No. 24-CO-321

_____

DISTRICT OF COLUMBIA COURT OF APPEALS

_____

,

RILEY S. WALLS,

Appellant,

v.

UNITED STATES,

Appellee.

_____

Appeal from the District of Columbia Superior Court
Criminal Division, Felony Branch

_____

APPELLANT RILEY S. WALLS'S MOTION FOR SUMMARY REVERSAL

_____

Peter H. Meyers
Bar No. 26443
2000 G Street, N.W.
Washington, D.C. 20052
(202) 994-7463
PMeyers@law.gwu.edu
Counsel for Appellant Walls
Appointed by the Court

LISTING OF PARTIES

Undersigned counsel hereby certifies that the only parties who appeared in the District of Columbia Superior Court were Mr. Riley S. Walls, and the United States of America. Mr. Walls was represented by attorney David H. Akulian in the Superior Court, and Assistant United States Attorney Amanda Williams represented the United States.

Mr. Walls is represented in this Court by attorney Peter H. Meyers and the United States is represented in this Court by Assistant United States Attorney Chrisellen R. Kolb.

No interveners or amici curiae have appeared in this case.

TABLE OF CONTENTS

Mr. Riley S. Walls, through his undersigned attorney, respectfully moves for summary reversal of the order issued by Judge Heidi M. Pasichow on March 28, 2024. This motion may be treated as the brief for Mr. Walls if the Court denies the motion or defers consideration on the merits.

APPEAL FROM FINAL JUDGMENT

This appeal is from a final order granting in part and denying in part Mr. Walls's motion for a reduction of sentence pursuant to the Incarceration Reduction Amendment Act ("IRAA"), entered on March 28, 2024, by Judge Pasichow, disposing of all parties' claims.

ISSUES PRESENTED

I. Whether the trial court erred when, after concluding in its final order that Mr. Walls "has met his burden of establishing that he is no longer a danger to society," and that a reduction of his sentence "was in the interests of justice," nevertheless then ordered his continued incarceration, in effect adding as a statutory criterion that--for unspecified reasons--he "would benefit from further time and supervision within the correctional system."

II. Whether the trial court also erred when it resentenced Mr. Walls to a prison term of 20 years to life for first-degree murder while armed, when the IRAA provides that any sentence with a maximum of life imprisonment shall have no more than a 15-year minimum sentence.

III. Whether the trial court also erred in its consideration of Factor Ten of the IRAA standards it applied, in the same way that the trial court misapplied Factor Ten in

Bishop v. United States, 310 A.3d 629 (D.C. 2014), where this Court ordered a remand for reconsideration.

STATEMENT OF THE CASE

I. Nature of the Proceedings

This is an appeal from an order issued by Judge Pasichow granting in part and denying in part Mr. Walls's motion for a reduction of sentence pursuant to the Incarceration Reduction Amendment Act ("IRAA"), D.C. Code § 24-403.03. *See* R. 18.[1] Mr. Walls filed a *pro se* motion pursuant to the IRAA on May 27, 2021. R. 5. The trial court appointed counsel to represent Mr. Walls, and counsel subsequently filed a supplement to the *pro se* motion. R. 12. The government filed an opposition to the motion, R. 13, and on September 22, 2023, the trial court held an evidentiary hearing on the motion.

Three witnesses testified at the hearing: (1) Maureen Baird, a consultant on correctional issues who had been an employee of the U.S. Bureau of Prison for 27 years, Tr. 9/22/23 at 9; (2) Robin Walls Couch, Mr. Walls's sister, *Id*. at 28; and (3) Mr. Walls, *Id*. at 43. At the conclusion of the hearing, defense counsel for Mr. Walls argued that he had satisfied his burden of showing that he was no longer dangerous and should be released after serving 27 years in prison. *Id.* at 54. Judge Pasichow responded that "it was a bit more challenging to do what you're asking the Court to do" because "we're talking about two different victims in this case…." *Id.* at 61.

[1] In this motion the record is cited as "R." followed by the number of the document in the record index. The transcript of the September 22, 2023, hearing is cited as "Tr."

