Appeal No. 23-CO-645

DISTRICT OF COLUMBIA COURT OF APPEALS



RODNEY C. WILLIAMS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the Superior Court of the District of Columbia
Criminal Division

# BRIEF FOR APPELLANT

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## DISCLOSURE STATEMENT

Appellant Rodney Williams was represented in Superior Court by Second Look Project attorneys James Ziegler and Margaret Birkel. The Public Defender Service ("PDS"), represented by Paul Maneri, filed a brief in Superior Court as *amicus curiae* in support of Mr. Williams. On appeal, Mr. Williams is represented by PDS attorneys Samia Fam, Mikel-Meredith Weidman, and Paul Maneri. The United States was represented below by Assistant United States Attorney Peter Smith and is represented on appeal by Chrisellen Kolb, Chief of the Appellate Division of the United States Attorney's Office for the District of Columbia.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Legislative Materials



[*] An asterisk denotes an authority upon which Mr. Williams chiefly relies.

Other Authorities

## ISSUE PRESENTED

Under the Incarceration Reduction Amendment Act ("IRAA"), D.C. Code § 24-403.03, a person whose first application for a sentence reduction is unsuccessful may file a second application "no sooner than 3 years after the date that the order on the initial application becomes final." D.C. Code § 24-403.03(d). The issue presented in this case is whether that three-year waiting period begins on the date of the trial court's final order denying the initial application, or, as the trial court held *sua sponte*, on the date of the appellate mandate affirming the trial court's denial.

## STATEMENT OF THE CASE AND JURISDICTION

In a written order issued June 24, 2019, the Honorable Michael K. O'Keefe denied Mr. Williams's first motion under the IRAA, insofar as that motion requested a modification of sentence that would allow for Mr. Williams's immediate release. On September 3, 2019, the trial court denied a motion for reconsideration. Mr. Williams filed a notice of appeal on September 6, 2019, and this Court affirmed in an unpublished memorandum opinion on September 14, 2021. *See Rodney C. Williams v. United States*, No. 19-CO-809, Mem. Op. & J. (D.C. Sept. 14, 2021). The mandate issued on October 6, 2021.

On January 25, 2023, Mr. Williams filed a Notice of Intent to file his second IRAA motion. On March 28, 2023, Judge O'Keefe issued a scheduling order whereby Mr. Williams's motion would be due July 26, 2023. Two weeks later, the court *sua sponte* notified the parties, via email, that it believed that Mr. Williams's second IRAA motion would not be timely under D.C. Code § 24-403.03(d) until three years after the appellate mandate affirming the denial of his first motion; in

other words, Mr. Williams would not be eligible to file a second motion until October 6, 2024. In response to the court's email, Mr. Williams filed a motion to establish the timeliness of his second IRAA motion. On July 7, 2023, the court denied Mr. Williams's motion to establish timeliness and vacated the briefing schedule, adhering to its view that "Mr. Williams is not eligible to file a second IRAA motion until October 6, 2024." App. C at 19.

This Court has jurisdiction over this interlocutory appeal under the collateral order doctrine. *See generally Stein v. United States*, 532 A.2d 641, 643 (D.C. 1987). The trial court's order holding that Mr. Williams must wait until October 6, 2024 to file his second IRAA motion satisfies all three requirements for that doctrine to apply: First, the order "conclusively determine[d]" that Mr. Williams was not yet eligible to file his second IRAA motion. *In re Taylor*, 241 A.3d 287, 299 (D.C. 2020). Second, the date on which Mr. Williams may have his second IRAA motion considered is "an important issue that is completely separate from the merits of the action[]." *Id.* And third, the court's interlocutory order will be "effectively unappealable from a final judgment in [this] action," *id*: Mr. Williams's statutory right to have his second IRAA motion considered before October 6, 2024 "will be irretrievably lost unless an immediate appeal is allowed." *Meyers v. United States*, 730 A.2d 155, 157 (D.C. 1999); *see also In re G.B.*, 139 A.3d 885, 890 (D.C. 2016).[1]

[1] Because the trial court's order vacated its earlier scheduling order and effectively dismissed Mr. Williams's impending IRAA motion as untimely, the trial court's order could also be construed as dismissing without prejudice Mr. Williams's second IRAA motion, which would provide an alternative basis for appellate jurisdiction. *Cf. Holmes v. D.C.*, 267 A.3d 1028, 1031 (D.C. 2022) ("[D]ismissal of a complaint,

## STATEMENT OF FACTS

Mr. Williams has been incarcerated for 41 years for a series of crimes that he committed in 1982, when he was 17 years old. He was charged and prosecuted as an adult, ultimately pleading guilty and receiving an aggregate sentence of 57 to 117 years in prison.

On December 9, 2018, after serving 36 years of his sentence, Mr. Williams filed his first IRAA motion. In a written order issued June 24, 2019, the trial court denied Mr. Williams's motion insofar as it requested a modification of sentence that would allow for his immediate release; the court instead modified Mr. Williams's sentence to make him immediately eligible for parole. Mr. Williams filed a motion for reconsideration on July 20, 2019, which the trial court denied on September 3, 2019. Mr. Williams filed a notice of appeal on September 6, 2019. Over two years later, this Court affirmed the judgment of the trial court in a memorandum opinion. The mandate issued on October 6, 2021.

