Appeal Nos. 24-CO-295 & 24-CO-296

DISTRICT OF COLUMBIA COURT OF APPEALS

MUHAYMIN MUHAMMAD

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

In Superior Court, Mr. Muhammad was represented by John Dwyer and James McComas of the Public Defender Service (PDS). Donald Alison represented the government. At his post-conviction proceedings, Mr. Muhammad was represented by PDS attorneys Keith Golden and Marshall Taylor and the government was represented by Joan Draper. In his Incarceration Reduction Amendment Act (IRAA) proceedings, Mr. Muhammad was represented by PDS attorney Safa Ansari-Bayegan. Assistant United States Attorney Christopher Macomber represented the government. PDS attorneys Jaclyn Frankfurt, Mikel-Meredith Weidman, and Areeba Jibril represent Mr. Muhammad on appeal.

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ISSUES PRESENTED

1. Whether the trial court erred in finding current dangerousness and denying Mr. Muhammad's request for release under the Incarceration Reduction Amendment Act ("IRAA"), D.C. Code § 24-403.03, based on Mr. Muhammad's failure to complete sex offender treatment that was unavailable to him and a 2016 infraction for submitting administrative grievances after being instructed not to do so.
2. Whether the trial court erred in denying Mr. Muhammad's request for release under IRAA, D.C. Code § 24-403.03, when it relied on factors set out in the D.C. voluntary sentencing guidelines, including the nature and seriousness of the underlying offense and principles of deterrence and just punishment, when evaluating whether it was in the interests of justice to grant his IRAA motion.

STATEMENT OF THE CASE AND JURISDICTION

On June 7, 1984, Muhaymin Muhammad pled guilty in two separate cases that have been consolidated for the purpose of this appeal. In 1982 FEL 007489, Mr. Muhammad was sentenced to 20 years to life for felony murder, 20 years to life for two counts of rape, 5 to 15 years for assault with intent to rape, and 15 years to life for armed robbery. In 1982 FEL 006288, Mr. Muhammad was sentenced to 5 to 15 years for manslaughter. Judge Donald Smith sentenced Mr. Muhammad to an aggregate term of 65 years to life in prison. On July 7, 2023, Mr. Muhammad filed a motion under the Incarceration Reduction Amendment Act, D.C. Code § 24-403.03 ("IRAA") seeking a sentence reduction that would result in

immediate release. The government filed an opposition on October 31, 2023. Defense counsel filed its reply brief on November 30, 2023.

Mr. Muhammad's IRAA motion was assigned to the Honorable Craig Iscoe, who held a hearing on the motion on December 19, 2023. In a written order dated March 19, 2024, the trial court denied Mr. Muhammad's request for relief.

Mr. Muhammad timely noted an appeal on March 28, 2024. This Court has jurisdiction under D.C. Code § 11-721(a)(1).

STATEMENT OF FACTS

Muhaymin Muhammad was only 18 years old in 1982 when he committed the offenses that led to his guilty plea and an aggregate sentence of 65 years to life for five offenses, including first-degree murder and rape. Now 60 years old, he has spent the entirety of his adult life, 42 years, in prison. Mr. Muhammad moved for release under the Incarceration Reduction Amendment Act (IRAA) on July 7, 2023, arguing that he was no longer dangerous and the interests of justice therefore warranted his release to the community. The government opposed the motion.

The sentencing judge denied the motion, finding Mr. Muhammad was still dangerous, because of his lack of sex offender treatment—even though he had been on a waitlist for the program since 2015—and a 2016 disciplinary infraction for filing multiple grievances against BOP officers which the BOP labeled as "stalking." Order 24-25.[1] The judge also found that release was not in the interest

[1] The trial court's order denying Mr. Muhammad's IRAA motion is referenced throughout as "Order."

of justice because "reducing Mr. Muhammad's sentence so that he only serves 42 years of incarceration would not serve the sentencing goals of punishment and general deterrence . . . ." Order 28. This appeal challenges those decisions.

IRAA allows a person who committed an offense before age 25 and who has served 15 years in prison to petition for a sentence reduction, and requires the sentencing court to grant the petition when it finds—based on consideration of eleven enumerated factors—the individual is not dangerous and the interests of justice warrant the reduction. *See* D.C. Code § 24-403.03(a). The statute responds to the wealth of scientific evidence showing that brain development continues until at least age 25, and that developmental immaturity makes young people both less culpable and more capable of rehabilitation.[2] IRAA also operates to remedy a problem of overincarceration. As the D.C. Council explained, the continued incarceration of rehabilitated, non-dangerous people who have already served lengthy sentences imposes social and economic costs that exceed any potential benefits, and thus is not in the public interest. 2020 Committee Report at 11-12. The Council has repeatedly amended the statute to expand its reach, lowering eligibility thresholds and allowing more people to be released.

On July 7, 2023, Mr. Muhammad filed an IRAA motion [redacted]

[2] D.C. Council, Comm. on the Judiciary & Pub. Safety, Rep. on Bill 23-0127 at 15-16 (Nov. 23, 2030) ("2020 Committee Report").

[redacted] The thoroughgoing personal history set out in the motion responded to IRAA's enumerated factors, several of which require judges to consider petitioners' individual histories and actions.

