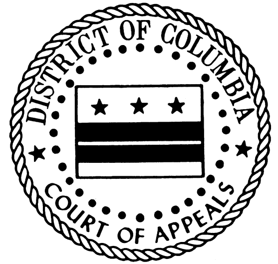

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BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CO-802

ERVIN ROGERS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Cr. No. 1992-FEL-005718

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Issue Presented

Whether the trial court abused its discretion by denying Rogers's motion for a sentence reduction under the Incarceration Reduction Amendment Act (IRAA), where the trial court properly applied factor 10, weighing appellant Ervin Rogers's diminished culpability as a 19-year-old offender in his favor and not improperly focusing on the nature of Rogers's underlying crime; and where any error in the court's application of factor ten did not affect the court's conclusion that Rogers remained a danger to the community, which was permissibly based on Rogers's extensive disciplinary record while incarcerated and his lack of consistent programming and development.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CO-5718

ERVIN ROGERS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On August 19, 1993, appellant Ervin Rogers pleaded guilty to First-Degree Felony Murder based on his burglary, robbery, kidnapping, and shooting of Kevin Sayles when Rogers was 19 years old (Record on Appeal (R.) 1 at 1). The Honorable Cheryl M. Long sentenced Rogers to 20 years to life imprisonment under D.C. Code § 24-403 (*id.*).

On November 7, 2022, after serving 29 years of his sentence, Rogers filed a motion for a sentence reduction pursuant to the Incarceration

Reduction Amendment Act (IRAA), D.C. Code § 24-403.03 (R. 19). The government opposed the IRAA motion on January 5, 2023 (R. 22), and Rogers replied to the government's opposition on February 6, 2023 (R. 24). On April 6, 2023, the Honorable Alfred S. Irving, Jr., presided over an evidentiary hearing at which Rogers testified (4/6/23 Tr.). On September 18, 2023, Judge Irving denied the motion in a written order (R. 28). On September 23, 2023, Rogers filed a timely notice of appeal (R. 29).

Summary of the Evidence

On April 11, 1992, appellant Ervin Rogers, along with three accomplices — Jalani Slay, Kevin Varner, and Octavius Smith — planned to rob two drug dealers: Kevin Sayles and Steven Holmes. *Varner v. United States*, 685 A.2d 396, 397 (D.C. 1996).[1] Late in the evening of April 11, Rogers and his accomplices were waiting in a car outside 144 U Street, Northwest, where Holmes lived, when Sayles and Holmes arrived at the house after having been out selling drugs. *Id.*

[1] Because Rogers pleaded guilty, there was no presentation of the evidence in his case. However, his accomplice Kevin Varner took his case to trial, and this Court summarized the facts in its decision affirming the denial of Varner's suppression motion.

Rogers and his accomplices had learned that Sayles and Holmes possessed a large quantity of crack cocaine, a supply of cash, and a TEC-9 automatic pistol. *Id.* Rogers and his accomplices, armed with a sawed-off shotgun and a 9mm pistol, entered the house, handcuffed Sayles to subdue him, and robbed Sayles and Holmes of the drugs, money, and the TEC-9 pistol (R. 2 at 5). While Sayles was handcuffed and Rogers was watching him, Sayles charged at Rogers (*id.* at 6). Rogers fired the sawed-off shotgun at Sayles and killed him (*id.*). *Varner*, 685 A.2d at 397. Rogers pleaded guilty to First-Degree Felony Murder on August 19, 1993 (R. 1).

The IRAA Proceedings

Rogers's IRAA Motion

On November 7, 2022, Rogers moved for relief under the Incarceration Reduction Amendment Act ("IRAA") on the basis that he committed the instant offenses before the age of 25, that he had been incarcerated for more than 15 years, and that "he [wa]s not a danger to the safety of any person or the community" (R. 19 at 1). Rogers asserted that because he had "committed this offense at the age of 19, his decision-making capabilities had not fully developed at the time" (*id.* at 11). Rogers said he "immediately took responsibility for his actions" by

pleading guilty (*id.* at 2). Because "[a]ll of [his] accomplices have been released," he claimed that "the punitive and deterrence purposes underlying his sentence ha[d] been met" (*id.* at 6).

Rogers suffered extreme trauma, including physical and sexual abuse, as a child (R. 19 at 27-33). Despite early exposure to drug use and addiction during his teenage years, Rogers "remained drug-free during incarceration" (*id.* at 33-34). He completed over 2,000 hours of programming and participated in the Challenge Program (*id.* at 47). He "evolved from a functionally illiterate 19-year-old with an eighth-grade education to a 50-year-old who is keenly interested in writing, video game design, and helping other inmates attain their educational and personal goals" (*id.* at 6). According to him, the Parole Commission "consistently failed to objectively and fairly consider [his] growth" in denying him parole each time he petitioned (*id.* at 5-6).