On January 25, 2023, Mr. Williams filed a Notice of Intent to file his second IRAA motion.[2] On March 28, 2023, the trial court ordered that Mr. Williams's

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even without prejudice, is sufficiently drastic to be deemed final, and therefore appealable." (quoting *Perry v. D.C.*, 474 A.2d 824, 825–26 (D.C. 1984)).

[2] In November 2022, the Superior Court issued guidelines for IRAA procedure requiring that counsel for all IRAA petitioners file a Notice of Intent to file an IRAA motion as the first step in the process. *See* IRAA Guidelines and Procedures, D.C. Super. Ct. (Nov. 7, 2022) (attached as App. D); *cf. Bostic v. D.C.*, 906 A.2d 327, 332 (2006) (Court of Appeals "may take judicial notice of laws, statutes, and other matters of public record"). Upon receipt of a Notice of Intent, the Criminal Division's Clerk's Office assigns the expected motion according to an assignment wheel, at which point the assigned judge must issue a standard IRAA scheduling order. Under the standard scheduling order, the IRAA motion is due 120 days from

motion would be due on July 26, 2023, and set subsequent deadlines for the government's response and Mr. Williams's reply. Two weeks later, the court *sua sponte* notified the parties, via email, that it intended to vacate the scheduling order based on its belief that Mr. Williams's second IRAA motion would not be timely under D.C. Code § 24-403.03(d) until three years after the appellate mandate affirming the denial of his first motion. The court did not, however, vacate the scheduling order at that time. *See* App. C at 2–3.

On June 9, 2023, Mr. Williams filed a "Motion To Establish Timeliness" of his second IRAA motion, arguing that an IRAA order "becomes final" when there is nothing left for the trial court to do in the matter, such that the order constitutes a final judgment for the purpose of appellate jurisdiction. Under that interpretation, Mr. Williams would have been able to file his second IRAA motion as early as June 24, 2022.

Mr. Williams and *amicus curiae* PDS explained that the text, structure, history, and purpose of the IRAA all point to the D.C. Council's intent to start the three-year waiting period on the date of the trial court's written order denying or granting only in part the initial IRAA application. They argued that the word "final" commonly refers to the point at which a matter may be appealed. App. A at 2; App. B at 3–4. And by specifying that the three-year clock does not begin to run until the order on the initial application "becomes final," the Council preempted any

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the date of the scheduling order, the government's response is due 120 days from the date of the IRAA motion filing, and the petitioner's reply is due 30 days from the date of the government's response. According to the guidelines, IRAA hearings should take place approximately 60–90 days after the government's response is filed.

confusion about whether the waiting period would begin on the date of a non-final oral order (which might be pronounced at the statutorily required hearing on the motion, *see* D.C. Code § 24-403.03(b)(2)), or instead on the date of a final written order. *See* App. A at 4; App. B at 3–5. Mr. Williams and PDS also pointed to the statute's legislative history, which states that "[i]f the defendant's initial application is unsuccessful, they may make a second application five years after *the order* on the first application." App. B at 5 (quoting D.C. Council Comm. on the Judiciary, Rep. on Bill 21-0683 at 14 (Oct. 5. 2016) (emphasis added)). And they argued that interpreting the statute's waiting period to begin on the date of the appellate mandate would lead to arbitrary results and clash with the overarching purpose of the IRAA and the Council's repeated efforts to expand and expedite consideration of IRAA motions. *Id.* at 5–9. The government did not oppose Mr. Williams's motion.

On July 7, 2023, the trial court denied Mr. Williams's motion to establish timeliness and vacated its earlier scheduling order, adhering to its view that "Mr. Williams is not eligible to file a second IRAA motion until October 6, 2024." App. C at 19. The court reached this conclusion primarily by inferring that "the order on the initial application" discussed in subsection (d) of the statute "refer[s] to the written opinion commanded by subsection (b)(4)." *Id.* at 8; *see* D.C. Code § 24-403.03(b)(4) ("The court shall issue an opinion in writing stating the reasons for granting or denying the application under this section[.]"). With that inference in place, the court determined that if "the order on the initial application" already refers to the final, written order, then the phrase "becomes final" must refer to a procedural

step after the trial court's final order, lest that phrase become superfluous. App. C at 8–9.

## SUMMARY OF ARGUMENT

Because "the order on [an] initial [IRAA] application becomes final" when the trial court issues a final, appealable order, Mr. Williams became eligible to file his second IRAA motion three years after the trial court's written order denying his initial motion. D.C. Code § 24-403.03(d). All of the traditional tools of statutory interpretation point squarely toward that conclusion.

First, the word "final" is best understood here, as a descriptor of the word "order," as the point at which the court issuing the order has nothing left to do in the matter—in practical terms, when the court issues its written opinion denying the motion. *See* Final, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "final" as "not requiring any further judicial action by the court that rendered judgment to determine the matter litigated; concluded"). That straightforward meaning is reflected in how the government, this Court, and multiple other Superior Court judges have understood subsection (d). *See, e.g.*, *Williams v. United States*, 205 A.3d 837, 848 (D.C. 2019) ("If a defendant's initial motion for a reduced sentence is denied . . . [t]he defendant may file a second sentence reduction motion after five years[.]"). Second, that interpretation is confirmed by clear evidence from the legislative history, which shows that the Council intended for petitioners to be able to "make a second application five years after *the order* on the first application." D.C. Council Comm. on the Judiciary, Rep. on Bill 21-0683 at 14 (Oct. 5, 2016) (emphasis added). Third, reading subsection (d) in light of the IRAA's purpose—to

reduce the incarceration of people serving long sentences for crimes that they committed in their youth by providing them multiple opportunities to prove their rehabilitation—further supports Mr. Williams's interpretation. Finally, to the extent that this Court has any remaining doubt about the correct interpretation of the IRAA, the rule of lenity requires resolving that doubt in Mr. Williams's favor.

