addressing his disciplinary record, Mr. Rogers took full responsibility. *Id.* at 18, 38. He explained that his

many masturbation infractions were simply the result of trying to satisfy his own needs, but he took full responsibility and admitted to lashing out in response to poor treatment by prison staff. *Id.* at 18, 40-41. He also explained the circumstances surrounding several other infractions (on one occasion, he took responsibility for a weapon that was not his and, in other instances, officers were the instigators). *Id.* at 12-13, 18-23. Mr. Rogers asserted that he has never been cited for an armed assault because he made a promise to himself and his mother that he would never again be violent towards anyone. *Id.* at 23-24.

Turning to programming, Mr. Rogers described obtaining a GED as one of his proudest moments and expressed his interest in creative writing and strategic gaming. *Id.* at 30. He also described the challenges he has faced with regard to programming, which include ineligibility to participate in the First Step Act, exclusion from some programs due to his life sentence,

limited programming during the pandemic, and inability to complete the Challenge Program. *Id.* at 24-30.

Mr. Rogers testified about his work in prison, which included custodial maintenance or "special details" for the prison's deputy captain, with whom he had a good rapport. *Id.* at 31-32. Unfortunately, Mr. Rogers lost the job when the deputy captain left the facility. *Id.*

Mr. Rogers further testified about his aspirations and plans should he be released. He would like to attend an art institute for videogame design so that he can continue designing videogames (a long-time activity of his). *Id.* at 32. He also expressed interest in the D.C. Central Kitchen's Culinary Job Training Program, where he could employ his experience as a cook. *Id.* at 33. He envisions himself getting his CDL license and becoming a truck driver, and he could also work in food service. *Id.* He also expressed that, due to his interest in computers and technology, he is interested in a free training program for work as a network technician or administrator. *Id.*

Upon release, Mr. Rogers would agree to being placed on probation, and to evaluation for therapy, including sex treatment. *Id.* at 33-34. In fact, Mr. Rogers already contacted three organizations (MBI, Community Connections, and Green Door) due to his commitment to working on his mental health. *Id.* at 34. Mr. Rogers asserted that, for a year and a half, he had maintained a positive disciplinary record with no infractions, and that he would continue on that path. *Id.* at 34-35. Finally, Mr. Rogers admitted his struggle with an addictive personality and described the efforts he has made to understand his challenges and maintain discipline. *Id.* at 35-36. Upon release, Mr. Rogers looks forward to meeting his daughter and becoming "a pillar and an asset to the community" by helping himself and others. *Id.* at 52-53.

Trial Court's Ruling

The trial court began its analysis of the IRAA factors by addressing IRAA factors one, nine, and ten all together. The trial court stated:

As to factors (1), (9), and (10), Mr. Rogers was nineteen at the time he committed the offenses. IRAA, reflecting the evolving scientific consensus about brain development during the transition from adolescence to adulthood, recites "immaturity, impetuosity, and failure to appreciate risks and consequences" as "hallmark features of youth . . . which counsel against" lengthy sentences for "juveniles and persons under age 25[.]" The Court observes that Mr. Rogers was not a juvenile when he committed the underlying offense, and that the offense required Mr. Rogers to choose "to engage in the robbery, arm himself, and put himself in the situation that led to him shooting and killing Mr. Sayles." The Court notes that Mr. Rogers shot and killed Mr. Sayles within the context of a premeditated armed robbery with three co-conspirators, with Mr. Rogers only possessing the shotgun after the group entered the house and the other co-conspirators left Mr. Rogers alone with Mr. Sayles while they searched the rest of the house. The Court further observes that the record suggests that Mr. Rogers was susceptible to negative peer pressure and antisocial behavior . . . which likely may have contributed to his joining in the robbery that resulted in Mr. Sayles's killing, but also that Mr. Rogers understood the severity of his offense and ultimately took responsibility for his killing of Mr. Sayles - albeit after surviving a likely revenge killing and conferring with his mother before turning himself in and confessing.

R. at 571-72 (internal citations omitted). The trial court then acknowledged that, "[a]s to factors (2) and (8), Mr. Rogers suffered trauma and abuse during his

childhood," and proceeded to detail the trauma and abuse set forth in the IRAA motion. *Id.* at 572.

Addressing IRAA factor three, the trial court acknowledged that Mr. Rogers has participated in programming, completed employment training courses, and worked in several positions at the BOP. *Id.* at 575-76. The trial court also detailed Mr. Rogers's disciplinary record at the BOP. *R.* at 574-75. Turning to factor five, the trial court noted, among other things, Mr. Rogers's acceptance of responsibility, his abstention from drug and alcohol use in prison, and his decision to seek out counseling and wellness programming. *Id.* at 577-78.