[redacted]

The government alleged that Mr. Muhammad murdered [redacted] by shooting him with a pistol on or around October 16, 1982. Gov. Ex. A at 1. [redacted] Def. Motion 13 n.56; Order 4. [redacted] Gov. Opp. 2, n. 3. Mr. Muhammad also pled

guilty to first degree murder, two counts of rape, and one count of armed robbery relating to the death of [redacted]. The government alleged that Mr. Muhammad, and a co-defendant, abducted, raped, and killed [redacted] on November 1, 1982. 24-CO-295, R. 108-111. Mr. Muhammad was also indicted for robbery, kidnapping, rape, and other crimes against four other victims that occurred between October 11, 1982 and November 8, 1982. 24-CO-295, R. 92-97. The government dropped those charges in exchange for his guilty plea. Order 2-4. [redacted]. In a letter to Judge Iscoe, Mr. Muhammad expressed remorse for his actions and explained that he had taken responsibility for the lasting pain he had caused. Def. Motion 16. [redacted] Long before he had any hope of early release, he took advantage of prison resources, completing 1500 hours of programming. *Id.* at 14, 24. He managed this despite BOP policies deprioritizing D.C. prisoners and those serving life sentences for programming.

The motion asserted that despite the violence and particular hardships of his incarceration, Mr. Muhammad had maintained a laudable disciplinary record, leading BOP to determine that he presented a "minimum" risk of recidivism—the lowest possible score under the BOP's own risk assessment tool. The Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) is a tool developed by the Department of Justice "to predict the likelihood of general and

violent recidivism."[3] DOJ touts PATTERN as a tool that "achieves a higher level of predictability [that] surpasses what is commonly found for risk assessment tools for correctional populations in the U.S."[4] PATTERN takes into account a variety of factors, including disciplinary history and programming, and measures the risk of any return to BOP custody or rearrest, including for non-violent crimes and technical violations of parole.[5] A recent Department of Justice study of 9,332 releases like Mr. Muhammad, with an overall "minimum" PATTERN score, found that only 3.2% were re-arrested for any reason.[6] Additionally, the motion contended that Mr. Muhammad's BOP custody classification score, which also took into account disciplinary history, confirmed the government's view of his low security risk, as it classified Mr. Muhammad as eligible for "community" placement—"[t]he lowest custody level assigned to an inmate which affords the lowest level of security and staff supervision."[7]

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[3] Press Release, U.S. Dep't of Just., *Department of Justice Announces the Release of 3,100 Inmates Under First Step Act, Publishes Risk and Needs Assessment System* (July 19, 2019), https://www.justice.gov/opa/pr/department-justice-announces-release-3100-inmates-under-first-step-act-publishes-risk-and.

[4] *Id.*

[5] *Id.*; U.S. Dep't of Just., Off. of the Att'y Gen., *First Step Act Annual Report* 40 (Apr. 2023), https://www.ojp.gov/first-step-act-annual-report-april-2023.

[6] Off. of the Att'y Gen., *First Step Act Section Annual Report* 42.

[7] U.S. Dep't of Just., Bureau of Prisons, *Program Statement P5100.08, Inmate Security Designation & Custody Classification* Ch. 2 (Sept. 12, 2006), https://www.bop.gov/policy/progstat/5100_008.pdf.

Mr. Muhammad's "minimum" PATTERN score and eligibility for "community" placement reflected his overall disciplinary record, the motion argued. He had never incurred a 100-level infraction,[8] even when housed at facilities with notoriously violent environments and physically attacked. Def. Motion 18, 20. BOP had entrusted him with coveted work placements, like UNICOR, only available to "model inmates." *Id.* at 28. And Counselor Jones of USP Coleman I, where Mr. Muhammad was incarcerated for years, remembered Mr. Muhammad as "not a problem" on his unit. He noted that Mr. Muhammad would "file a lot" of administrative grievances "for himself or other inmates" because "he wanted everyone to be treated a certain way." *Id.* at 22.

[redacted]

[8] The level of the offense refers to its severity; offenses range from the 100 level, the most severe, to the 400 level, the least severe. *See* 28 C.F.R. § 541.3.

Finally, the motion summarized Mr. Muhammad's comprehensive reentry plan, which included his plans for accessing housing, employment, medical and psychological care, and peer and community support. Def. Motion. 43-47.

On October 31, 2023, the government filed its opposition to Mr. Muhammad's motion, arguing that the trial court should deny relief because Mr. Muhammad remained a danger to the community and the interests of justice did not support release. Gov. Opp. 1. The government argued he was still dangerous for two reasons: lack of sex offender treatment and a 2016 disciplinary incident.

Although the government faulted Mr. Muhammad for not having completed enough programming generally, it specifically targeted his lack of sex offender treatment. Gov. Opp. 12. It noted that Mr. Muhammad had joined the waitlist for sex offender treatment in December of 2015, and then stated—without any factual support—that it was "not credible . . . to assume that defendant ha[d] been waiting eight years for th[at] programming." *Id.* at 12-13. Based on the unsupported premise that Mr. Muhammad could not have been on the waitlist for eight years, it asserted that his failure to show "sincere attempts to engage in this critical treatment" weighed "heavily against release." *Id.* at 13.

As to his disciplinary history, the government argued that, in general, the 27 infractions Mr. Muhammad had incurred up until 2016 represented a "pattern" of noncompliance with institutional rules. Gov. Opp. 10. It specifically pointed to an infraction that Mr. Muhammad received in 2016, for filing five BP-229 administrative grievance forms against a BOP cook after previously being told to stop emailing a different BOP employee. Order 12. According to the disciplinary

report, shortly after Mr. Muhammad arrived at USP Yazoo City in 2016, he received "verbal counseling" after he emailed complaints to the Reentry Affairs Coordinator. The BOP described these emails as "inappropriate" because they addressed the recipient as "Dear Beloved" and told her "how she needed to do her job." *Id.* Mr. Muhammad also complained about the reentry coordinator's response to another BOP staff member, saying "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me." *Id.* He did not receive an infraction for the emails, but was warned that if he continued this "harassing behavior" he would be written up.