## ARGUMENT

### I. Statutory Background

Enacted as part of "a groundbreaking juvenile justice reform omnibus bill" in 2016,[3] the Incarceration Reduction Amendment Act is intended to reduce the incarceration of people who committed serious offenses as children or young adults by "ensuring that all [youthful] 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). Consistent with that purpose, the IRAA provides all eligible petitioners with three opportunities to prove that they can be safely released to the community. *See* D.C. Code § 24-403.03(d).

To understand how the waiting periods in subsection (d) fit into the overall statutory scheme, it helps to start with the statute's origins: "a line of Supreme Court jurisprudence regarding developmentally-appropriate sentencing." 2020 Committee Report, *supra* note 3 at 13. In 2010, the Supreme Court held that when a juvenile is sentenced to life without parole ("LWOP") for a non-homicide crime, the State must

[3] D.C. Council, Comm. on the Judiciary & Public Safety, Rep. on Bill 23-0127 at 13 (Nov. 3, 2020) (hereinafter "2020 Committee Report").

give that person "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, 560 U.S. 48, 75 (2010). Two years later, in *Miller v. Alabama*, 567 U.S. 460 (2012), the Court extended *Graham* and "held that the Eighth Amendment forbids a sentencing scheme under which LWOP is mandatory for *any* class of juvenile offenders." *Williams*, 205 A.3d at 843 (emphasis in *Williams*). Based on the premise that "children are constitutionally different from adults for purposes of sentencing," *Miller*, 567 U.S. at 471, "*Miller* required that sentencing courts consider a child's 'diminished culpability and heightened capacity for change' before condemning him or her to die in prison." *Montgomery v. Lousiana*, 577 U.S. 190, 195 (2016) (quoting *Miller*, 567 U.S. at 479).

"The Council of the District of Columbia responded to the constitutional imperatives declared in *Graham*, *Miller*, and *Montgomery* by passing the Incarceration Reduction Amendment Act of 2016 (the 'IRAA')." *Williams*, 205 A.3d at 846. As noted, the IRAA "establishe[d] a sentence review procedure intended to comply with the Supreme Court's LWOP decisions by ensuring 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." *Id.* However, in order to accomplish the Council's goal of reducing incarceration, the IRAA goes beyond what was constitutionally required by *Miller* and *Montgomery*: for instance, whereas *Montgomery* held that parole consideration would satisfy the Eighth Amendment, the IRAA "provides defendants significant procedural guarantees, in contrast to the minimal procedures

that the Constitution requires in parole proceedings." *Id.* at 853 (internal quotation marks omitted). Among these "procedural guarantees" is "a written, structured decision by the judge that [compared to a parole decision] is subject to more stringent constitutional and statutory requirements and is more fully reviewable on appeal." *Id.*

As *Williams* observed, the IRAA includes another procedural guarantee aimed at reducing incarceration and providing meaningful opportunities to obtain release: the provision allowing petitioners to file up to three motions for relief. Under the version of the statute applicable in *Williams*, "[i]f a defendant's initial motion for a reduced sentence [was] denied," the statute allowed for "a second sentence reduction motion after five years" and "a third such motion after another five years." *Id.* at 848.[4] These waiting periods, the Court explained, allow initially unsuccessful petitioners time to accumulate additional evidence of "demonstrable maturity and rehabilitation": if an IRAA applicant's first petition is unsuccessful, he has "another five years in which to make further progress before he can take the second chance, and yet another five years before he can take his third chance." *Id.* at 855.

As initially enacted, the IRAA limited eligibility for sentencing relief to those who, like Mr. Williams, were 18 or younger at the time of their offense and who had

[4] *Compare* D.C. Code § 24-403.03(d) (2023) ("[A] court shall entertain a 2nd application under this section no sooner than *3 years* after the date that the order on the initial application becomes final.") (emphasis added); *with* D.C. Code § 24-403.03(d) (2017) ([A] court shall entertain a 2nd application under this section no sooner than *5 years* after the date that the order on the initial application becomes final.") (emphasis added).

served at least 20 years in prison. *See* D.C. Code § 24-403.03(a) (2017). Since *Williams* was decided, however, the D.C. Council has twice amended the IRAA to expand the number of people who are eligible for sentence reductions and sharpen the statute's focus on petitioners' rehabilitation. Most notably for this appeal, the Council amended subsection (d) in 2019 to reduce the waiting period between successive motions from five to three years,[5] suggesting that three years is a sufficient amount of time for a petitioner to "make further progress" before taking a second chance at proving his rehabilitation. Other 2019 amendments reduced the number of years in prison a defendant must serve before filing an initial IRAA application (from 20 to 15); made IRAA available to those who were already eligible for parole; removed "the nature of the offense" from the factors that the court must consider; amended the statute to state explicitly that the diminished culpability and hallmark characteristics of youth counsel against not just "lifetime" sentences, but all "lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime," D.C. Code § 24-403.03(c)(10); and made relief mandatory upon a finding that an applicant is not dangerous and that the interests of justice warrant a sentence reduction.[6] In 2021, emphasizing data "showing clearly that reducing mass

[5] Omnibus Public Safety and Justice Amendment Act of 2018, D.C. Law 22-313, § 16(b)(4), 66 D.C. Reg. 6308, 6308 (eff. May 10, 2019).