While acknowledging that his disciplinary record "may not be spotless," Rogers asserted he had "substantially complied with institutional rules as applicable to a determination of non-dangerousness" (R. 19 at 34). He "ha[d] not committed a violent infraction or a weapons possession infraction for a number of years" (*id.* at 2). His

only weapons offense for possessing a dangerous weapon was "more than six years ago" on July 4, 2016 (*id.* at 2 n.3). He emphasized that his two violent infractions for assault "involved unarmed assault that did not result in serious injury" (*id.* (emphasis omitted)). And his citations for threatening bodily harm involved "the often-hyperbolic threat of violence that Mr. Rogers would have been powerless to carry out" (*id.*). Rogers denied that he committed the introduction of drugs/alcohol infraction that was on his record (*id.* at 45).

Rogers asked the court to ignore his history of infractions for engaging in sexual acts (i.e., masturbation), positing that "BOP's policy regarding masturbation flies in the face of common sense, social science, and physiology" (R. 19 at 35-36). In his view, BOP should treat masturbation more like indecent exposure, a Level 300 offense, than engaging in sexual acts, a Level 200 offense (*id.* at 37-38). He asserted that his masturbation was driven by physical needs and "bears no rational relationship with a person's ability or willingness to comply with society's laws" (*id.* at 36). Rogers also complained that "[m]any of the notes" in his disciplinary history regarding masturbation "do not specify, with particularity, what he was actually charged with doing" (*id.* at 37).

Rogers claimed that he suffered "extremely harsh" conditions of confinement (R. 19 at 55). He was inaccurately labeled a "Walsh Act" offender (i.e., a sex offender) (*id.*). He also "faced discrimination because he is a District [of Columbia] inmate serving a sentence in the BOP" (*id.* at 39).

Finally, Rogers argued that, had he been sentenced under the D.C. Voluntary Sentencing Guidelines rather than the indeterminate sentencing regime that applied at the time, he already would have been released (R. 19 at 16-18). Under the modern determinate sentencing scheme, Rogers asserted that a judge likely would have chosen a sentence of 30 years (from a guidelines range of 30 to 60 years) (*id.* at 16).

The Government's Opposition

The government opposed Rogers's request for a reduced sentence, focusing on Rogers's "lengthy disciplinary record and generally insufficient rehabilitation record" (R. 22 at 2). The government noted Rogers's burden "to demonstrate his maturation and rehabilitation in order to justify relief under the IRAA" (*id.* at 7).

At 19, Rogers "was a young adult, not a juvenile" when he committed the homicide (R. 22 at 8, 13). Although Rogers "acted with

three others to effectuate the robbery," he alone "shot and killed Mr. Sayles" (*id.* at 12-13). The United States Attorney's Office opposed a reduction of Rogers's sentence (*id.* at 11), and the victim Kevin Sayles's family "believe[d] that [Rogers] should complete his sentence" and that Rogers "would be a danger to the community and to their family if released" (*id.* at 12).

The government argued that Rogers failed to meet his "burden to show substantial compliance with prison rules," as he had "incurred a total of 120 infractions during his incarceration in BOP" (R. 22 at 8 (citing R. 22, Exhibit 1, Inmate Discipline Data)). In the past 10 years, Rogers had "incurred 54 total infractions" (*id.* at 9). Rogers's most serious offenses were for possessing a dangerous weapon and introduction of drugs or alcohol into the facility (*id.*). Despite Rogers's attempts to minimize his engaging in sexual acts offenses as merely a "personal endeavor," "some of these offenses were noted to be in front of female staff" (*id.*). While Rogers had demonstrated maturity by taking early responsibility for his crime, the government argued that the sheer volume of his disciplinary infractions "demonstrate[d] a lack of fitness to reenter society" (*id.* at 11).

The government commended Rogers on his progress with educational programming, but noted that it fell short: on average, he had participated in less than 6 hours of programming per month (R. 22 at 10). Moreover, programs like "Sexaholics Anonymous" and anger management had not been effective; after completing these programs, he incurred violations for engaging in sexual acts and threatening bodily harm (*id.*). The government further pointed out that Rogers's release plan was "short on specific detail" and "fail[ed] to address . . . significant gaps in his rehabilitation, such as vocational training and sexaholic treatment or counseling" (*id.* at 13-14).

The Evidentiary Hearing

The court heard testimony from Rogers at an evidentiary hearing on the motion on April 6, 2023. Rogers testified that he was 50 years old and had committed the offense when he was 19 years old (4/6/23 Tr. 5). He claimed that he intended "to just injure" Sayles, but the shotgun "slipped out of [his] hand, and when [Sayles] charged [at him], it discharged, it hit him in his head, and it killed him" (*id.* at 6). He "turned [him]self in . . . after [he] was shot" (*id.* at 5-6).