Several months later, Mr. Muhammad filed five BP-229 grievance forms against a Cook Supervisor, leveling a range of complaints against her, including poor food preparation, lying, and stealing, and calling her two offensive names. The report writer stated the complaints "caused [her] to feel as if she was being harassed," and that she was "very upset" about them and felt "her safety would be in danger" if Mr. Muhammad were released to the general prison population. Citing the prior verbal warning regarding the emails to the reentry coordinator, BOP staff gave Mr. Muhammad a 200-level infraction for "Stalking Another Person Through Repeated Behavior Which Harasses, Alarms, or Annoys the Person After Having Been Previously Warned to Stop Such Conduct" based on "continued actions of harassing and threatening." Gov. Opp. 10-11. Though the conduct was not sexual in nature, the government argued that it demonstrated "a repeated pattern of targeting female staff members in BOP" which the government analogized to his underlying convictions. *Id.* at 11-12.

In the reply brief, the defense contended that Mr. Muhammad's overall record, as well as his minimum PATTERN score and Dr. Keller's expert report, established his rehabilitation, and that neither the lack of sex offender treatment nor the 2016 infraction indicated current dangerousness. Mr. Muhammad had not been able to complete sex offender treatment, the reply explained, because BOP deprioritized him for programs because he was serving a life sentence and was a D.C. inmate, Reply 14,[9] and not, as the government erroneously asserted, because of a lack of "sincere attempts to engage." Gov. Opp. 13.

As to the 2016 incident, the reply explained that despite the use of the term "stalking" in the title of the offense, the BOP infraction encompassed a broad range of conduct including "mere annoyance of a person." Reply 10-11. Mr. Muhammad's infraction stemmed from a series of complaints he had filed through allowable channels that staff considered to be "harassment." *Id.* at 11.[10] The reply cited Dr. Keller's expert report, which accounted for his overall disciplinary history when concluding that "Mr. Muhammad did not endorse overt or covert hostility or a disregard toward women." Reply 11. Finally, defense counsel pointed out that since the disciplinary incident, Mr. Muhammad had held jobs that required continued trust by staff and experienced positive relationships with staff. *Id.*

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[9] Amicus Br. at 7, *Blades v. Garland*, No. 1:22-cv-00279-ABJ (D.D.C. Apr. 11, 2022) (quoting D.C. Corrs. Info. Council, *FCI McDowell Inspection Report* 10 (Oct. 17, 2019)).

[10] Citing the DHO report about the incident, counsel also noted that the stigma associated with Mr. Muhammad's crimes of conviction had played a significant role in how the investigation was conducted. Reply 11.

At the hearing on the IRAA motion, counsel for both parties presented oral argument, but neither party presented live testimony. The government did not object to the written reports—including Dr. Keller's—that had been submitted to the trial court. And neither the judge nor the government requested live testimony from any witnesses at the hearing.

The government acknowledged that "this is a close case in many ways," given the 42 years Mr. Muhammad had served and his disciplinary and programming records. Tr. 24. Nonetheless, as in its written opposition, it opposed relief "largely" on "two core areas"—the infraction from 2016 and the lack of sex offender treatment. Tr. 29. Regarding the 2016 incident, the government conceded the titling of the offense did not necessarily reflect the conduct at issue—noting that "stalking might mean one thing in the general public as it means something separate in BOP." Tr. 27. Nonetheless, the trial court itself drew a connection to the offenses of conviction, expressing concern about infractions related to "stalking, sexual proposals, and . . . threatening bodily harm," which it believed "relate[d] in many ways to the offenses." Tr. 26, 30.

Defense counsel directed the court's attention to the facts underlying the 2016 infraction, explaining that it arose from administrative complaints he had filed against two staff members, and arguing that the BOP used "stalking" as a catch-all term to include behavior which "harasses, alarms, or annoys" the staff member. Tr. 45-46. Defense also contended the record did not suggest these infractions were sexual in nature, Tr. 42, and explained that Mr. Muhammad often used BOP administrative procedures to "try and take control over his situation and

over his environment in the BOP." Tr. 33.[11] Staff had explained that "he did file grievances but he wasn't a problem on the unit, he was actually someone that we turned to to help resolve conflicts," and multiple wardens had cited "his good conduct, his ability to work with both his peers and staff." Tr. 41-42. Finally, he was not heavily disciplined for the infraction, Tr. 33, indicating BOP did not consider it to be very serious, and his PATTERN score and Dr. Keller's unrebutted report showed that he was not a danger. Tr. 36.

The government also reiterated that Mr. Muhammad's programming record was deficient because he had not completed sex offender treatment, suggesting to a lesser extent that he had not completed enough programming in general. Tr. 28. It agreed that he "was on a waitlist" for sex offender treatment in December of 2015, and that D.C. Code inmates and people serving life sentences might have less access to programming, but said it was "not clear . . . what played out" or whether he "was removed from the waitlist or otherwise received treatment." Tr. 28.

Defense counsel rebutted the government's suggestion that Mr. Muhammad could have completed sex offender treatment, explaining that he "put himself on [the] waitlist [in 2015] and he has remained on that waitlist," and that he "has no control over when he accesses or doesn't access that programming." Tr. 39. Counsel also contended that there was "no evidence on this record that Mr. Muhammad has ever refused to do sex offender treatment," and pointed out that

[11] Defense counsel also suggested the stigma associated with Mr. Muhammad's underlying convictions played a part in "how this was ultimately viewed and assessed by the BOP." Tr. 33.

the individualized needs plan BOP had prepared for him, which set out short- and long-term programming goals, did not mention a need for sex offender treatment at all. *Id.* at 38-39. Defense counsel further cited Dr. Keller's expert assessment that Mr. Muhammad "does not need that sex offender treatment," and represented that even so, Mr. Muhammad was "fully willing to engage in that programming" after release, should a reevaluation by CSOSA "deem it appropriate." Tr. 39-40.