[6] *Id.* §§ 16(b)(1), (b)(3).

incarceration does not come at the cost of public safety," the Council extended IRAA eligibility to people serving sentences for offenses committed before age 25.[7]

All told, the IRAA requires a judicial determination entirely distinct from guilt or innocence, and different even from the task faced by the initial sentencing judge: it "requires judges to . . . consider whether" a petitioner has "earned back [his] liberty by demonstrating [his] capacity for reformation." *Williams*, 205 A.3d at 849. The validity of a petitioner's underlying conviction is irrelevant. *See* D.C. Code § 24-403.03(c)(10) (requiring that courts consider "[t]he diminished culpability of juveniles and persons under age 25, . . . and the hallmark features of youth, . . . which counsel against sentencing them to lengthy terms in prison, *despite the brutality or cold-blooded nature of any particular crime*" (emphasis added)). And the IRAA recognizes that a person's evidence of reformation changes over time: not only does the statute provide for successive applications separated by three years, D.C. Code § 24-403.03(d), it also requires the court to consider dynamic factors such as "[w]hether the defendant has substantially complied with" institutional rules, *id.* § 24-403.03(c)(3), "whether the defendant has completed any education, vocational, or other program," *id.*, and "[w]hether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society," *id.* § 24-403.03(c)(5).

[7] 2020 Committee Report at 18 (quoting Cameron Kimble and Ames Grawert, *Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem*, Brennan Center (Aug. 6, 2019)).

II. A trial court's denial of an IRAA petition "becomes final," and thus starts the three-year waiting period, when that court issues a written opinion stating its reasons for denial.

The most natural read of the plain text of subsection (d) and its surrounding context is that "the order on the initial application becomes final," and thus starts the three-year waiting period for a second IRAA motion, when the trial court issues its final order on the merits of the motion: a written opinion denying or granting only in part the initial application. That straightforward understanding is reflected in how this Court described subsection (d) in the only published case to discuss that provision. *See Williams*, 205 A.3d at 848 ("If a defendant's initial motion for a reduced sentence is denied, . . . [t]he defendant may file a second sentence reduction motion after five years; if that motion too is denied, he may file a third such motion after another five years."). The statute's legislative history and purpose confirm what is plain from the text: the three-year period that separates successive IRAA motions begins on the date of the trial court's final order denying the previous motion, not the date of the appellate mandate.

Start with the ordinary meaning of the word "final," which "is variously defined; like many legal terms, its precise meaning depends on context." *Clay v. United States*, 537 U.S. 522, 527 (2003). In the context of describing an order, "final" typically means "not requiring any further judicial action by the court that rendered judgment to determine the matter litigated; concluded. . . . Once an order, judgment, or decree is final, it may be appealed on the merits." Final, BLACK'S LAW DICTIONARY (11th ed. 2019). Thus, this Court has jurisdiction over appeals from "all final orders and judgments of the Superior Court of the District of

Columbia." D.C. Code § 11-721(a)(1). And the Court recently held that "a trial court order either denying or granting a motion for compassionate release . . . is a 'final' order because it disposes of the issues in the case before the court 'so that the court has nothing remaining to do.'" *United States v. Facon*, 288 A.3d 317, 332 (D.C. 2023) (quoting *Rolinski v. Lewis*, 828 A.2d 739, 746 (D.C. 2003) (en banc)). Similarly, this Court has implicitly recognized that a written order denying an IRAA motion is a final order,[8] and it has explicitly recognized that an oral order denying an IRAA motion does not become final until the written order is issued. *See* Order, *Newman v. United States*, No. 22-CO-586 (D.C. Sept. 7, 2022) (dismissing appeal "as taken from a non-final order" because the written order had not yet been issued). Thus, the date that the order on an IRAA application "becomes final" is the date on which the trial court finally disposes of the issues in the case, leaving nothing more for that court to do.

That reading is reinforced by the fact that the statute says nothing to expressly condition the three-year waiting period between IRAA applications on whether an appeal has been filed or decided, or otherwise link the waiting period in any way with the right to appeal an adverse decision. *See Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019) ("[I]t is [a court's] duty to respect not only what [the

[8] The Court's multiple decisions in IRAA appeals (including the 2019 appeal in this case) would not have been possible if there were a serious question about whether written denials of IRAA motions are final orders for the purpose of appellate jurisdiction. *See Rolinski*, 828 A.2d at 742 ("Where a substantial question exists as to this court's subject matter jurisdiction, it is our obligation to raise it, *sua sponte*, even though no party has asked us to consider it." (quoting *Murphy v. McCloud*, 650 A.2d 202, 203 n.4 (D.C. 1994)).

legislature] wrote but, as importantly, what it didn't write."). When the D.C. Council wants to refer to a different type of finality—one attaching after some stage of appellate review—it typically does so in express terms. *See, e.g.*, D.C. Code § 4-803(f) ("[A] penalty or assessment under subsection (a) of this section shall be final unless timely appealed[.]); D.C. Code § 47-3304(b) (a decision of the Superior Court in a civil tax case "shall become final" upon the expiration of time to file petition for review, or upon expiration of appeal); D.C. Code § 32-1115(d) (Mayor's decision and order in in hearing under occupational safety and health law "shall become the final decision and order" unless one of the parties "files an appeal"). If the Council meant to say that an IRAA order does not become final until a certain stage of the appeal, it "knew how to write such a law. It did not do so in this statute." *Marietta Memorial Hospital Employee Health Benefit Plan v. DaVita Inc.*, 142 S. Ct. 1968, 1974 (2022).