With respect to factor six, the trial court noted that the family of the victim believes that Mr. Rogers should complete his sentence and would be a danger to the community if released. *Id.* at 579. As for factor seven, the trial court noted Mr. Rogers's "declining physical health," but stated that "neither [p]arty presents any material evidence as to this factor." *Id.* at 579.

Finally, with respect to factor eleven, the trial court stated that, while the government pointed to inadequacies in Mr. Rogers's release plan, Mr. Rogers assured that he is prepared to pursue employment or additional schooling, provided letters of support, and would be amenable to conditions of release involving sexaholic treatment and counseling. *Id.* at 579-80.

In its dangerousness analysis, the trial court noted Mr. Rogers's achievements but focused almost entirely on his disciplinary record as the reason for denying his IRAA motion. *Id.* at 581-83. Specifically, the trial court found that "Mr. Rogers's extensive disciplinary record, inconsistent treatment programming, and his capacity to reoffend preclude the Court from finding that he is not a danger to the safety of any person or the community." *Id.* at 581. The trial court condemned "Mr. Rogers's testimony that his disciplinary misconduct, especially instances of masturbation directed at female prison guards, was his chosen reaction to perceived mistreatment by facility staff," and found that his behavior "speaks

to Mr. Rogers's lack of maturation and rehabilitation." *Id.* at 581-82. As an additional matter, the trial court expressed concern that Mr. Rogers failed to complete rehabilitative programming. *Id.* at 582. The trial court ultimately found that Mr. Rogers failed to prove lack of dangerousness, and it declined to address whether the interests of justice warrant a sentence modification. *Id.* at 582-83.

SUMMARY OF THE ARGUMENT

The trial court erred by misapplying factor ten of the IRAA statute, which requires consideration of the diminished culpability of juveniles and persons under age 25, the hallmark features of youth that counsel against lengthy prison sentences, and a person's personal circumstances that support an aging-out of crime. Additionally, the trial court abused its discretion by failing to consider and weigh several relevant factors in its dangerousness analysis. For these reasons, Mr. Rogers respectfully requests that this Court reverse the trial court's order denying his IRAA motion, or, in the

alternative, remand his case to the trial court for the purpose of reconsidering the IRAA motion after properly applying factor ten.

ARGUMENT

Following a series of Supreme Court decisions addressing the constitutionality of sentencing juvenile offenders to life without parole, the D.C. Council adopted the Incarceration Reduction Amendment Act of 2016, D.C. Code § 24-403.03. See *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the Eighth Amendment forbids the execution of juvenile offenders); *Graham v. Florida*, 560 U.S. 48, 75 (2010) (holding that the Eighth Amendment prohibits sentencing juvenile offenders to life without parole for non-homicide crimes); *Miller v. Alabama*, 567 U.S. 460 (2012) (invalidating mandatory sentences of life without parole for juvenile homicide offenders); *Montgomery v. Louisiana*, 577 U.S. 190 (2016). The IRAA protects youthful offenders' Eighth Amendment right against cruel and unusual punishment and recognizes the Supreme Court's mandate that they must have a

"meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

Since 2016, the D.C. Council has made several revisions to the IRAA. In 2020, the Council decided to expand IRAA relief from juveniles to persons under the age of 25, explaining that:

Emerging adults generally display greater risk-seeking behaviors, susceptibility to peers, stress, and excitement, and diminished capacity for self-control. Developmental research shows that young adults continue to mature well into their 20s and exhibit clear differences from both juveniles and older adults.

Comm. on the Judiciary & Public Safety, Rep. on Bill 23-127, *Omnibus Public Safety and Justice Amendment Act of 2020*, at 15 (Nov. 23, 2020) (hereinafter "2020 Committee Report"). This revision built upon the Supreme Court's finding that, "[b]ecause juveniles have diminished culpability and greater prospects for reform . . . 'they are less deserving of the most severe punishments'" even when they commit terrible crimes, as well as the increasing understanding that such differences apply to

young adults. *Miller*, 567 U.S. at 471-72 (quoting *Graham*, 560 U.S. at 68).

The D.C. Council also added an "aging out of crime" clause to factor ten of the eleven factors that trial courts must address when making a decision whether to grant or deny an IRAA motion. See Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Law 23-274, 68 D.C. Reg. 47921 § 601 (Apr. 27, 2021). The D.C. Council explained that "[e]xtensive data shows that individuals age out of crime. Criminal behavior predominantly occurs during teenage and young adult years and decreases significantly in the 20s and upward." 2020 Committee Report at 18. The Council further explained that "[t]his well-documented and widely-accepted phenomenon is known as the 'age-crime curve,' meaning that people desist from committing crimes as they age." *Id.* at 16. Furthermore, "[s]uch well-developed data showing that individuals age out of crime may be relevant to a court's decision of whether a defendant is a danger to any other person or the community." *Id.* at 18.