After hearing argument from counsel, the judge said that "Mr. Muhammad is free to make a statement if he wishes but does not have to." Tr. 40-41. The judge offered Mr. Muhammad an additional opportunity to speak before the end of the hearing, but assured him that his "[f]ailure to say anything will not be held against [him]." Tr. 47. Defense counsel explained that Mr. Muhammad was nervous to testify in court and that he turned to "his written word as the best way to express himself." Tr. 48. The judge assured him that he understood, saying "I certainly also understand nervousness in speaking in a setting such as this in a courtroom, it may be difficult for people to do." Tr. 48.

The trial court denied Mr. Muhammad's IRAA petition in a written order on March 19, 2024, ruling that Mr. Muhammad had failed to demonstrate that he was no longer dangerous and that the interests of justice warranted a reduction of sentence. Order 10. The court's dangerousness ruling primarily relied on the lack of sex offender treatment and the 2016 BOP infraction for "stalking." Its interests-of-justice analysis drew on principles drawn from the voluntary sentencing guidelines and concluded that the 42 years Mr. Muhammad had served did not satisfy goals of "just punishment" or general deterrence.

The judge made findings regarding each of the eleven factors enumerated in the IRAA statute. He noted that Mr. Muhammad was 18 years old at the time of the offense, citing (c)(1). As to (c)(2), the judge noted that he had had a "difficult childhood marked by the trauma of physical and verbal abuse," and "did not have any criminal history prior to committing the six separate offenses." Order 11. Both factors weighed in favor of release.

In reviewing (c)(3), which relates to disciplinary and programming history while incarcerated, the judge found that Mr. Muhammad "remains a danger to the community due to his 2016 infraction for stalking two women and his lack of sex offender treatment . . . ." finding he had "demonstrated slight compliance with the rules" of various facilities. Order 15. Although he credited Mr. Muhammad for never receiving a single 100-level infraction and for not incurring any infractions since 2017, he found that the "infraction for 'stalking,' . . . raises significant concerns, especially in light of Mr. Muhammad's convictions for two rapes, one attempted rape, one first degree murder, and one armed robbery." *Id.* The judge acknowledged that the disciplinary report "establishes that the charge of 'Stalking' may include 'repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct,'" but concluded the subject of Mr. Muhammad's complaints felt he presented "an actual physical danger to her." *Id*. at 13.

As to Mr. Muhammad's programming record, the judge found he had shown "some meaningful completion of significant amounts of programming," Order 15, and acknowledged that he had "undergone extensive job training programs . . . and

has been trusted by BOP staff with various work assignments." Order 14. Yet, the judge found his 1600 hours of BOP programming to be "low," and concluded that Mr. Muhammad's "failure to complete sex offender treatment" "raises great concerns about whether he would pose a danger of committing sex offenses if he were released from custody." Order 14. Though the trial court acknowledged that "Mr. Muhammad's counsel may be correct" that he "might not have received priority in program enrollment" due to his status as a D.C. inmate and the length of his sentence, it nonetheless found the lack of treatment "alarming." *Id.*

Although Mr. Muhammad had been on the waitlist since 2015, the judge faulted him for not putting himself on a waitlist before then: "Mr. Muhammad has completely failed to establish any effort on his part to enroll in sex offender treatment from 1982 until 2015." Order 14; *see also id.* at 25. Despite the lack of record evidence about the availability of sex offender programming in BOP before 2015, the trial court ascribed to Mr. Muhammad an "unwillingness for the first 33 years of incarceration to even seek sex offender treatment," and drew a "sharp contrast" with his "willingness to seek and complete substance abuse treatment." Order 14. The judge dismissed the uncontested evaluation by Dr. Keller, who had concluded that Mr. Muhammad was not in need of sex offender treatment, because she had not testified live during the evidentiary hearing. Order 15.

As to (c)(4), the position of the U.S. Attorney's Office, the judge weighed the government's opposition against release, crediting the government's unfounded assertion that Mr. Muhammad had not made "sincere attempts to enroll in [sexual

offender] treatment since being placed on a waitlist in 2015" and the government's position on Mr. Muhammad's disciplinary history. Order 15-16.

The judge again relied on the 2016 infraction and the lack of sex offender treatment in finding that Mr. Muhammad had not "demonstrated maturity, rehabilitation, and a fitness to reenter society," under (c)(5). He said Mr. Muhammad's 2016 infraction demonstrated a "lack of maturity and rehabilitation" because he was 52 years old at the time and did not stop after being warned to do so. Order 16. Additionally, the judge found that Mr. Muhammad's programming record did not "establish rehabilitation and a fitness to reenter society" because he had not completed sex offender treatment. *Id.* The judge dismissed Mr. Muhammad's "minimum" PATTERN score because "a PATTERN score is no guarantee of how Mr. Muhammad will behave outside of prison." *Id.* at 17. He similarly dismissed Dr. Keller's uncontested expert report because it was "based solely on a two-hour telephone conversation," represented only "one" evaluator's assessment, and "d[id] not demonstrate to the Court that Mr. Muhammad would not be a danger upon release." *Id.* at 16-17.

When considering (c)(5), the judge also doubted the sincerity of Mr. Muhammad's letter to the court expressing remorse, reasoning that his "decision not to testify made it more difficult for the Court to assess whether his letter, which may have been drafted or edited by others, was an accurate depiction of his feelings." Order 17. The judge noted that "the burden is on Mr. Muhammad to demonstrate that he is not dangerous," but "[h]e chose not to exercise the opportunity to testify at the hearing and describe any remorse he felt, and why he

believes he has matured while incarcerated." *Id.* This observation stood in contrast to the judge's statements to Mr. Muhammad at the hearing, where the judge expressed empathy for Mr. Muhammad's nervousness, pointedly told him that he would not hold his decision not to testify against him, and said that he "just want[ed] to be sure" he had a chance to speak. Tr. 47, 49-50.