Moreover, as PDS explained below, the potential for both an oral and a written order in the same IRAA case helps to explain why the Council chose to describe the starting point for the three-year waiting period as the date on which "the order on the application becomes final." D.C. Code § 24-403.03(d). The IRAA requires that for every motion, the trial court hold a hearing, *id.* § 24-403.03(b)(2), and also issue a written opinion, *id.* § 24-403.03(b)(4). In any given case, then, the court might (as it did in *Newman*) deny the motion in an oral order at the end of the hearing, with a written opinion to follow. If the statute counterfactually described the start point of the waiting period as only "the date of the order on the initial application," that

scenario would create a dilemma: would the waiting period begin on the date of the oral order, or the written one?

The inclusion of the phrase "becomes final" preempts any such dilemma. As the trial court recognized, "there is no ambiguity on which order is final"—the statute "requires the trial court [to] issue an opinion in writing, thus creating a final order on the matter." App. C at 9; *see also* D.C. Code § 24-403.03(b)(4) (requiring a written opinion); *Facon*, 288 A.3d at 332 (explaining that an order is not final until "the court has nothing remaining to do"). By specifying that the waiting period begins on "the date that the order on the initial application becomes final," the statute signals that the waiting period does not begin until there is a final, appealable order—even if the court indicates in an earlier oral order that it will deny the motion. The trial court here misunderstood this feature of the statutory structure, stating that "[t]he phrase 'becomes final' does not help to define which order is the final order given that the statute commands the trial court to issue only one order: a written one." App. C at 9. But the question that needs answering is not "which order is the final order"; instead, it is *which order starts the waiting period*? The answer to that question is supplied by the language "becomes final": the written order starts the three-year clock.[9]

[9] This Court need not resolve whether the three-year waiting period in this case began on June 24, 2019 (when the trial court denied Mr. Williams's first IRAA motion) or September 3, 2019 (when it denied his motion for reconsideration), because in either case Mr. Williams is now eligible to file a second motion. However, it is Mr. Williams's view that because the June 24 order was appealable as a final order while his motion for reconsideration was pending, June 24, 2019 was "the date that the order on the initial application bec[ame] final." D.C. Code § 24-403.03(d). *See United States v. Stephenson*, 891 A.2d 1076, 1079 (D.C. 2006) (holding that

The government's brief and this Court's decision in *Williams*, 205 A.3d 837, reinforce that the most natural read of subsection (d) is that the waiting period begins on the date of the trial court's final written order—not the appellate mandate. The government's brief in *Williams* recognized that IRAA denials, like any other final order of the Superior Court, would be subject to appellate review. *See* Brief for United States at 40, *Williams*, No. 16-CO-570 (Apr. 5, 2018). Still, describing subsection (d) in that case, the government explained that "[i]f the first motion is denied, *the trial court must consider a second motion* to reduce sentence, which may be filed no sooner than *five years after the denial*." *Id.* at 12 (emphases added); *see also id.* at 43 ("[T]he IRAA offers three chances, each five years apart."). The timing of successive IRAA motions was also part of the government's merits argument that the IRAA provides a meaningful, realistic opportunity for release. *See id.* at 45 ("While a defendant must wait at least five years between sentencing reviews, he has the choice to wait longer if he concludes that he needs more time to make a better record for his next hearing.").

This Court repeated the government's understanding of the statute in its opinion, explaining that "[i]f a defendant's initial motion for a reduced sentence is denied, . . . [t]he defendant may file a second sentence reduction motion after five years; if that motion too is denied, he may file a third such motion after another five years." *Williams*, 205 A.3d at 848. The Court stated that a petitioner must wait five years after the initial motion "is denied"—not denied and affirmed on appeal—

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order dismissing indictment was appealable as a final order despite pending motion for reconsideration at the time appeal was filed).

despite the fact that it too was well aware that IRAA denials would be subject to full appellate review. *See id.* at 853–54. And, repeating the government's point on the merits, the Court expressly relied on the five-year intervals between one motion's denial and the next motion's consideration when assessing whether the IRAA "provide[s] a meaningful opportunity to attain demonstrable maturity and rehabilitation." *Id.* at 855 (explaining that an unsuccessful IRAA petitioner has "another five years in which to make further progress before he can take the second chance, and yet another five years before he can take his third chance" and that he "can wait to move for reduction of his sentence if he needs more time to make the showing of his rehabilitation").