The current version of factor ten instructs that trial courts consider:

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[.]

D.C. Code § 24-403.03(c)(10) (2021).

Recently, this Court found that factor ten "must weigh categorically in favor of the movant in all cases and that a trial court may not consider the degree to which the 'hallmark features of youth' played a role in the underlying offense." *Bishop v. United States*, 310 A.3d 629, 645 (2024). Additionally, this Court found that the purpose of the "aging out of crime" clause "is to mandate consideration of how the movant has changed between the time of the underlying offense and the time of his or her IRRA motion." *Id.* at 644.

I. The trial court erred by misapplying factor ten of the IRAA statute.

This Court reviews the denial of an IRAA motion for abuse of discretion. *Id.* at 641; *Williams v. United States*, 205 A.3d 837, 848 (D.C. 2019). The court “must determine whether the decision maker failed to consider a relevant factor, whether [the decision maker] relied upon an improper factor, and whether the reasons given reasonably support the conclusion.” *Bishop*, 310 A.3d at 641 (quoting *Crater v. Oliver*, 201 A.3d 582, 584 (D.C. 2019)). As noted in *Bishop*, “[a] court by definition abuses its discretion when it makes an error of law.” *Bishop*, 310 A.3d at 641 (quoting *Vining v. District of Columbia*, 198 A.3d 738, 754 (D.C. 2018)).

In *Bishop*, the trial court abused its discretion where it misapplied factor ten, which must “weigh categorically in favor of the movant.” 310 A.3d at 647. A trial court “may not inquire, on a case-by-case basis, whether or to what extent the ‘hallmarks of youth’ played a role in the underlying offense.” *Id.*

The trial court in Mr. Rogers's case erred by misapplying factor ten in much the same way as the trial court in *Bishop* did. When addressing factor ten (along with factors one and nine), the trial court in Mr. Rogers's case stated:

As to factors (1), (9), and (10), Mr. Rogers was nineteen at the time he committed the offenses. IRAA, reflecting the evolving scientific consensus about brain development during the transition from adolescence to adulthood, recites "immaturity, impetuosity, and failure to appreciate risks and consequences" as "hallmark features of youth . . . which counsel against" lengthy sentences for "juveniles and persons under age 25[.]" **The Court observes that Mr. Rogers was not a juvenile when he committed the underlying offense, and that the offense required Mr. Rogers to choose "to engage in the robbery, arm himself, and put himself in the situation that led to him shooting and killing Mr. Sayles."** The Court notes that Mr. Rogers shot and killed Mr. Sayles within the context of a premeditated armed robbery with three co-conspirators, with Mr. Rogers only possessing the shotgun after the group entered the house and the other co-conspirators left Mr. Rogers alone with Mr. Sayles while they searched the rest of the house. **The Court further observes that the record suggests that Mr. Rogers was susceptible to negative peer pressure and antisocial behavior . . . which likely may have contributed to his joining in the robbery that resulted in Mr. Sayles's killing, but also that Mr. Rogers understood the severity of his offense and ultimately took responsibility for**

his killing of Mr. Sayles - albeit after surviving a likely revenge killing and conferring with his mother before turning himself in and confessing.

R. at 571-72 (internal citations omitted) (emphasis added). Again, the above analysis groups factors one, nine and ten together.

Factor one instructs that trial courts consider "[t]he defendant's age at the time of the offense." D.C. Code § 24-403.03(c)(1). The trial court's finding that Mr. Rogers was 19 at the time of the offense is the only part of the above analysis that applies to factor one. Factor nine requires trial courts to consider "[t]he extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense." D.C. Code § 24-403.03(c)(9). The only portion of the above analysis that applies to factor nine is that "Mr. Rogers shot and killed Mr. Sayles within the context of a premeditated armed robbery with three co-conspirators," and that, "Mr. Rogers only possess[ed] the shotgun after the group entered the house and the other co-conspirators left Mr. Rogers alone with Mr. Sayles

while they searched the rest of the house." R. at 571-72. The rest of the analysis applies to factor ten.