He faced a "horrendous" level of violence while incarcerated at the Lorton Correctional Complex (4/6/23 Tr. 8). Two inmates tried to rob him for his sneakers, "smacked [him] in the head with a master lock on a belt" and "stabbed [him] in the arm" (*id.* at 8-9). In federal facilities, he became associated with a "car": a geographically based group that "governs how the prison politics" run (*id.* at 10). He claimed he took responsibility for the possessing a dangerous weapon offense even though he did not commit it because the rules of his "car" dictated that he take responsibility for it (*id.* at 12-13). He admitted, however, that being in a car did not affect his disciplinary record, which reflected his own actions (*id.* at 37-38). Once his inmate profile became labeled with "Walsh Act" indicating sex offender status, his "car" disowned him and refused to protect him (*id.* at 14-16).

Rogers confirmed the government's count of 120 disciplinary infractions over 30 years, 69 of which were for engaging in sexual acts (4/6/23 Tr. 38-39). Regarding his masturbation offenses, Rogers testified that he "was trying to satisfy [his] own needs" (*id.* at 18). He admitted that several instances of masturbation were "directed . . . towards female staff [or] male staff because of the conditions that [he] was in at that

time," i.e., that he did so to retaliate for perceived mistreatment (*id.* at 41). Rogers disputed that he threatened that he would "beat your *ss, b*tch" to somebody (*id.* at 19). He admitted another threats incident, but dismissed it as resulting from his feeling "disrespected" that the chaplain denied him phone privileges (*id.* at 20). He agreed that he received these infractions "despite taking anger management in 2015" (*id.* at 45).

Rogers testified he reached the final phase of the Challenge Program, a psychosocial development program (4/6/23 Tr. 27). However, he was expelled after a disagreement with a supervisor about whether he and classmates were given their recreation time (*id.* at 25-29).

Regarding his release plan, Rogers wanted to attend "the Art Institute for videogame design" to design an interactive videogame world (4/6/23 Tr. 32). He also proposed entering D.C. Central Kitchen's Culinary Job Training Program to cook (*id.* at 32-33). If those programs did not work, Rogers said he could become a network technician because he was "into technologies" (*id.* at 33).

The Trial Court's Decision

On September 18, 2023, Judge Irving denied Rogers's motion for IRAA relief in a written order (R. 28). The court first noted that Rogers

"meets the three threshold requirements for eligibility" in that he was 19 years old when he committed the offense, he was sentenced pursuant to D.C. Code § 24-403, and he had served 30 years in prison (R. 28 at 6). The court then examined the required statutory factors by grouping certain related factors together.

Under § 24-403.03(c)(1), (9), and (10), the court noted that Rogers was 19 years old at the time of the offense and observed that Rogers "was not a juvenile when he committed the underlying offense" (R. 28 at 6). The court considered "the evolving scientific consensus about brain development during the transition from adolescence to adulthood" including "'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'" (*id.* (quoting D.C. Code § 24-403(c)(10))). Regarding Rogers's role in the offense, the court noted 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" (*id.*). "Rogers only possess[ed] the shotgun after . . . the other co-conspirators left Mr. Rogers alone with Mr. Sayles while they searched the rest of the house" (*id.* at 7). Rogers

"understood the severity of his offense" and "took responsibility" for it "after surviving a likely revenge killing and conferring with his mother" (*id.*).

Under § 24-403.03(c)(2) and (8), the court found that Rogers "suffered trauma and abuse during his childhood," including "regular domestic violence between his parents," and physical and sexual abuse by his mother's friends (R. 28 at 7). Rogers "left home at the age of twelve" and stopped attending school after the eighth grade (*id.* at 8). He "experienced several encounters with the criminal justice system," including eight juvenile encounters "ranging from theft, breaking and entering, and receiving stolen property, to burglary, illegal firearms and ammunition possession, and assault with a dangerous weapon" (*id.*). As an adult, he was charged with unauthorized use of an automobile and pleaded guilty to a lesser offense (*id.* at 8-9).

Under § 24-403.03(c)(3), the court focused on Rogers's "extensive disciplinary record," "almost half of [which]" occurred "within the past decade" (R. 28 at 9). The court found particularly troubling that Rogers commonly engaged in sexual acts in the presence of female prison staff, including his most recent infraction in March 2022 (*id.*). In addition, the

court noted his other severe infractions, including possession of a dangerous weapon and introduction of drugs or alcohol into the facility (*id.*). The court "note[d] that on direct and cross examination," Rogers "explained that many of his disciplinary infractions . . . arose from his frustration and disagreement with facility staff and course instructors about their treatment of him (*id.* at 13). The court recounted Rogers's completion of his GED and over 2,000 hours of programming, as well as his work history, which "ha[d] been interrupted by disciplinary punishments ranging from administrative detention to solitary confinement" (*id.* at 10).

Under § 24-403.03(c)(4), the court noted the U.S. Attorney's Office's opposition to Rogers's motion for sentence reduction largely on the basis of his disciplinary history and lack of commitment to his own rehabilitation (R. 28 at 11-12).