The legislative history confirms what everyone understood to be the case in *Williams*: the D.C. Council intended for unsuccessful IRAA petitioners to be able to try again three years (or five years, at the time *Williams* was decided) after the final order on their initial application. *See, e.g.*, *In re Macklin*, 286 A.3d 547, 553 (D.C. 2022) ("We may also look to the legislative history to ensure that our interpretation is consistent with legislative intent." (internal quotation marks omitted)). When the Committee on the Judiciary published its 2016 committee report on the IRAA, subsection (d) of the proposed bill was identical—save for the number of years—to the current statutory text. *See* D.C. Council Comm. on the Judiciary, Rep. on Bill 21-0683 (hereinafter "2016 Committee Report"), Attachment H at 19 (Oct. 5, 2016) ("[A] court shall entertain a 2nd application under this section no sooner than 5 years after the date that the order on the initial application becomes final."). Describing that language, the committee explained that "[i]f the defendant's initial application

is unsuccessful, they may make a second application five years after *the order* on the first application, and a third and final application five years after *the order* on the second application." 2016 Committee Report at 14 (emphases added).

That explanation—identifying "the order" on the previous application as the start point for the waiting period—is powerful evidence that subsection (d)'s waiting periods begin on the date of the trial court's final order. *See* 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 48:6 (7th ed. Nov. 2022 update) ("Courts presume that when parts of a bill are enacted in the same form as they were introduced by the committee, the legislature adopted the committee's intent."); *Miller v. Fed. Mine Safety & Health Rev. Comm'n*, 687 F.2d 194, 195 (7th Cir. 1982) ("In the absence of any contrary legislative history, so clear a statement in the principal committee report is powerful evidence of legislative purpose, which we are obliged to give effect to even if it is imperfectly expressed in the statutory language.").[10] Indeed, the legislative history so unmistakably indicates that the waiting period starts upon "the order on the first application"—not the expiration of appellate review—that Mr. Williams's interpretation would prevail even if the text supported a different interpretation of the statute. *See Lopez-Ramirez v. United States*, 171 A.3d 169, 172 (D.C. 2017) ("The words of a statute are a primary index but not the sole index to legislative intent; the words cannot prevail over strong

[10] The trial court flipped that principle of statutory interpretation on its head, asserting incorrectly that "the committee report cannot be controlling" because the proposed bill attached to the report includes the phrase "becomes final" whereas the report itself does not. App. C at 13.

contrary indications in the legislative history." (quoting *Grayson v. AT&T Corp.*, 15 A.3d 219, 238 (D.C. 2011) (en banc)).

Reading subsection (d) in light of the IRAA's purpose further supports the conclusion that the waiting period begins on the date of the trial court's final order, and not when the appellate mandate issues. *See, e.g.*, *Macklin*, 286 A.3d at 553 ("We consider . . . evident legislative purpose, and the potential consequences of adopting a given interpretation."); *Thomas v. D.C. Dep't. Emp. Serv.*, 547 A.2d 1034, 1037 (D.C. 1988) ("[W]e consider the meaning of the terms and phrases of the statute . . . in the context of the entire statute and its policies and objectives."). As described in Section I, and as its name implies,[11] the purpose of the Incarceration Reduction Amendment Act is to reduce the incarceration of people who committed serious crimes as children or young adults by providing them a "meaningful opportunity to obtain release based on their diminished culpability and their maturation and rehabilitation." *Williams*, 205 A.3d at 846. Recall that two of the "significant procedural guarantees" aimed at achieving the IRAA's purpose are "a written structured decision by the judge" that is "fully reviewable on appeal," *id.* at 853, and fixed intervals for successive motions, allowing initially unsuccessful applicants "to make further progress" toward rehabilitation before trying again, *id.* at 855.

The statute's most natural interpretation—that the date of the trial court's final order is when the waiting period begins—ensures that those procedural guarantees

[11] *See Doe v. Burke*, 133 A.3d 569, 575 (D.C. 2016) ("[I]n determining the extent and reach of an Act of the legislature, the court should consider not only the statutory language, but also the title." (quoting *Mitchell v. United States*, 64 A.3d 154, 156 (D.C. 2013)).

operate in tandem to further the IRAA's purpose. As soon a petitioner's initial application is denied, he can seek this Court's review of the denial "for compliance with constitutional and other legal requirements and for abuse under well-established standards of reasonableness." *Id.* at 854. At the same time, he begins the three-year countdown until his next opportunity for resentencing, knowing that with enough additional progress, he may win relief regardless of the outcome of his appeal. Indeed, because the IRAA requires consideration of dynamic factors, appellate review of an initial application's denial will involve entirely different evidence and facts from those that the trial court will consider for the second application, leaving little practical or contextual reason to think that the Council meant to delay the second motion's consideration while an appeal of the first remains pending.

On the other hand, interpreting subsection (d) as requiring a three-year wait from the date of the appellate mandate would require the assumption that the Council meant to unnecessarily pit the right to appellate review against the timing of a second application. As the Court well knows, careful appellate review takes time: for reasons untethered from the IRAA's objectives and outside of any IRAA petitioner's control, the appellate process is long and its duration often unpredictable.[12] Under the trial court's read of the statute, therefore, an unsuccessful IRAA applicant would

[12] In the 2019 appeal in this case, for example, the appellate mandate following the Court's unpublished memorandum opinion did not issue until more than two years after Mr. Williams filed his notice of appeal. *See also* Hon. Roy W. McLeese III, *Trying to Write Fair Opinions*, 97 N.Y.U. L. REV. 1353, 1370 (2022) (noting the challenge in "issuing opinions without undue delay" given this Court's significant caseload).

be faced with a Hobson's choice: either (1) appeal the denial of his first motion, delaying his second motion for the uncertain and possibly years-long duration of the appeal; or (2) forgo appellate review, leaving any errors of the trial court uncorrected, in order to have an earlier opportunity for consideration of a second motion with updated evidence. By forcing such a choice between two important features of the statutory scheme, the trial court's interpretation contravenes the "well-accepted tenet of statutory construction that, whenever possible, a statute should be interpreted as a harmonious whole." *Adgerson v. Police & Firefighters' Ret. & Relief Bd.*, 73 A.3d 985, 992 (D.C. 2013) (internal quotation marks omitted).