Subsequently, on March 28, 2024, Judge Pasichow issued an order granting in part and denying in part Mr. Walls's IRRA motion for immediate release. This order reduced Mr. Walls's original sentence of 45 years to life imprisonment, imposed in 1997, to a revised sentence of 35 years to life imprisonment.[2] A timely notice of appeal was filed on March 31, 2024, R. 22, and this Court appointed undersigned counsel (who was not trial counsel) to represent Mr. Walls in this appeal.

II. Statement of the Facts

A. History of This Case

On August 9, 1992, at approximately 3:00 a.m., Mr. Walls and a friend encountered two other young men on the front steps of an apartment building. After an exchange of words, Mr. Walls pulled out a nine-millimeter handgun and opened fire. One of the other men died as a result of the gunshot wounds he received, and the second individual, who was shot in the foot, escaped. *See Walls v. United States*, 773 A.2d 424, 426 (D.C. 2001). Mr. Walls was 18 years old at the time.

Mr. Walls was charged with first-degree murder while armed, AWIK, CFDCV, and carrying a pistol without a license ("CPWL"). After two mistrials, each of which resulted from a hung jury, Mr. Walls was tried a third time by a jury, Judge Harold L.

[2] Mr. Walls was originally sentenced by Judge Harold L. Cushenberry on October 24, 1997, to consecutive prison terms of 30 years to life for first-degree murder while armed, 10-30 years imprisonment for assault with intent to kill ("AWIK"), and 5-15 years for carrying a firearm during a crime of violence "CFDCV").

Judge Pasichow's final order in this case reduced Mr. Walls' sentence for first-degree murder while armed to a prison term of 20 years to life imprisonment, and kept the same consecutive sentences of 10-30 years imprisonment for AWIK and 5-15 years imprisonment for CFDCV. *See* final order, R. 18, at 15.

Cushenberry presiding, and convicted of all the charges except CPWL.[3] On October 23, 1997, Judge Cushenberry sentenced Mr. Walls as described in footnote 1, *supra*.

Mr. Walls filed an appeal, and on May 31, 2001, a divided panel of this Court affirmed his convictions. Senior Judge Mack dissented, concluding that the trial court's curtailment of the cross-examination of the key government witness against Mr. Walls (the friend he had arrived with at the apartment building) undermined confidence in the guilty verdicts. *Walls*, 773 A. 2d at 436.

Subsequently, on May 27, 2021, Mr. Walls filed the instant motion for a reduction of sentence pursuant to the IRAA.

B. Judge Pasichow's Final Order Granting the Motion In Part and Denying the Motion in Part

Judge Pasichow's final order granting in part and denying in part Mr. Walls's IRAA motion analyzed in detail the eleven factors that the IRAA requires the court to consider. Judge Pasichow's evaluation of these eleven factors was overwhelmingly favorable to Mr. Walls. Most of the factors were found by Judge Pasichow to favor granting relief, and no factors were found by Judge Pasichow to support a denial of relief.

(1) The defendant's age at the time of the offense. The trial court found Mr. Walls was 18 years old at the time of the offenses and thus qualified for relief under the IRAA. Order at 7.

[3] At the first trial, the court granted a motion for judgment of acquittal on that count. *Walls v. United States, supra*, 773 A.2d at 426 fn. 5.

(2) The history and characteristics of the defendant. The Court found this factor "favors a reduction in Defendant's sentence." *Id*. at 8.

(3) Whether the defendant has substantially complied with the rules of the institution to which the defendant has been confined and whether the defendant has completed any educational, vocational, or other program, where available. The court found this factor "weighs in favor of a sentence reduction." *Id*. at 10.

(4) Any report or recommendation received from the United States Attorney. The government recommended against any sentence modification. *Id.* at 11.

(5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction. The court found this factor "weighs in favor of a sentence reduction." *Id.* at 11.

(6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased. No such statements were submitted. *Id.* at 12.

(7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals. Neither party submitted any such reports. *Id.* at 12

(8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system. The court found that this factor "weighs in favor of a sentence reduction." *Id.* at 12.

(9) The extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense. The court noted that Mr. Walls, although accompanied by a friend, acted alone. *Id.*

(10) 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. The court found this factor weighed "in favor of a sentence reduction." *Id.* at 13, but the court did not consider the additional language added to this factor by the D.C. Council and was part of the law when Judge Pasichow issued her decision (*see* discussion below).