In considering (c)(6), statements given by the family members of the victims, the judge considered a victim impact letter and found the factor weighed against release, because although "the victim seems to forgive Mr. Muhammad for his actions, her statement reveals the impact his actions had and still continue to have on her more than four decades later." Order 18.

As to factor (c)(7), which addresses "[a]ny reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals," D.C. Code § 24-403.03(c)(7), the judge considered Dr. Keller's uncontested written mental health evaluation, which concluded that Mr. Muhammad "'is of relatively low risk to sexually and violently reoffend,'" and found that this factor weighed only "slightly" in favor of granting the motion because "Dr. Keller was not made available at the evidentiary hearing for questioning or cross-examination." Order 19. The judge noted that the government "did not oppose" submission or assert that the court could not rely on the report because Dr. Keller was not called as a witness. *Id.* at 18.

The judge weighed (c)(8)—which addresses "[t]he defendant's family and community circumstances . . . including any history of abuse, trauma, or involvement in the child welfare system," D.C. Code § 24-403.03(c)(8)—in favor

of release, recognizing that "the abuse Mr. Muhammad faced as a child and young adult, the trauma it led to, and other difficult circumstances were likely contributing factors to Mr. Muhammad's offense, and that these factors are likely to have been substantially mitigated by time, maturity, and Mr. Muhammad's hard work towards self-improvement over the course of his incarceration." Order 20.

Factor (c)(9)—"[t]he extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense," D.C. Code § 24-403.03(c)(9)—weighed against release, the judge ruled, because there was "no indication in the record that his co-defendant was older than Mr. Muhammad or that Mr. Muhammad committed the offenses due to peer pressure." Order 21.

The judge found (c)(10), which requires judges to consider "[t]he diminished culpability of juveniles and persons under age 25," D.C. Code § 24-403.03(c)(10), weighed in favor of Mr. Muhammad. He noted the offenses suggested "careful planning and deliberate violent actions," however, rather than "impetuosity."

Finally, under factor (c)(11), the judge commended "Mr. Muhammad for taking steps towards preparing a release plan and finding support in the community" but deemed the plan insufficient based on his plan to reside in

transitional housing rather than with family members,[12] and for not including a sex offender treatment plan. Order 23-24. He did not acknowledge defense counsel's representation at the hearing that Mr. Muhammad would be willing to participate in sex offender treatment if CSOSA determined it was appropriate.

The judge concluded that the majority of factors weighed against a finding of non-dangerousness, again emphasizing the 2016 infraction and the lack of sex offender treatment as the central reasons for this decision. Order 24. Despite the government's acknowledgment that the title of the "stalking" infraction might "mean one thing in the general public [and] . . . something separate in BOP," Tr. 27, the judge relied on the title to connect the infraction for "harassing two female staff members over the course of several months" with the underlying offenses. Order 24; *see also id.* at 11. As he put it, each of Mr. Muhammad's convictions "began with him stalking the victim." Order 25. "Before committing each of [his] offenses, he drove on the beltway looking for women who were driving alone, then deliberately ran his car into theirs and then, when they got out to inspect the damage, committed horrific violent crimes against them." Order 25. The judge also found Mr. Muhammad dangerous because he had "not completed any sex-offender treatment during his 42 years in prison," relying on the unfounded assertion that "Mr. Muhammad has shown no effort to enroll in sex-offender treatment from 1982 to 2015." *Id.* The judge reached this conclusion even though "sex-offender treatment may not be easily accessible to all inmates." *Id.*

[12] Mr. Muhammad's immediate family is either deceased or otherwise inaccessible.

Finally, the judge expressly considered the nature of Mr. Muhammad's underlying offenses, stating they "raise serious concerns about whether he is dangerous and are relevant to the Court's analysis of [his] rehabilitation and fitness to reenter society." Order 25. The judge emphasized that he "had time to pause and reflect" between them, and asserted that [redacted]." *Id*. at 25-26.[13]

The judge also concluded that it was not in the interests of justice to reduce Mr. Muhammad's sentence. Reasoning that "[s]entencing factors are also relevant to a resentencing," Order 26, he looked to the determinate sentencing statute, D.C. Code § 24-403.01, and the Sentencing Guidelines Manual, which identify the "seriousness of the offense" as a necessary consideration. Order 26-27. The judge also drew from the determinate sentencing statute the principle that a sentence should provide "just punishment" and "adequate deterrence," D.C. Code § 24-403.01(a)(2), concluding, "The nature of the offense is relevant to both punishment and deterrence so that the Court may determine what punishment is appropriate, especially because the need for punishment and deterrence may vary greatly with the nature of the offense." Order 27.

Applying these principles, the judge calculated that, if sentenced today, Mr. Muhammad would "likely" receive a sentence at least 11 years longer than the 42

[13] The trial court did not address Mr. Muhammad's presentence report, which noted that Mr. Muhammad had been using PCP for "several years" and that this had "affected his behavior considerably." Gov. Ex. B. at 10.

years he had already served. Order 28. As a result, he concluded "that reducing Mr. Muhammad's sentence so that he only serves 42 years of incarceration would not serve the sentencing goals of punishment and general deterrence, and therefore would not be in the interests of justice." *Id.* He noted that Mr. Muhammad would be eligible to reapply for IRAA in three years, "which may give him the opportunity to address the Court's concerns such as his lack of sex offender treatment and improve his disciplinary record." *Id.*

SUMMARY OF ARGUMENT

The trial court erred in determining that Mr. Muhammad was still dangerous based on a lack of sex offender programming and a disciplinary infraction from 2016 for filing administrative grievances after being warned to stop. First, where Mr. Muhammad had been on a waitlist for sex offender treatment since 2015, the trial court abused its discretion in relying on his lack of such programming to find him dangerous, because this programming was not "available" to him. *See* D.C. Code § 24-403.03(c)(3). *Cf. Bishop v. United States*, 310 A.3d 629, 642 n.7 (D.C. 2024). The trial court also abused its discretion in assuming without record support that he needed sex offender treatment to be non-dangerous.