Interpreting the statute's waiting period to begin on the date of the appellate mandate would also be contrary to the Council's repeated amendments expanding and expediting consideration of IRAA motions. *See supra* p. 10. Indeed, as described above, the Council has specifically expedited the consideration of successive IRAA motions, reducing the waiting period in subsection (d) from five to three years. In doing so, the Council made plain its determination that three years is a sufficient period for applicants to "make further progress" towards rehabilitation, *Williams*, 205 A.3d at 855—after all, even under the trial court's interpretation of subsection (d), an initially unsuccessful applicant who does not appeal his first denial would be eligible to re-apply in three years. There is no reason to think that the Council intended to effectively punish applicants who exercise their right to appeal by stalling their re-applications for the duration of a long and unpredictable appellate process.

Construing the three-year waiting period as beginning on the date of the appellate mandate would also produce disparities between IRAA appellants that are arbitrary, irrational, and driven by circumstances beyond their control—further evidence that the Council did not intend that interpretation. *See Wade v. United States*, 173 A.3d 87, 95 (D.C. 2017) ("When interpreting statutes, we assume that the legislature 'acted logically and rationally' and we 'avoid interpretations of statutes which lead to implausible results.'" (quoting *Eaglin v. District of Columbia*, 123 A.3d 953, 957 (D.C. 2015)). How long the appellate process might take depends on matters outside applicants' hands and unrelated to their maturation and rehabilitation: Are the appellate issues complicated and novel, or simple and common? Is oral argument necessary? If so, how long does it take this Court to calendar the case for argument? How long does it take the division of judges assigned to the appeal to issue a decision? An unsuccessful petitioner attempting to decide whether to appeal would be left to guess whether the appeal will take one year to resolve, resulting in a four-year wait from the trial court's final order, or two years to resolve, resulting in a five-year wait, and so on and so forth. And those with the strongest appeals could be made to wait the longest, while those with the weakest appeals could have the shortest waiting times. A frivolous appeal, for instance, might result in the government moving for summary affirmance, allowing this Court to promptly affirm without scheduling oral argument or publishing a full opinion. On the other hand, an IRAA petitioner appealing from a denial in a close or complicated case must wait for full briefing to be completed, oral argument to be scheduled, and an opinion to be published—a process that may amount to years even in a run-of-

the-mill case. The upshot, if the waiting period were held to begin after the appellate process runs its course: the frivolous appellant gets a second bite at the apple far sooner than the appellant in the closely contested case. The D.C. Council could not have intended such an illogical result.

In reaching a contrary conclusion, the trial court found no support for its interpretation in the history or purpose of the IRAA or in cases interpreting similar statutory language. Instead, the court relied exclusively on a flawed analysis of the statutory text. The key step in that analysis was to "construe[] the 'order' in subsection (d) to refer to the written opinion commanded by subsection (b)(4)." App. C at 8. From there, the court reasoned that the phrase "becomes final" in subsection (d) cannot mean final for the purpose of appealability, because the word "order" in subsection (d) already refers to the final order commanded by subsection (b)(4). *See id.* at 8–10. Positing that "it seems fair to question why the D.C. Council would include the phrase 'becomes final'" if it meant for the waiting period to begin on the date of the trial court's final order, the trial court inferred that the phrase "'becomes final' appears to add another step to the process following the 'order on the initial application.'" *Id.* at 9. Thus, the court ultimately concluded that "[i]f an IRAA applicant appeals the trial court's order, an order on an initial IRAA application 'becomes final' upon the mandate of the Court of Appeals." *Id.* at 10.

The trial court's logic fails at its first step. By equating the word "order" in subsection (d) with the word "opinion" in subsection (b)(4), the court ran "afoul of the usual rule that 'when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were

intended.'" *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, p. 194 (6th rev. ed. 2000)); *see also Tangoren v. Stephenson*, 977 A.2d 357, 360 & n. 12 (D.C. 2009) (applying this rule); 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 46:6 (7th ed. Nov. 2022 update) ("Different words used in the same, or a similar, statute are assigned different meanings whenever possible."). Indeed, an "opinion" is "[a] court's written statement explaining its decision in a given case," Opinion, BLACK'S LAW DICTIONARY (11th ed. 2019), whereas the word "order" means "[a] command, direction, or instruction," and it "*generally embraces* final decrees as well as *interlocutory directions or commands*," Order, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphases added). Assigning both words their ordinary meanings and assuming that they mean different things, the word "order" in subsection (d) refers not just to the final, written order commanded by subsection (b)(4)'s opinion requirement, but also to interlocutory orders such as those that a court might pronounce at the hearing on the motion. Thus, as explained above, the subsequent phrase "becomes final" is not "superfluous, redundant, and meaningless," App. C at 8: it serves the important function of clarifying which order starts the waiting period. *See supra* pp. 14–15.