Under § 24-403.03(c)(5), the court concluded that "in addition to his decision to turn himself in, cooperate with MPD, and accept legal responsibility for his actions," Rogers has maintained strong connections with his immediate and extended family (R. 28 at 12). Rogers satisfied his court-ordered financial obligations, assumed leadership roles on work

details, and had not used drugs or alcohol throughout his incarceration (*id.*).

Under § 24-403.03(c)(6), the court considered the victim's family's opposition to Rogers's release, noting their position that he should complete his sentence and their fear that he would be a danger to the community and to them if released (R. 28 at 14).

Under § 24-403.03(c)(7), the court concluded that neither the government nor Rogers had presented any material evidence regarding Rogers's health (R. 28 at 14). The court "observe[d] that Mr. Rogers is over fifty years old and presents with declining physical health with chronic care requirements," while noting that his prison records indicate his medical condition "is the second lowest of concern" (*id.*)

Under § 24-403.03(c)(11), the court detailed the letters of support from Rogers's close friends and family, his proceeds from a $10,000 settlement, and his willingness to pursue sexaholic treatment and counseling as conditions of his release (R. 28 at 14-15).

Ultimately, the court concluded that Rogers "failed to meet his burden of establishing that he is not a danger to the safety of any person or the community as required for relief under IRAA" (R. 28 at 15). The

court emphasized Rogers's "extensive disciplinary record" and "his capacity to reoffend" (*id.* at 16). His repeated masturbation offenses and infractions for disobeying orders, even under the threat of serious sanctions, "contributed to gaps in his programming and work history" (*id.*). That he reacted to perceived mistreatment by directing his masturbation at female prison guards "suggest[ed] to the Court that Mr. Rogers has a very low frustration tolerance" and ultimately a "lack of maturation and rehabilitation" (*id.*). In fact, Rogers had committed another masturbation offense in March 2022, after the court had expressed "its dismay and concern with Mr. Rogers's continuing reaction to stressors through masturbating in the presence of female security personnel" (*id.* at 16-17).[2] The court could not be confident that Rogers would endeavor to receive consistent mental health treatment and other necessary treatment "once he is outside of the prison system" (*id.* at 16). Moreover, the court indicated its "concern" that Rogers "failed to complete rehabilitative programming because of his disagreements with

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[2] On April 1, 2021, Rogers moved for compassionate release due to the COVID-19 pandemic (R. 2). In a written order on June 16, 2021, Judge Irving denied Rogers's motion, noting, among other things, Rogers's extensive disciplinary history and lack of rehabilitation (R. 7 at 12-14).

course instructors" or that it was "ineffective in empowering [him] to control his negative behavior and modify his conduct" (*id.* at 17).

Summary of Argument

The trial court did not abuse its discretion in denying Rogers's motion for IRAA relief. Contrary to Rogers's claim, the court's application of IRAA factor 10 was consistent with this Court's guidance in *Bishop v. United States*, 310 A.3d 629 (D.C. 2024). The court applied the correct version of the statute and weighed that factor in Rogers's favor in conjunction with factors 1 and 9, but permissibly found that it was outweighed by Rogers's extensive and recent disciplinary history while incarcerated. And any error in the court's application of factor 10 would be harmless considering the reasons the court gave for denying the IRAA motion.

The court also did not fail to weigh any required factors. The court analyzed and weighed each of the 11 statutory factors, sometimes in conjunction with other related factors. Moreover, the court's ruling made clear why the court concluded Rogers failed to demonstrate he was not a danger to the community. Having concluded Rogers did not meet his

burden on the non-dangerousness prong, the court did not err in declining to address the "interests of justice" prong.

ARGUMENT

The Trial Court Did Not Abuse Its Discretion in Denying Rogers's IRAA Motion.

Rogers argues that in denying his IRAA motion, the trial court abused its discretion by misapplying IRAA factor 10 and by failing to weigh several required factors. Rogers shows no basis for remand.

A. Standard of Review and Applicable Legal Principles

The IRAA "establishe[d] a sentence review procedure intended to . . . ensur[e] that all juvenile offenders serving lengthy prison terms have a realistic, meaningful opportunity to obtain release based on their diminished culpability and their maturation and rehabilitation." *Williams v. United States*, 205 A.3d 837, 846 (D.C. 2019). *See also* D.C. Law 23-274, § 601 (eff. April 27, 2021) (extending IRAA to cover adult offenders who committed crimes "before [their] 25th birthday"). The defendant bears the burden to establish by a preponderance of the evidence that they are "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); *Williams*, 205 A.3d at 850; *see generally Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021) ("the preponderance standard is the 'default rule'").

This Court reviews a trial court's IRAA ruling for abuse of discretion. *Williams,* 205 A.3d at 848; *see also Cook v. United States,* 932 A.2d 506, 507 (D.C. 2007) (motions for sentence reduction reviewed for abuse of discretion); *Johnson v. United States,* 398 A.2d 354, 362 (D.C. 1979) (review of trial court's exercise of discretion is deferential and appellate court "does not render its own decision of what judgment is most wise under the circumstances presented").