Second, the trial court erred in finding Mr. Muhammad dangerous based on his 2016 disciplinary infraction for an offense the BOP described as "stalking," where the underlying conduct bore no similarity to the conduct that led to Mr.

Muhammad's convictions and both the BOP's own risk assessment tools and an unrebutted expert established that he presented a very low risk of recidivism.

Third, the trial court erred in its dangerousness analysis by holding Mr. Muhammad to an erroneously elevated burden of proof, dismissing his "minimum" PATTERN score because it did not "guarantee" non-dangerousness, even though IRAA requires petitioners to prove non-dangerousness by no more than a preponderance of the evidence, *cf. Bailey v. United States*, 251 A.3d 724 (D.C. 2021); and devaluing an unrebutted expert report and Mr. Muhammad's letter of remorse because the defense offered them as written submissions rather than through live testimony, even though IRAA permits written submissions, the government did not challenge these submissions, and the judge affirmatively told Mr. Muhammad his decision not to testify would not be held against him.

Finally, the trial court erred in its interests-of-justice analysis when it found that the 42 years Mr. Muhammad had already served was not enough to "reflect the seriousness of the offense" or "achieve the goals of punishment and general deterrence." IRAA does not permit judges to deny relief because an offense was serious, *see Bishop*, 310 A.3d at 649, or to rely on authorities outside of IRAA—like the determinate sentencing scheme—to guide the interests-of-justice analysis, *see Williams v. United States*, 205 A.3d 837, 854 (D.C. 2019) ("[T]he IRAA itself clearly sets forth the criteria that the court must consider."). Because the record

established as a matter of law that Mr. Muhammad was not dangerous and that the interests of justice warranted release, this Court should reverse the denial of relief and remand to effectuate his immediate release.

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING DANGEROUSNESS BASED ON MR. MUHAMMAD'S FAILURE TO COMPLETE SEX OFFENDER TREATMENT THAT WAS UNAVAILABLE TO HIM AND A 2016 INFRACTION FOR SUBMITTING ADMINISTRATIVE GRIEVANCES AFTER BEING INSTRUCTED NOT TO DO SO.

The trial court erred in ruling that Mr. Muhammad was still dangerous. In so ruling, the judge primarily relied on his lack of sex offender treatment, even though he had been on the waitlist since 2015, and a 2016 disciplinary infraction for filing multiple grievances against BOP staff members, categorized by the BOP as "stalking." Order 24-25. At the same time, the judge rejected evidence of non-dangerousness, dismissing Mr. Muhammad's "low" PATTERN score because it did not "guarantee" non-dangerousness, and discounting Dr. Keller's expert opinion and Mr. Muhammad's statement of remorse because those submissions were in writing, and did not come in through live testimony.

This Court reviews the denial of an IRAA motion for an abuse of discretion. *See Bishop v. United States*, 310 A.3d 629 (D.C. 2024). A trial court exercises its discretion erroneously where its decision is not "drawn from a firm factual foundation." *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979). It also abuses its discretion when it misapplies the governing legal principles, such as when it "fail[s] to consider a relevant factor" or "relie[s] upon an improper factor,"

or when "the reasons given [do not] reasonably support the conclusion." *Long v. United States*, 312 A.3d 1247, 1269 (D.C. 2024), (citing *Crater v. Oliver*, 201 A.3d 582, 584 (D.C. 2019)); *see also Vining v. District of Columbia*, 198 A.3d 738, 754 (D.C. 2018) ("A court by definition abuses its discretion when it makes an error of law." (citation omitted)).

The trial court abused its discretion in three key ways when it found Mr. Muhammad was still dangerous. First, it misapplied Factor (c)(3) by requiring programming that wasn't available to Mr. Muhammad, after assuming without evidentiary support that he needed sex offender treatment to be non-dangerous. *See* D.C. Code § 24-403.03(c)(3). Second, it drew a factually unsubstantiated analogy between the sexual assaults he was convicted of in 1982 and a 2016 disciplinary offense for filing repeated grievances against BOP staff members, based on the BOP's use of the word "stalking" in the title of the infraction. And third, it held Mr. Muhammad to an erroneously elevated burden of proof by dismissing his "minimum" PATTERN score because it did not "guarantee" non-dangerousness, and penalizing the defense for relying on written submissions rather than live testimony. These errors were essential to the judge's dangerousness ruling, and therefore warrant reversal.

A. THE TRIAL COURT ERRED WHEN RELYING ON THE LACK OF SEX OFFENDER TREATMENT TO FIND MR. MUHAMMAD DANGEROUS, BECAUSE THIS PROGRAMMING HAS NOT BEEN AVAILABLE TO MR. MUHAMMAD IN BOP.

The trial court's ruling that Mr. Muhammad was dangerous because he had not completed sex offender treatment was factually and legally flawed. Factually,

the judge had no basis for the assumption that this treatment was essential to a finding of non-dangerousness, especially given the record evidence to the contrary. Legally, the judge misapplied Factor (c)(3), which directs judges to consider participation in programming "where available," by penalizing Mr. Muhammad for his failure to complete treatment that was *not* "available" to him, as evidenced by the fact that he had been on the waitlist for eight years. The trial court similarly erred by inferring dangerousness from the fact that Mr. Muhammad did not join the waitlist *before* 2015, both because there was no evidence that he could have done so, and because even if he could have, his pre-2015 state of mind about sex offender treatment was not relevant to current dangerousness.