The Supreme Court's decision in *Clay*, which the trial court cited but did not rely on, does not support the trial court's interpretation. The Court in *Clay* observed that "[f]inality is variously defined," but in the context of "postconviction relief," it "has a long-recognized, clear meaning: Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari,

or when the time for filing a certiorari petition expires." 537 U.S. at 527. The context in which finality has a "long-recognized" meaning is not *any* type of relief that occurs after a conviction, though: *Clay* used the phrase "postconviction relief" exclusively as a synonym for "collateral review" of the legality of the conviction itself. *See id.* at 524, 527–28. And as explained above, *see supra* p. 11, the IRAA is nothing like a collateral review statute: collateral statutes (like D.C. Code § 23-110) require courts to assess the validity of the conviction or sentence at the time the judgment was entered,[13] whereas the IRAA "requires judges to . . . consider whether," based on up-to-date evidence, a petitioner has "earned back [his] liberty by demonstrating [his] capacity for reformation." *Williams*, 205 A.3d at 849. In short, the typical understanding of finality in the collateral context does not inform the meaning of the word "final" here.

Finally, even if this Court finds the trial court's reading of subsection (d) plausible, the rule of lenity requires adopting Mr. Williams's reading. *See Carrell v. United States*, 165 A.3d 314, 322 n.22 (D.C. 2017) (en banc) ("[T]he rule of lenity requires that, when a choice has to be made between two readings of [a statute], it is appropriate, before we choose the harsher alternative, to require that [the legislature] should have spoken in language that is clear and definite." (quoting *Ruffin v. United*

[13] *See, e.g.*, 28 U.S.C. § 2255(a) (grounds for collateral attacks on federal convictions include where "the sentence was imposed in violation of the Constitution or laws of the United States, or . . . the court was without jurisdiction to impose such sentence, or . . . the sentence was in excess of the maximum authorized by law"); D.C. Code § 23-110(a) (listing the same grounds for collateral attacks on Superior Court convictions).

*States*, 76 A.3d 845, 858 (D.C. 2013)); *see also In re Richardson*, 273 A.3d 342, 349 (D.C. 2022) ("The rule of lenity states that criminal statutes should be strictly construed and that ambiguities should be resolved in favor of the defendant." (internal quotation marks omitted)). Because the rule of lenity "'embodies the instinctive distaste against men and women languishing in prison unless the lawmaker has clearly said they should,'" it "applies not only to statutes which proscribe criminal conduct, but also to those that fix or alter the punishment for misdeeds previously done." *Luck v. District of Columbia*, 617 A.2d 509, 515 (D.C. 1992) (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971) (brackets omitted)).[14]

To be sure, this Court need not resort to the rule of lenity, because subsection (d) is not ambiguous: this Court, the government, and several Superior Court judges have all understood the waiting period to start on the date of the final order denying the initial application. *See Williams*, 205 A.3d at 848; Brief for United States at 12, *Williams*, No. 16-CO-570; App. A at 5–6 (citing Superior Court cases). Subsection (d) does not include the clear language that the Council has used elsewhere to describe finality that attaches at some stage of the appeal, *see supra* pp. 13–14, and nothing in the legislative history suggests that the Council meant for the phrase "becomes final" to refer to anything but the trial court's final order. To the contrary, even the trial court acknowledged that the legislative history "provides some credence to PDS and Mr. Williams's interpretation." App. C at 13. The court also agreed that the D.C. Council's amendments to the IRAA demonstrate its intent "to

[14] *Luck* expressly rejected the argument that the rule of lenity did not apply to a statute governing good time credits. *Id.*

expand and expedite consideration of IRAA motions," *id.* at 14, further supporting Mr. Williams's interpretation. If the trial court's strained reading of the text seems facially plausible despite all the evidence to the contrary, it is because the word "final" has such varied meaning—but that counsels in favor of applying the rule of lenity, not adopting the trial court's flawed construction.[15] In sum, the most natural reading of the text and all of the other indicators of legislative intent point toward Mr. Williams's interpretation as the correct one. To the extent that the Court has any remaining doubt, the rule of lenity requires resolving it in Mr. Williams's favor.

## CONCLUSION

This Court should reverse the trial court's ruling and hold that Mr. Williams became eligible to file his second IRAA motion three years after the date of the trial court's final order denying Mr. Williams's first motion.

Respectfully submitted,

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[15] *See, e.g.*, *United States v. Allen*, 566 F.2d 1193, 1195 (3d Cir. 1977) (applying rule of lenity to determine meaning of the phrase "become final" in federal statute); *see also Bd. of Educ. of Gallup-McKinley Cnty. Sch. v. Native Am. Disability L. Ctr., Inc.*, 959 F.3d 1011, 1017 (10th Cir. 2020) (Bacharach, J., concurring) (collecting cases concluding that "references to a decision as 'last' or 'final' are ambiguous").

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served, through the Court's electronic filing system, upon Chrisellen Kolb, Esq., Chief, Appellate Division, Office of the United States Attorney, this 7th day of September, 2023.

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# District of Columbia
# Court of Appeals

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(d) the year of the individual's birth;
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B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

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

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

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

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23-CO-645
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