"The [trial] judge is obligated to accord the prisoner a fair hearing and to make findings and conclusions supported by the record with respect to the pertinent factors enumerated in the IRAA." *Williams,* 205 A.3d at 854. To be eligible for a sentence reduction under the IRAA, as amended in 2021, the defendant must have: (1) committed his crime before his 25th birthday; (2) been sentenced pursuant to D.C. Code §§ 24-403 or 24-403.01 (i.e., received either an indeterminate or a term-of-years sentence, respectively), or been "committed" pursuant to

D.C. Code § 24-903 (i.e., received a Youth Rehabilitation Act sentence); and (3) served at least 15 years in prison. D.C. Code § 24-403.03(a), (b). If the defendant meets those threshold requirements, the trial court "shall" reduce the "term of imprisonment imposed" if the court also determines, after considering the factors in subsection (c), "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), (a)(2).

Under subsection (c) of the IRAA, the trial court must consider:

> (1) The defendant's age at the time of the offense;
>
> (2) The history and characteristics of the defendant;
>
> (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;
>
> (4) Any report or recommendation received from the United States Attorney;
>
> (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
>
> (6) Any statement, provided orally or in writing, provided pursuant to [D.C. Code] § 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;

> (7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
>
> (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;
>
> (9) The extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense;
>
> (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, and the defendant's personal circumstances that support an aging out of crime; and
>
> (11) Any other information the court deems relevant to its decision.

D.C. Code § 24-403.03(c). The trial court is afforded discretion in deciding how to balance these factors; they do not have "preordained weights assigned to them." *Williams,* 205 A.3d at 854.

B. Rogers Fails to Show an Abuse of Discretion.

In determining that Rogers had not met his burden to show non-dangerousness, the trial court conducted a thorough review of the evidence, methodically evaluated each of the IRAA factors, and

considered both Rogers's and the government's arguments. Unlike the trial court in *Bishop*, 310 A.3d at 640, 643-44, the trial court here did not mistakenly apply the previous version of the statute, but instead began by correctly listing the factors that he was required to consider under the current subsection (c), including factor 10's reference to "the defendant's personal circumstances that support an aging out of crime" (R. 28 at 5). The court considered that Rogers was 19 when he committed the offense, that he "was susceptible to negative peer pressure and antisocial behavior" at the time, and that he suffered physical and sexual abuse in his youth (*id.* at 6-7). The court also considered that Rogers earned his GED in 2016, that he completed over 2,000 hours of programming, that he had been employed in various positions, and that he had maintained strong connections with friends and family (*id.* at 10-12). However, the court was particularly concerned with Rogers's extensive disciplinary history in the BOP, including the fact that "almost half of his [120] infractions" were "within the past decade" (*id.* at 9). The court was troubled that Rogers reacted to perceived mistreatment by BOP staff by masturbating in front of female security personnel, disobeying orders, and arguing with staff in ways that disrupted his work history and

rehabilitative programming (*id.* at 16-17). This behavior reflected his "low frustration tolerance" and inability "to control his negative behavior and modify his conduct" (*id.*). The court concluded that Rogers's "extensive disciplinary record, inconsistent treatment programming, and his capacity to reoffend" prevented the court from concluding "that he is not a danger to the safety of any person or the community" (*id.* at 16). The court reasonably evaluated Rogers's "unique characteristics, degree of culpability, and prospects for reformation" as required by the IRAA and "ma[d]e findings and conclusions supported by the record." *Williams*, 205 A.3d at 854. The court thus acted within its discretion when it denied Rogers's motion.

1. The Trial Court Properly Applied Factor 10.

Rogers claims (at 20) that the trial court misapplied IRAA factor 10—by "inquir[ing] . . . whether or to what extent the hallmarks of youth played a role in the underlying offense." Rogers misunderstands the court's analysis and, regardless, shows no basis for remand.

In its written opinion, the trial court reasonably combined its discussion of IRAA factors 1, 9, and 10, which all relate to the interplay

between the defendant's youth at the time of the crime and the circumstances of the offense. In the first sentence of the paragraph assessing factors 1, 9, and 10, the court applied factor 1, noting Rogers's "age at the time of the offense," D.C. Code § 24-403.03(c)(1): 19 years old (R. 28 at 6). In its second sentence, the court applied factor 10, noting that the IRAA reflects "the evolving scientific consensus about brain development during the transition from adolescence to adulthood" including "'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'" (*id.* (quoting D.C. Code § 24-403.03(c)(10)). Then, in its third and fourth sentences, the court weighed factor 9 (Roger's role in the offense and the roles of others), accurately "observ[ing]" that 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" (*id.*).