(11) Any other information the court deems relevant to its decision. The court found that several additional factors "speak strongly in favor of release," including his strong family support and five years of sobriety:

> Defendant argues that his reentry will be aided by support from his family and community, evidenced by the letters of support from several family members and friends. *See* Def. App. 3. By maintaining and rebuilding relationships with members of his family during his incarceration, particularly his cousin and his uncle, Defendant now has a strong support system in place if released. Mot. at 26-27. If released Defendant would be able to live with his sister while receiving support from other family members who are "determined to play a key role" in Defendant's success should he be released. *Id*. at 27. Defendant has three job offers in place pending his release. Mot. at 27; Def. App. 3. Further, the Court 14 finds that Defendant's dedication to sobriety and his almost five years living drug free in prison are indications of his ability to be successful within the community upon release. Even in light of his prior disciplinary record, the Court found that his strong family support and abstinence from drugs speak strongly in favor of early release.

Id. at 13-14.

In considering Mr. Walls's present danger to society, the court concluded that Mr. Walls had met his burden of showing that he was no longer a danger to society:

> After considering the eleven factors noted therein, the Court has concluded that Defendant has met his burden of establishing that he is no longer a danger to society. While the Court does not believe that Defendant is ready for immediate release and would benefit from further time and support within the correctional system, the Court does believe that he has met his burden of showing that when released, he does not pose a current danger to society and thus is entitled to a reduction in his sentence.

Id. at 14.

In considering the interests of justice, the court noted Mr. Walls's dysfunctional early life and identified steps that Mr. Walls has taken to improve his life, including participating in prison programs, abstaining from intoxication, and building family relationships:

> The Court has determined that Defendant has proven that a reduction of his sentence would be in the interests of justice. Defendant was impressionable and he was exposed to and confronted with violence, alcoholism, and drug abuse at a young age. Growing up, he lacked adult supervision and stability. All this contributed to the decisions he made as a young adult, including the tragic decisions he made on August 9, 1992. He has taken steps to improve his life, including enrolling himself in programming in prison, achieving sobriety, and building strong relationships with family members. The Court… concludes that it is in the interests of justice to grant Defendant's Motion and reduce his sentence permitting Defendant to be eligible for Parole prior to 2027.

Id. at 15.

SUMMARY OF ARGUMENT

The trial court erred when, after concluding that Mr. Walls had met his burden of showing that he was "no longer a danger to society" and that since he presented a reduction of his sentence was "in the interests of justice," then ordered his continued incarceration

with an earlier parole release date than was originally applicable. In effect, the trial court read into IRAA a factor not present in the statute--the test of whether a defendant would benefit from continued incarceration. The trial court then concluded without explanation or justification that Mr. Walls "would benefit from further time and support within the correctional system." Moreover, the trial court improperly delegated Mr. Walls's release to the Parole Board, when the D.C. Council clearly placed the responsibility on the trial court under IRAA to determine a defendant's release.

The trial court also erred when it resentenced Mr. Walls to a minimum term of 20 year to life for first-degree murder which armed when the IRRA provides that any sentence with a maximum sentence of life imprisonment shall have no more than a 15-year minimum sentence.

The trial court also erred in its consideration of Factor Ten of the standards it applied in the same two ways that the trial court in *Bishop v. United States*, 310 A.3d 629 (D.C. 2014), also misapplied Factor Ten, requiring a remand in this case, similar to the remand for reconsideration ordered in *Bishop*.

ARGUMENT

I. Applicable Legal Standards

The Incarceration Reduction Amendment Act of 2016 ("IRAA"), as amended by the Second Look Act, D.C. Code § 24-403.03, D.C. Law 23-274, § 601, 68 D.C.R. 1034 (April 27, 2021), provides that the court "shall" grant a sentence reduction to an individual who committed a serious offense when he or she was under the age of 25 years old and has served at least 15 years in prison, if the court finds that "the

defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification." D.C. Code § 24-403.03(a)(2). The IRAA lists eleven factors the court must consider in ruling on a motion to reduce a defendant's sentence. *See* D.C. Code § 24-403.03(C)(1)-(11). Under the statute, a court's consideration of a motion for reduction of sentence focuses on the defendant's rehabilitation over the past 15 or more years, rather than "the brutality or cold-blooded nature" of the original crime committed. *See* D.C. Code § 24-403.03(C)(10).