When considering factor ten, the trial court erred by emphasizing that "Mr. Rogers was not a juvenile when he committed the underlying offense." *Id.* at 571. The trial court clearly found it significant that, at the time of his offense, Mr. Rogers was 19 years old rather than 17 years old, which would have qualified him as a juvenile rather than a young adult. The trial court's clear implication is that Mr. Rogers's status as a young adult rather than a juvenile weighs against him. This flies in the face of the D.C. Council's decision to make relief under IRAA available not just to juveniles but also to individuals who were under the age of 25 at the time of their offense. There should be no distinction in the IRAA analysis between offenders under the age of 18 and offenders under the age of 25.

Should there be any doubt about the importance the trial court placed on the fact that Mr. Rogers was not a juvenile, it went on to explain that "the offense

required Mr. Rogers to choose to engage in the robbery, arm himself, and put himself in the situation that led to him shooting and killing Mr. Sayles." R. at 571. The clear implication here is that the fact that Mr. Rogers was 19 years old rather than a juvenile impacted his ability to choose whether or not to commit the robbery and the murder. This contradicts the science supporting the D.C. Council's decision to make IRAA available to offenders under the age of 25. As the D.C. Council explained, "[c]riminal behavior predominantly occurs during teenage and young adult years and decreases significantly in the 20s and upward." 2020 Committee Report at 18 (emphasis added). This finding by the Council was based on "extensive data." *Id.*

Should there still be any doubt about the trial court's clear implication that Mr. Rogers's age (19 rather than 17) weighs against his release, the trial court found that, though "the record suggests that Mr. Rogers was susceptible to negative peer pressure and antisocial behavior," which led him to join in the

robbery, "Mr. Rogers understood the severity of his offense and ultimately took responsibility for his killing of Mr. Sayles." R. at 572. The clear implication here is that, despite the "hallmark features of youth" such as peer pressure and antisocial behavior, Mr. Rogers was developed enough as a 19-year-old to fully understand what he was doing and was fully able to appreciate the risks and consequences. R. at 572. Again, this finding flies in the face of scientific data and the D.C. Council's decision to make IRAA relief available to offenders under the age of 25. Factor ten includes "immaturity, impetuosity, and failure to appreciate risks and consequences" as part and parcel of being under the age of 25. D.C. Code § 24-403.03(c)(10). An individual's level of ability to appreciate risks and consequences therefore should not be considered when addressing factor ten.

Furthermore, this Court explained in *Bishop* that:

Under factor ten, the trial court noted that Mr. Bishop was nineteen at the time of his offense and that "Mr. Bishop's age and circumstances at the time of the offense surely contributed to

his actions that day." Nevertheless, Mr. Bishop's "record of violence and criminality before and, particularly, after the day of the offense weigh, to some degree, against a finding of mere youthful impulsiveness."

310 A.3d at 640. Similarly, the trial court in Mr. Rogers's case placed emphasis on his actions after the offense, stating that:

Mr. Rogers understood the severity of his offense and ultimately took responsibility for his killing of Mr. Sayles - albeit after surviving a likely revenge killing and conferring with his mother before turning himself in and confessing.

R. at 572. The trial court erred in its analysis of the actions taken by Mr. Rogers after committing the offense. While it is reasonable to consider the fact that Mr. Rogers took responsibility, it is improper to tie that action to his ability to understand the severity of the offense as a 19-year-old rather than a juvenile.

Furthermore, as in *Bishop*, the trial court failed to address Mr. Rogers's current age and brain maturation as supporting an aging out of crime. 310 A.3d at 644. As explained in *Bishop*:

Factor ten, meanwhile, takes as a given the movant's "diminished culpability" and the existence of the "hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing [movants] to lengthy terms in prison," D.C. Code § 24-403.03(c)(10), and simply requires the trial court to consider that fact in its overall assessment whether to grant relief.

310 A.3d at 645. This Court went on to explain that:

One could still argue that, even if the first clause of factor ten must always count in favor of the movant, its *weight* should vary based on the defendant and circumstances of the offense. One could posit, for example, that a twenty-three-year-old who acted with premeditation was less influenced by the hallmark features of youth than a sixteen-year-old who acted in the heat of the moment.

310 A.3d at 646. This Court explained that the above argument would be incorrect as "the IRAA does not contemplate trial courts making case-by-case determinations of the degree to which the underlying offense was motivated by the 'hallmark features of youth,' since "[s]uch an inquiry runs counter to the plain language of factor ten." *Id.*

In Mr. Rogers's case, the trial court did exactly what this Court in *Bishop* instructed trial courts not to

do. The trial court considered Mr. Rogers's specific age in its factor ten analysis. In *Bishop*, this Court counseled that comparing a 23-year-old to a 16-year-old would constitute error in the IRAA analysis. It follows that the trial court's consideration that Mr. Rogers was 19 rather than a juvenile (17 or under) was erroneous.