Contrary to Rogers's repeated insistence (at 23-25) as to the trial court's "clear implication," he fails to show that these "observ[ations]" were "much the same" (at 21) as the *Bishop* trial court's express finding

(in reliance on the wrong version of factor 10) that the defendant's personal circumstances weighed against a "finding of mere youthful impulsiveness." 310 A.3d at 646. Here, the court did not state (or imply, clearly or otherwise) that based on its observations, it viewed factor 10 as weighing against (or even less favorably to) Rogers. Instead, the comments led directly into the court's permissible discussion of Rogers's "role in the offense," and that of his co-conspirators, under D.C. Code § 24-403.03(c)(9). Specifically, the court found that "Rogers shot and killed Mr. Sayles within the context of a premeditated armed robbery," while his co-conspirators left Rogers alone with the shotgun and went to search the house without being involved in the homicide (R. 28 at 6-7).[3]

[3] In addition to the IRAA requiring consideration of the defendant's role versus the role of others in the offense, *see* D.C. Code § 24-403.03(c)(9), Rogers also invited this comparison by arguing he was entitled to relief because his co-conspirators had all been released from prison (R. 19 at 6). However, Rogers was the only one who fired the weapon killing Sayles, and he also had very different circumstances and development while incarcerated. *See* R. 17, Exhibit 4, *United States v. Varner*, Case Nos. 1992-FEL-918 & 1992-FEL-4080, Amended Order (J. Todd Edelman, D.C. Super. Ct. Sept. 4, 2020) (noting that Varner was acquitted of all homicide charges, "took it upon himself to develop a curriculum and teach others" while in the BOP, co-founded Men Teaching Others Responsibility, and had only seven disciplinary infractions in over 27 years of incarceration).

The court assessed all of the requisite components of factor 10 while also weighing them against the countervailing considerations in factors 1 and 9: Rogers's age at the time of the offense and his role in the homicide.

Rogers thus wrongly contends (at 23) that the court erred by considering that "Rogers was not a juvenile when he committed the underlying offense" (R. 28 at 6). Factor 1 explicitly directs that courts "shall" consider "the defendant's age at the time of the offense," D.C. Code § 24-403.03(c)(1). *Bishop* clarified that factor 10 must always weigh in favor of the movant, notwithstanding individual evidence of the defendant's age and mental state at the time of the offense. 310 A.3d at 645. But *Bishop* also confirmed that this does not prohibit consideration of a defendant's age at the time of the offense under a different factor. *Id.* at 646 n.11 ("This is not to suggest that evidence of premeditation or the movant's record of violence before or after the underlying offense are wholly irrelevant to an IRAA inquiry. We hold only that such considerations are inappropriate under the first clause of factor ten."). This preserves the overall coherence of the statute, as factor 1 expressly requires courts to consider the defendant's age at the time of the offense, and factor 9 requires courts to consider the defendant's role in the offense.

Indeed, Rogers's position would negate factor 1 entirely, as it would require treating all individuals who were under 25 years old when they committed the offense the same as to all factors regardless of age. It is a "basic principle" of statutory interpretation that "each provision of the statute should be construed so as to give effect to all of [its] provisions, not rendering any provision superfluous." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 183 (D.C. 2021) (quoting *Grayson v. AT&T Corp.*, 15 A.3d 219, 238 (D.C. 2011)). Moreover, the scientific literature underlying *Roper v. Simmons*, 543 U.S. 551 (2005), and its progeny,[4] the D.C. Council's passage of the IRAA,[5] and the 2021

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[4] *See, e.g.*, Brief of the American Medical Association et al., at 2, *Roper v. Simmons*, 543 U.S. 551 (2005) ("Cutting-edge brain imaging technology reveals that regions of the adolescent brain do not reach a fully mature state until after the age of 18."); *id.* at 7 ("This study . . . established that psychosocial maturity is incomplete until age 19, at which point it plateaus."); *id.* at 11 ("[T]he development of the human brain . . . progresses from childhood through adolescence and into adulthood."); *id.* at 15 ("[A]s teenagers grow into adults, they increasingly shift the overall focus of brain activity to the frontal lobes."); *id.* at 19 n.75 ("Studies showed linear increases in white matter in the age range of 4-20 years.").

[5] Comprehensive Youth Justice Amendment Act of 2016, D.C. Council, Report on Bill 21-0683, at 278 (Oct. 5, 2016) ("[T]he adolescent brain does not fully mature until the mid-to-late twenties. Compared to adults, youth are less capable than adults in long-term planning, regulating emotion, impulse control, and the evaluation of risk and reward. . . .

(continued . . .)

extension to individuals who were under 25 years old at the time of the offense,[6] reflects a gradual maturation and development of the brains of youth, not a single on-off switch that is flipped when an individual celebrates his 25th birthday. Because the statute's text, legislative history, and purpose all support consideration of the various ages of defendants in factor 1, Rogers fails to show that the trial court erred in its bare "observ[ation]" that Rogers was 19 and not a juvenile when he committed the offense.

Similarly, without explaining 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," and the

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Because the adolescent brain is still developing, children possess a unique capacity for change."); *id.* at 339 ("[O]ur brains get built in an ongoing construction project that begins before birth and continues to about age 25, with especially rapid developments between ages zero to three and again in adolescence, and . . . these changes affect youths' judgment, decision-making, and behavior.").