In *Williams v. United States*, 205 A.3d 837 (D.C. 2019), this Court made clear that the Incarceration Reduction Amendment Act was intended to authorize release of offenders not based upon the seriousness of their original offenses, but based upon "their maturation and rehabilitation" since being imprisoned. 205 A.3d at 846.

This Court also made clear in *Williams* that the standard that should be applied in ruling on a prisoner's IRAA motion whether there is a "reasonable probability" that the prisoner will live "without violating the law" and that release "is not incompatible with the welfare of society":

> See D.C. Code § 24-404 (a) (authorizing release on parole if the Parole Commission finds ''there is a **reasonable probability** that a prisoner will live and remain at liberty without violating the law, that his or her release is not incompatible with the welfare of society, and that he or she has served the minimum sentence imposed or the prescribed portion of his or her sentence, as the case may be'').

Id. at 848 fn. 54 (emphasis added).

While this Court will generally apply the abuse of discretion standard to review of denials of IRAA motions, *Bailey v. United States,* 251 A.3d 724, 732 (D.C.

2021), this Court reviews *de novo* whether a trial court "failed to consider a relevant factor" or "relied upon an improper factor" in reaching its decision, or based its decision on factors not specified in the applicable statute. *Bailey*, *supra*, 251 A.3d at 732 (remanding the case where trial court considered improper factors in denying compassionate release); *Bishop v. United States*, 310 A.3d 629, 643 (D.C. 2024) (remand required where trial court based its decision on outdated Factor Ten of IRAA and misinterpreted that factor); *Johnson v. United States*, 398 A.2d 354, 365 (D.C. 1979) (remand required if trial court failed to consider a relevant factor, relied upon an improper factor, or the reasons given do not reasonably support the trial court's conclusion); *see also, United States v. Morton*, 50 A.3d 476, 482 (D.C. 2012) (remanding case for reconsideration because trial court failed to consider a relevant factor in reaching its decision); *Crater v. Oliver*, 201 A.3d 582, 584 (D.C. 2019) (error when trial court "failed to consider a relevant factor" in making its decision).

II. The Trial Court Erred When, After Concluding That Mr. Walls "Has Met His Burden of Establishing That He is No Longer a Danger to Society" and That There "A Low Likelihood for Future Dangerousness on Release," It Then Ordered His Continued Incarceration

After evaluating whether Mr. Walls should be granted relief from his initial sentence, imposed in 1997, after serving approximately 27 years of incarceration, Judge Pasichow concluded:

> After considering the eleven factors noted therein, the Court has concluded that Defendant has met his burden of establishing that he is no longer a danger to society.

Final order at 14. The Court further found "a low likelihood for future dangerousness to the community upon release." *Id* at 14.

However, the court went on to indicate--without explanation or any justification--that, despite its conclusion that Mr. Walls was no longer a present danger to society, Mr. Walls would not be released because he "would benefit from further time and support within the correctional system." *Id.* Judge Pasichow added:

> The Court… concludes that it is in the interests of justice to grant Defendant's Motion and reduce his sentence permitting Defendant to be eligible for Parole prior to 2027.

Id. at 15.

Judge Pasichow misapplied the IRAA statute in two important respects. First, the trial court gave no reasons or supporting justification for not immediately releasing Mr. Walls, given the court's conclusion that he could be released without danger. Under *Williams,* the relevant test is whether (1) the prisoner is likely to pose a danger if released (applying a reasonable probability standard) or (2) whether his release is incompatible with the welfare of society. Judge Pasichow made neither finding—in fact she found a "low likelihood" for future dangerousness. *Id.* at 14.

This case is similar to this Court's recent decision in *Terry v. Jones v. United States*, No. 22-CO-0909, Order issued May 22, 2023. In that case, Judge Robert R. Rigsby had granted an IRAA motion in part, ordering that the defendant, who had served 28 years of a 35-year to life sentence, be immediately eligible for parole, but not ordering his immediate release. *United States v. Jones*, No. 1994 FEL 000928 (order issued Nov. 2, 2022, at 7). This Court, on a motion for summary reversal, remanded to the trial court with instructions

"to provide its reasoning for ordering appellant immediately eligible for parole rather than granting his request for immediate release." Order issued May 22, 2023, at 1. This Court cited *Cruz v. United States*, 165 A.3d 290, 294 (D.C. 2017), which held that the trial court must explain its reasoning "in sufficient detail to permit appellate review." *Id.* at 1. Copies of both the trial court's order and this Court's remand are contained as Appendix B and Appendix C in the Appendix co-filed with this motion.