The trial court appears to have adopted the government's position that Mr. Rogers "was a young adult, not a juvenile, when he shot and killed Mr. Sayles," and that, "[a]lthough a failure to appreciate risks and consequences may have played a role, defendant still chose to engage in the robbery, arm himself, and put himself in the situation that led him [to] shooting and killing Mr. Sayles." R. at 493. The trial court should have instead adopted Mr. Rogers's argument, which was set forth in his reply:

The premises that underlie the government's conclusion that this factor does not weigh in Mr. Rogers' favor have all been scientifically proven to be the hallmarks of a brain that has not fully developed: "a failure to appreciate risks and consequences," and putting oneself "in the situation" that can lead to serious consequences. Thus, this factor weighs in Mr.

Rogers's favor and the government's conclusion to the contrary is meritless.

R. at 555. Simply put, this Court's decision in *Bishop* makes clear that Mr. Rogers's argument was right. The trial court's decision to adopt the government's position and to weigh the fact that Mr. Rogers was not a juvenile against granting his IRAA motion was erroneous.

II. The trial court abused its discretion by failing to consider relevant factors in its dangerousness analysis.

This Court has consistently found that a trial court abuses its discretion where it fails to consider the relevant factors regarding an issue. See *Dumas v. Woods*, 914 A.2d 676, 679 (D.C. 2007) ("A failure by the trial court to make findings as to each of the relevant factors requires remand."); *Caldwell v. United States*, 595 A.2d 961 (D.C. 1991) (remanding for resentencing where the trial court failed to consider relevant factors related to the principle of proportionality); see also *Benn v. United States*, 978 A.2d 1257, 1273 (D.C. 2009) (remanding where the trial court failed to consider any of the three *Dyas* factors before excluding expert evidence).

The trial court in Mr. Rogers's case abused its discretion by failing to consider and weigh several relevant factors in its dangerousness analysis. The trial court declined to address the interests of justice prong of D.C. Code § 24-403.03(a)(2) so the decision to deny IRAA relief was based entirely on how the eleven factors impacted the dangerousness finding.

The trial court did address all factors in the section of its order entitled "Section 24-403.03(c)'s Eleven Factors." It listed facts and arguments pulled from the motions submitted by Mr. Rogers and the government and weighed the fact that Mr. Rogers was not a juvenile against him. But the trial court failed to explain how it weighed several factors when analyzing dangerousness.

In its dangerousness analysis, the trial court made no mention of Mr. Rogers's diminished culpability as an offender under the age of 25, the hallmark features of youth, and personal circumstances supporting an aging out of crime. This factor should have weighed categorically

in favor of granting relief to Mr. Rogers under the IRAA. See *Bishop*, 310 A.3d at 647. As explained above, however, the trial court clearly weighed Mr. Rogers's status as a young adult against him.

Furthermore, the trial court failed to address the fact that Mr. Rogers is now over 50-years-old in evaluating dangerousness. The trial court in *Bishop* erred by failing to address the defendant's current age and brain maturation as supporting an aging out of crime. *Id.* at 644. The trial court in Mr. Rogers's case erred in the same way.

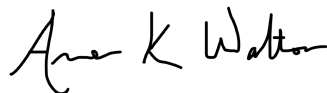
When analyzing dangerousness, the trial court also failed to consider Mr. Rogers's history and characteristics and family and community circumstances at the time of his offense, including abuse and trauma, which surely weigh in favor of granting his IRAA motion. Considering the massive amount of abuse and trauma to which he was exposed as a youth, Mr. Rogers has undoubtedly done exceedingly well over the course of the last 30 years at the BOP, yet the trial court failed to

weigh these factors before making its decision to deny his IRAA motion. The trial court was also required to consider Mr. Rogers's personal circumstances supporting an aging out of crime, but it neglected to do so. The trial court's failure to consider and weigh several relevant factors in its dangerousness analysis constitutes abuse of discretion.

CONCLUSION

For the reasons stated above, Mr. Rogers respectfully requests that this Court reverse the trial court's order denying his IRAA motion, or, in the alternative, remand his case to the trial court with instructions to properly apply factor ten in accordance with this Court's decision in *Bishop*.

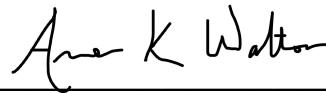
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CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2024, a copy of the foregoing Brief for Appellant was served via the court's e-filing system on Chrisellen R. Kolb, Esq., Chief of the Appellate Division of the United States Attorney's Office for the District of Columbia.



Anne Keith Walton, Esq.