As an initial matter, the record did not support the trial court's premise that Mr. Muhammad could not be safely released to the community without completing sex offender treatment. To the contrary, the evidence amply established that Mr. Muhammad already posed a very low risk of recidivism and did not need sex offender treatment. The BOP's own PATTERN risk assessment reflected a "minimum" risk of recidivism, and Mr. Muhammad's BOP custody classification was the "lowest possible," permitting "community" placement. Def. Motion 32, 36. The government did not dispute either of these BOP assessments. In addition, Mr. Muhammad's most recent individualized programming plan from BOP did not include sex offender treatment as a short- or long-term goal. Tr. 39. [redacted] In contrast,

the government offered no evidence that sex offender treatment was necessary to render someone non-dangerous where other risk assessments uniformly indicated a low risk of any type of recidivism.

Despite the lack of a factual foundation to support a conclusion that Mr. Muhammad needed sex offender treatment before he could safely be released, the judge repeatedly assumed that sex offender treatment was essential to non-dangerousness. *See, e.g.*, Order 24 ("Mr. Muhammad continues to ignore, or deny, his need for sex offender treatment."); Order 24 ("The Court finds that . . . his failure even to recognize the need for such treatment . . . ."); Order 16 ("The Court also finds that Mr. Muhammad's programming record, specifically his lack of sex offender treatment, does not establish rehabilitation[.]"); Order 15 ("The Court is concerned that Mr. Muhammad remains a danger to the community due to his . . . lack of sex offender treatment[.]"); Order 14 ("[I]t is alarming that Mr. Muhammad has never received this important treatment over 42 years."). The judge erred in adhering to this premise without a factual foundation.

The trial court also misapplied Factor (c)(3), and thus abused its discretion, by penalizing Mr. Muhammad for not completing programming that was not available to him. Factor (c)(3) directs judges to consider "whether the defendant has completed any educational, vocational, or other program, *where available*." D.C. Code § 24-403.03(c)(3) (emphasis added). Sex offender treatment was not available to Mr. Muhammad, as the record plainly showed. [redacted]

[redacted] Def. Ex. 13 at 2; *see also* Tr. 39. Though the government suggested Mr. Muhammad had left the waitlist, Tr. 28, the BOP paperwork showed and defense counsel clarified that this was incorrect. Tr. 39.

The government was also incorrect when it asserted, without evidence, that it was "not credible . . . to assume that [he] has been waiting eight years for this programming." Gov. Opp. at 13. That was precisely the case. As defense counsel explained, and the government acknowledged, the BOP deprioritizes people like Mr. Muhammad, who are serving life sentences for D.C. Code offenses, when allocating the limited spots for this type of programming. Reply 14; Tr. 13, 28.[14] Mr. Muhammad's lengthy and ongoing wait for sex offender treatment means this programming was not "available" to him.

The judge agreed that Mr. Muhammad had been on the waitlist since 2015, and acknowledged that "as a D.C. inmate who is serving a longer sentence, [Mr. Muhammad] might not have received priority in program enrollment compared to other inmates once his incarceration was supervised by the Federal Bureau of Prisons," but still found it "alarming that Mr. Muhammad has never received this

[14] Recent data from the Department of Justice contextualize Mr. Muhammad's long wait: "The current program capacity is 239 and 4,333 inmates are awaiting placement in treatment. At the end of FY 2022, approximately 325 inmates were participating in Sex Offender Treatment Programs. To maximize public safety and taxpayer value, the Bureau ensures that programming slots are available for sexual offenders with a moderate-to-high risk of re-offending." U.S. Dep't of Just., *Fed. Prison Sys. FY 2024 Performance Budget Cong. Submission* 44, www.justice.gov /d9/2023-03/bop_se_fy_2024_pb_narrative_omb_cleared_3.23.2023.pdf.

important treatment over 42 years," and relied on the lack of this programming as a key factor in finding Mr. Muhammad currently dangerous. Order 14.

By relying on Mr. Muhammad's lack of this programming despite its unavailability the judge misapplied Factor (c)(3). IRAA directs judges to consider programming completion "where available." D.C. Code § 24-403.03(c)(3). In *Bishop v. United States*, this Court took note of "the possibility that there may be some circumstances in which a lack of programming opportunities" would excuse "programming shortcomings." 310 A.3d 629, 642 & n.7 (D.C. 2024). It cited Factor (c)(3) in support of this observation, and emphasized the words "where available." *Id.* at 642 n.7. Mr. Muhammad's eight-year stint on the waitlist and deprioritization for programming as a D.C. lifer precisely illustrate the possibility the *Bishop* Court contemplated. The trial court erred in holding the lack of inaccessible programming against Mr. Muhammad.

Factor (c)(3)'s direction that judges evaluate "available" programming aligns with the purpose of IRAA. IRAA serves to "ensur[e] 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). A "realistic, meaningful opportunity" for release, *Williams*, 205 A.3d at 849, is impossible if release is contingent upon completion of programming that a petitioner cannot access.

Finally, the trial court erred by penalizing Mr. Muhammad for not having signed up for sex offender treatment *prior to* 2015, Order 14, because the record

did not establish that Mr. Muhammad *could* have joined the waitlist any sooner and because Mr. Muhammad's mental state before 2015 was not relevant to current dangerousness. The judge faulted Mr. Muhammad for not signing up earlier, writing that "Mr. Muhammad has completely failed to establish any effort on his part to enroll in sex offender treatment from 1982 until 2015," and contrasting his "unwillingness for the first 33 years of incarceration to even seek sex offender treatment" with his "willingness" to complete substance abuse treatment. *Id.*

There was no evidence in the record to demonstrate that sex offender treatment even existed at the facilities where Mr. Muhammad was incarcerated prior to 2015. Even if he could have signed up before 2015, it is undisputed that he *did* sign up in 2015, eight years before the IRAA hearing. The judge had no basis to conclude that the choices he made before 2015, nearly a decade ago, reflected current dangerousness, especially in light of the ample up-to-date evidence of non-dangerousness, including his "minimum" PATTERN score and Dr. Keller's report indicating low recidivism risk and no need for sex offender treatment. Evaluating Mr. Muhammad's state of mind at the time of the motion, rather than a somewhat arbitrary previous point in time, better reflects the purpose of IRAA, which focuses on whether a petitioner's "current conduct proves further incarceration is not in the public interest." 2020 Committee Report at 12 (internal quotation marks omitted).