Moreover, after the judge concluded that Mr. Walls was no longer posed a current danger, and that the interest of justice favored a sentence reduction, it was improper for the judge to order his continued incarceration because he "would benefit from further time and support within the correctional system." *Id.* The appropriate remedy when the trial court finds the defendant is no longer dangerous and that grating relief is in the interests of justice, is to order the release of the defendant, not require the defendant to serve additional time in prison. The trial court never explained how Mr. Walls, after serving 27 years in prison, would "benefit from further time and support within the correctional system," rather than releasing him to his family. Once a prisoner establishes he is unlikely to present a danger to the community, Mr. Walls respectfully submits that the Second Look Act mandates release, or at the very least, a carefully justified reduction in sentence—the statute contains no criterion such as a showing that prisoner would benefit from continued incarceration. In effect, the judge read into the statute a factor that the D.C. Council did not enact. And, in any event, the judge pointed to no ongoing rehabilitation program in the prison that might confer such a benefit, even assuming *arguendo* that such a factor could be read into the statute. Of course, reading an implied "continued benefit of incarceration" factor into the statute would undermine the purpose of the IRAA, which was specifically

intended to avoid a virtually lifetime of incarceration. Mr. Walls has already served almost three decades in prison, and it is highly speculative that he would further benefit from further incarceration. This is especially true in light of the trial court's conclusion that Mr. Walls posed a "low likelihood" of future dangerousness. Furthermore, the trial court itself noted his strong family support documented in his release plan, including a place to live and employment. *Id.* at 13-14.

This is not to argue that a trial court can *neve*r reduce a sentence under IRRA without granting immediate release. However, in this case the trial court gave no reason for continued incarceration. Thus, its reasoning for the limited relief it granted to Mr. Walls does not reasonably support the trial court's conclusions. *Johnson v. United States*, *supra*, 398 A.2d at 365 (remanding the case). After the trial court concluded that Mr. Walls no longer posed a current danger and that granting relief was in the interests of justice, it was inconsistent for the judge to then require, without explaining the basis for its reasoning, that Mr. Walls should serve additional time in prison because he "would benefit from further time and support within the correctional system." Final order at 15.

Second, the trial court erred by not itself determining whether Mr. Walls should be released on a specific future date, because he is no longer dangerous, but instead delegated that responsibility to Parole authorities. As this Court is well aware, parole eligibility is no guarantee of parole release. The D.C. Council, in adopting and then amending the IRAA, provided that the judge **shall** make the decision on modifying a defendant's sentence and potential release from prison – not that the release decision under IRAA would be delegated to Parole authorities. The D.C. Council intended that the Parole Board administers parole, while judges administer the IRAA. *See Williams v. United States*, 205

A.3d 837, 849-50 (D.C. 1019). "Although review under IRAA is not denominated 'resentencing,' it would seem to equate to a resentencing in all but name." *Williams*, 205 A.3d at 849. The IRAA is of course different from parole in that factors relevant to juveniles' immaturity counsel against a lifetime, or virtual lifetime , in prison:

> The IRAA judicial hearing is superior to a parole hearing in those respects, for one reason because the IRAA explicitly requires judges to give individualized consideration to the factors specific to juveniles that "counsel *against* sentencing them to a lifetime in prison." In addition, the formal judicial hearing envisioned by the IRAA provides defendants significant procedural guarantees, in contrast to the "minimal" procedures that the Constitution requires in parole proceedings. These include a fuller opportunity to present relevant evidence (and, by implication, to challenge the government's evidence) with the assistance of counsel, and a written, structured decision by the judge that is subject to more stringent constitutional and statutory requirements and is more fully reviewable on appeal.

Williams, 205 A.3d at 853 (citations omitted).