[6] Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Council, Report on Bill 23-127, at 15 (Nov. 23, 2020) ("Developmental research shows that young adults continue to mature well into their 20s and exhibit clear differences from both juveniles and older adults. Although young adults are more cognitively developed than youth, compared to older adults, they are more impulsive, less emotionally mature, and less cognizant of the consequences of their actions.").

sentence that followed it (R. 28 at 6), the court's analysis would have erroneously omitted factor 9's requirement that it consider "the 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).

Rogers finally disputes (at 24-25) that the trial court accorded full weight to "the hallmark features of youth," despite the court's quoting the IRAA's language about the three hallmark features of youth and also agreeing that the record indicated that Rogers "was susceptible to negative peer pressure and antisocial behavior" (R. 28 at 6-7). Rogers's comparison of this case to the trial court's errors in *Bishop* is misplaced. First, as noted *supra*, the trial court in *Bishop* (1) mistakenly applied the previous version of the statute, 310 A.3d at 640, 643-44, and (2) mistakenly employed a case-specific analysis for factor 10, finding that while Bishop's "age and circumstances at the time of the offense surely contributed to his actions," his "record of violence and criminality before and, particularly, after the day of the offense weigh[ed], to some degree, against a finding of mere youthful impulsiveness." *Id.* at 640. This Court thus remanded because it could not "be confident that the trial court's error in [undertaking a case-specific approach to factor 10],

when combined with its use of the prior version of factor ten, did not influence the court's dangerous and interests-of-justice determinations." *Id.* at 645, 649.

Here, as discussed *supra*, the trial court made neither of the errors at issue in *Bishop*. Instead, the trial judge began by correctly listing the factors that he was required to consider under the current subsection (c), including factor 10's reference to "the defendant's personal circumstances that support an aging out of crime" (R. 28 at 5). He then gave full weight to factor 10, recognizing that it weighed in Rogers's favor, but then permissibly found that this factor was outweighed by other factors. Although the structure of the trial court's analysis — assessing some factors individually and weighing other factors against each other in the same paragraph — could be clearer, the court properly applied factors 1, 9, and 10 and reasonably considered them in combination with the other factors.

Finally, Rogers claims (at 26) that the trial court "failed to address . . . Rogers's current age and brain maturation as supporting an aging out of crime." But *Bishop* itself rejected the idea that a trial court must "mechanically tick off each piece of evidence presented," 310 A.3d at 642,

and later noted that "[i]t would be unduly formulaic to require a recitation of each and every finding in the trial court's concluding paragraphs," *id.* at 648; *see also Saidi v. United States*, 110 A.3d 606, 613 (D.C. 2015) ("Trial judges are presumed to know the law, and their rulings come to us with a presumption of correctness" (citation omitted)).

Bishop also confirms that even though the court did not expressly discuss whether there were any "personal circumstances that support an aging out of crime" in its assessment of factors 1, 9, and 10, it is enough that "[v]iewing the order as a whole, the trial court adequately considered" it. 310 A.3d at 648. Here, the trial court devoted nearly three full pages in its 18-page opinion to discussing Rogers's extensive disciplinary record while incarcerated in the BOP: 120 infractions, including two of the most severe Level 100 offenses, 76 of the next most severe Level 200 offenses, and 42 Level 300 offenses (R. 28 at 9). His most common offense was for engaging in sexual acts in the presence of female prison staff (*id.*), which mirrors a criminal offense outside of the prison context. *See* D.C. Code § 22-1312 (lewd, indecent, or obscene acts). The court noted that he had numerous dangerous offenses that also match D.C. crimes, including possession of a dangerous weapon, introduction of

drugs or alcohol into the facility, threatening to stab staff, and assaulting guards. (*id.*). *See* D.C. Code § 22-4514 (possession of a prohibited weapon); § 48-904.01 (distribution of controlled substances); § 22-407 (threats to do bodily harm); § 22-404 (assault). Most notably, the court emphasized that "he has committed almost half of his infractions within the past decade" (R. 28 at 9).

In any event, any error in applying factor 10 was harmless. *See Kotteakos v. United States*, 328 U.S. 750, 765 (1946) (non-constitutional error is harmless if "the judgment was not substantially swayed by the error"). The court's analysis of factor 10 did not "substantially" (if at all) sway the court's decision to deny the IRAA motion. Instead, the court relied on Rogers's extensive disciplinary history, inconsistent programming, and capacity to reoffend despite being incarcerated for almost 30 years (R. 28 at 16). The court was particularly troubled by Rogers's rationalization that many of his disciplinary infractions "arose from his frustration and disagreement with facility staff and course instructors about their treatment of him" (*id.* at 13). These "acts of aggression" as a "chosen reaction to perceived mistreatment" reflected "very low frustration tolerance" that "ultimately speaks to Mr. Rogers's

lack of maturation and rehabilitation" (*id.* at 16-17). To make matters worse, the court noted that even after the court denied his motion for compassionate release on account of COVID-19 due to similar concerns, Rogers committed yet another masturbation offense in March 2022 (*id.* at 17). The court also expressed its concern that Rogers "failed to complete rehabilitative programming because of his disagreements with course instructors" and "that such programming appears ineffective in empowering Mr. Rogers to control his negative behavior and modify his conduct" (*id.*).