See also Long v. United States, 312 A.3d 1247, 1259-60 (D.C. 2024), emphasizing the differences between consideration by the Parole Board and judicial consideration under IRAA, which acknowledges the immaturity of adolescent brain development:

> Contrary to the government's framing, the IRAA is not simply parole by another name. The two mechanisms are motivated by different policy considerations, operate under different procedures, and achieve different objectives. Underlying the IRAA is a body of scientific evidence "demonstrat[ing] that the frontal lobes of the brain, which control executive functions like planning, working memory, and impulse control ...[,] may not be fully developed until the mid-twenties." Comprehensive Youth Justice Amendment Act of 2016, Report on Bill No. 21-0683 before the Committee on the Judiciary, Council of the District of Columbia, at 3 (Oct. 5, 2016); *see also Bishop v. United States*, 310 A.3d 629, 635, 645-46 (D.C. 2024) (detailing the D.C. Council's scientific basis for the IRAA). The IRAA recognizes that eligible inmates are deserving of an opportunity to seek early release from their sentences because they were less developmentally culpable when they committed their crimes. The justifications traditionally advanced to support parole, by contrast, are

> rehabilitation and deterrence. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 8, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979).

For these reasons, IRAA adjudications by judges are not adjuncts to the parole system. They are two separate systems with different procedures and different objectives. The trial court in this case erred by keying its decision not on its own determination of the appropriate resentencing of Mr. Walls, but on restructuring his sentence so that the Parole Board could consider his release at an earlier date. This was an error of law, reviewable *de novo* by this Court. *Bailey*, *supra*, 251 A.3d at 732. Mr. Walls's sentence, even as reduced by the trial court, can turn into a virtual life sentence, depending on the Parole Board's decisions.

Judge Pasichow misapplied the IRAA statute in this case. After concluding that Mr. Walls had met his burden of showing that he no longer posed a current danger, and that grating relief was in the interests of justice, it was then erroneous for the judge to order his continued incarceration because he "would benefit from further time and support within the correctional system." This Court should remand the case with instructions to the trial court, in light of its findings that Mr. Walls was no longer a danger, and that grating relief was in the interests of justice, to order the his immediate release, rather than requiring him to serve additional time in prison at the discretion of the Parole Board.

III. The Trial Court Also Erred When It Resentenced Mr. Walls to a Prison Term of 20 Years to Life for First- Degree Murder While Armed, When the IRAA Provides That Any Sentence with a Maximum of Life Imprisonment Shall Have No More than A 15-Year Minimum Sentence

In resentencing Mr. Walls for first-degree murder while armed, Judge Pasichow substituted for the 30-year mandatory minimum sentence imposed by Judge Cushenberry in 1997, a 20-year minimum sentence, and kept the maximum of life incarceration imposed by Judge Cushenberry. *See* final order at 15. While IRAA authorizes the trial court to issue a sentence "less than the minimum term otherwise required by law," § 24-403.03(e)(2)(A), the IRAA also requires that if the maximum sentence imposed is life imprisonment, the minimum sentence shall be no more than 15 years' imprisonment. *See* § 24-403.03(e)(1), which provides that: "Any defendant whose sentence is reduced under this section shall be resentenced pursuant to § 24-403, § 24-403.01, or § 24-903, as applicable." The applicable statute is § 24-403, entitled "Indeterminate sentences; life sentences; minimum sentences." Section 24-403(a) states in pertinent part:

> Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment.[4]

In light of this statutory provision, the 20-year minimum sentence imposed by Judge Pasichow for first-degree murder while armed was illegal. This Court should, at the least, remand the case with instructions to revise the sentence imposed on Mr. Walls for first-degree murder to be 15 years to life imprisonment. *See Lopez-Ramirez v. United States*, 171 A.3d 169, 177 (D.C. 2017) (remanding case to correct sentence); *Dobson v. United States*, 449 A.2d 1082, 1083 (D.C. 1982) (same). If this Court agrees with the first argument contained in this motion, that the case should be

[4] § 24-403.01involves suspended sentences and certain maximum sentences; § 24-903 involves sentencing alternatives for youthful offenders.

remanded with instructions for the trial court to release Mr. Walls in light of the trial court's conclusion that he "has met his burden of establishing that he is no longer a danger to society," then the relief requested in this second argument would be unnecessary.

IV. The Trial Court Also Erred in Its Consideration Of Factor Ten of the Standards it Applied, in the The Same Way that the Trial Court Misapplied Factor Ten in *Bishop v. United States*, 310 A.3d 629 (D.C. 2024), Where This Court Ordered a Remand For Reconsideration

In the recent case of *Bishop v. United States*, 310 A.3d 629 (D.C. 2014), this Court ordered a remand for reconsideration because the trial court, in denying an IRAA motion for release, committed legal error in misapplying IRAA Factor Ten in two different respects. First, the trial court used the outdated 2019 version of Factor Ten, rather than the correct version of Factor Ten, as amended in 2021. The original version required the trial court to 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.

The amended version of Factor Ten requires the trial court to additionally consider "the defendant's personal circumstances that support an aging out of crime." The D.C. Council added the "aging out of crime" clause on January 13, 2021, effective April 27, 2021. *See* Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Law 23-274, 68 D.C. Reg. 47921 § 601 (Apr. 27, 2021). In adopting this language, the 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 (footnote omitted). "In the Committee's view, "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.

This Court concluded in *Bishop, supra*:

> In considering Mr. Bishop's IRAA motion, the trial court appears to have relied on the 2019 version of the statute, which did not contain the "aging out of crime" clause italicized above. The trial court, therefore, was apparently unaware of the need to inquire into Mr. Bishop's "personal circumstances that support an aging out of crime." D.C. Code § 24-403.03(c)(10) (2021)…. We agree with Mr. Bishop that, in relying on an outdated version of the statute, the trial court "failed to undertake a required factual inquiry." *Johnson v. United States*, 398 A.2d 354, 366 (D.C. 1979).

310 A.3d at 643.

In this case, Judge Pasichow appears to have relied on the same outdated version of Factor Ten that the trial court relied upon in Bishop. For the same reasons, Judge Pasichow's reliance on the outdated version of Factor Ten represented a failure to undertake the required factual inquiry.

Second, in *Bishop*, this Court found that the trial court had also erred in applying the first clause of Factor Ten, which requires the court to

> [C]onsider ... [t]he diminished culpability of juveniles and persons under age 25 ... 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."

D.C. Code § 24-403.03(c)(10).

In ordering a remand, *Bishop* stated:

> Mr. Bishop next argues that the trial court exceeded its discretion under factor ten by "consider[ing] whether [Mr.] Bishop exhibited the hallmark factors of youth (such as impulsiveness) before, during, or after the crime." …. We agree with Mr. Bishop and hold 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.

310 A.3d at 645.

Similarly, in this case, the trial court improperly considered the degree to which the "hallmark features of youth" played a role in the underlying offense in evaluating Factor Ten:

> The factual circumstances of the case, including Defendant's background and the oral representations made at the Motion Hearing make clear that Defendant was "… more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and was likely driven by anger, impulsivity, and an inability to consider the consequences of his actions. *Graham v. Florida*, 560 U.S. 48, 68 (2010).

Final order at 13.

Thus, because the trial court in this case made the same two errors in applying Factor Ten that this Court found to be reversible error in *Bishop*, this case should be remanded to the trial court with instructions to properly apply Factor Ten. If this Court agrees with the first argument contained in this motion, that the case should be remanded with instructions for the trial court to release Mr. Walls in light of the trial court's conclusion that he "has met his burden of establishing that he is no longer a danger to society," then the relief requested in this third argument would be unnecessary.

CONCLUSION

WHEREFORE, for the above reasons, this Court should remand this case to the trial court with instructions to grant Mr. Walls immediate release from prison based upon the trial court's conclusion that Mr. Walls "has met his burden of establishing that he is no longer a danger to society" after serving about 27 years in prison. In the alternative, this Court should remand this case for the trial court to amend its final order to indicate that Mr. Walls's sentence for first-degree murder while armed shall be a minimum of 15 years' incarceration (rather than 20 years), and to reconsider its evaluation of Factor Ten of the IRAA based upon the current statutory language and correct principles in interpreting Factor Ten.

Respectfully submitted,

/S/Peter H. Meyers
Peter H. Meyers
Bar. No. 26443
2000 G Street, N.W.
Washington, D.C. 20052
(202) 994-7463
PMeyers@law.gwu.edu
Attorney for Appellant Walls
Appointed by this Court

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Summary Reversal and Appendix were served electronically on the office of counsel for Appellee, Chrisellen R. Kolb, Esquire, Appellate Division, U.S. Attorney's Office, this 3rd day of July 2024.

/S/Peter H. Meyers
Peter H. Meyers