All of these factors weighed heavily in the court's assessment that, notwithstanding the hallmark features of youth that influenced Rogers's commission of the offense in 1992, Rogers remained a danger to the community due to his recent and ongoing infractions. Thus, unlike in *Bishop*, this Court can be "confident" that any error in the application of factor 10 "did not influence the [trial] court's dangerous and interests-of-justice determinations." 310 A.3d at 645. Accordingly, remand is unwarranted.

2. The Trial Court Reasonably Weighed the Factors in Its Dangerousness Analysis.

Rogers claims (at 29) that the trial court abused its discretion "by failing to consider relevant factors in its dangerousness analysis." Rogers's claim is meritless.

The trial court conducted a thorough review of the evidence, methodically evaluated each of the IRAA factors, and considered both Rogers's and the government's arguments in determining that Rogers had not met his burden to show non-dangerousness. The court's analysis explicitly discussed each of the eleven factors that the statute requires it to consider in the dangerousness inquiry (R. 28 at 6-15). The trial court made factual findings that were grounded in the record and considered the appropriate legal criteria in reaching its decision. Thus, there is no basis to overturn the decision. *See Johnson,* 398 A.2d at 365 (in applying abuse-of-discretion review, this Court "must determine whether the decision maker failed to consider a relevant factor, whether he relied upon an improper factor, and whether the reasons given reasonably support the conclusion" (internal quotation omitted)).

Rogers admits that the court addressed all of the required factors in the non-dangerousness inquiry, but complains (at 30) that "the trial court failed to explain how it weighed several factors." But as discussed *supra*, *Bishop* rejected such requirements as "unduly formulaic," 310 A.3d at 648, and instead found it adequate that "[v]iewing the order as a whole, the trial court adequately considered" the required factors, *id.* at 647. Here, the court emphasized Rogers's "extensive disciplinary record" and "his capacity to reoffend" in concluding he did not meet his burden to show non-dangerousness (R. 28 at 16). Contrary to Rogers's assertion that the trial court failed to separately address Rogers's "current age and brain maturation . . . [and his] personal circumstances supporting an aging out of crime" (at 31-32), the court expressly discussed Rogers's current personal circumstances and maturation, including his extensive disciplinary history in prison. As discussed *supra*, the court reasoned that Rogers's own testimony that his instances of masturbation directed as female prison guards were "his chosen reaction to perceived mistreatment by facility staff" "speaks to [his] lack of maturation and rehabilitation" (R. 28 at 16-17).

The court did not abuse its discretion by considering Rogers's disciplinary record in finding that he remained dangerous. A trial court has discretion to decide how to balance the § 24-403.03(c) factors, none of which has a "preordained weight[ ]." *Williams,* 205 A.3d at 854. That Rogers — or even this Court — might weigh the subsection (c) factors differently does not establish an abuse of discretion. *See Johnson,* 398 A.2d at 362 (on abuse-of-discretion review, this Court "does not render its own decision of what judgment is most wise under the circumstances presented" but instead examines the record and trial court's ruling "for those indicia of rationality and fairness that will assure it that the trial court's action was proper").

Rogers also takes issue (at 30) with the trial court's decision not to address "the interests of justice" prong of IRAA. This was not error. The trial court explained that because Rogers "fail[ed] to meet his burden on the issue of dangerousness," the court would "reserve on its determination as to the issue of the interests of justice" (R. 28 at 15-16). The "interests of justice" prong is a consideration that the trial court must weigh only after the court first has found the movant satisfied the non-dangerousness prong. *See* D.C. Code § 24-403.03(a)(2) ("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"). A court need not address all prongs of a legal test if one prong is dispositive. *See, e.g.*, *Brown v. United States*, 934 A.2d 930, 943 (D.C. 2007) (court need not address both prongs of ineffective-assistance-of-counsel test if appellant does not meet burden of first showing); *Keerikkattil v. United States*, 313 A.3d 591, 608 n.7 (D.C. 2024) ("Because we conclude that [appellant] has not established that the error affected his substantial rights, we need not address the fourth prong of plain-error review."). Here, the trial court concluded that because Rogers failed to meet his burden to show his non-dangerousness, the court need not address the interests of justice inquiry.[7]

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

[7] In the event this court finds error that was not harmless, the appropriate remedy would be to remand for the trial court to reconsider its dangerousness finding, and if necessary, rule on the interests of justice prong.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Anne Keith Walton, Esq., on this 29th day of July, 2024.

/s/
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