By assuming without record support that Mr. Muhammad needed sex offender treatment, despite unrebutted evidence in the record to the contrary, misapplying Factor (c)(3) by requiring sex offender treatment even though it was not available to him, and inferring current dangerousness based on what the court

believed was Mr. Muhammad's decision not to sign up for the waitlist before 2015, the court abused its discretion. This error was integral to the judge's finding that Mr. Muhammad was dangerous and warrants reversal, both in itself and in combination with the errors described in Part B and Part C.

B. THE TRIAL COURT ERRED IN INFERRING CURRENT DANGEROUSNESS BASED ON A 2016 BOP DISCIPLINARY INFRACTION FOR SUBMITTING GRIEVANCE FORMS AFTER BEING WARNED TO STOP.

The trial court also lacked a firm factual foundation for its conclusion that Mr. Muhammad was still dangerous based on a disciplinary infraction from 2016—seven years before he filed his IRAA motion—when Mr. Muhammad was sanctioned for submitting repeated administrative grievances after being warned to stop. The BOP's full title for the infraction was "stalking another person through repeated behaviors which harasses, alarms, or annoys the person after having previously been warned to stop such conduct,"[15] but the BOP paperwork and the government referred to it using the shorthand title of "Stalking." Gov't Opp. at 10. Although the government conceded that "stalking might mean one thing in the general public as it means something separate in BOP" and that "looking at the language of the DHO might carry more weight than the title," Tr. 27, the trial court relied heavily on the "stalking" shorthand title to draw an unsubstantiated analogy between the 2016 infraction and Mr. Muhammad's underlying conviction, and

[15] *See* U.S. Dep't of Just., Bureau of Prisons, *Program Statement 5270.09, Inmate Discipline Program*, 48 (July 8, 2011), https://www.bop.gov/policy/progstat/5270009.pdf.

used this flawed analogy to infer continued dangerousness. Because the facts did not support this inference, particularly in light of other record evidence establishing Mr. Muhammad's current non-dangerousness, the trial court erred. "Just as a trial court's action is an abuse of discretion if no valid reason is given or can be discerned for it, so also it is an abuse if the stated reasons do not rest upon a specific factual predicate." *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979) (citations omitted).

There was no allegation of any sexual or violent conduct in connection with the 2016 disciplinary infraction; the specific conduct that led to the infraction was the filing of five BP-229 administrative grievance forms against a BOP cook after previously being told to stop emailing a different BOP employee. Order 12. According to the DHO report, Mr. Muhammad received "a verbal warning" after he emailed complaints to the Reentry Affairs Coordinator at USP Yazoo City in 2016. The BOP described these emails as "inappropriate" because they addressed the recipient as "Dear Beloved" and told her "how she needed to do her job." Order 12. Mr. Muhammad also complained about the reentry coordinator's response to another BOP staff member, saying "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me." Order 12. He was warned that if he continued this "harassing behavior" towards the reentry coordinator he would be written up.

The DHO report alleged that several months later, Mr. Muhammad filed five BP-229 grievance forms against a Cook Supervisor, leveling a range of complaints against her, including poor food preparation, lying, and stealing, and calling her

two offensive names. The report writer stated the complaints "caused [her] to feel as if she was being harassed," and that she was "very upset" about them and felt "her safety would be in danger" if Mr. Muhammad were released to the general prison population. Citing the prior verbal warning regarding the emails to the Reentry Coordinator, BOP staff gave Mr. Muhammad an infraction for "Code 225 (Stalking)" based on "continued actions of harassing and threatening."

The BOP did not allege that Mr. Muhammad had engaged in any kind of sexual harassment or physical misconduct. And although the DHO report alleged "constant behavior toward female staff," it identified no behavior other than the complaints and grievance forms to two particular staff members. As defense counsel noted, the DHO complaint also referred to Mr. Muhammad's underlying offenses—his "history of 'taking hostages' and committing 'rape'"—in concluding that these complaints posed a threat, suggesting that staff were prejudiced against him based on his convictions. Reply 11 n.36.

Although both BOP and the government referred to the Code 225 infractions that Mr. Muhammad was disciplined for as "stalking," the details of the underlying conduct establish that it qualified more accurately as "annoyance" or "harassment"—both of which fall within the expansive scope of Code 225—rather than "stalking" as it is ordinarily understood. Code 225 encompasses "repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct." This is significantly broader than the D.C. Code offense for stalking, which makes it a crime "to purposefully engage in a course of conduct directed at a specific individual: (1) with the intent to cause

that individual to (A) fear for his or her safety or the safety of another person; (B) feel seriously alarmed, disturbed, or frightened; or (C) suffer emotional distress." D.C. Code § 22-3133. Notably, BOP Code 225 lacks any requirement that the person intend to cause fear or distress. The government itself conceded that the "stalking" moniker carried connotations that were not accurate, and agreed that it was better to look at the underlying conduct. Tr. 27.

Nonetheless, the trial court erroneously drew an analogy between the 2016 disciplinary offense and Mr. Muhammad's convictions, drawing heavily on the "stalking" title and inferring a component of sexual aggression that was not supported by the record. Tr. 30. "[W]hen I see stalking," the judge said, "it seems to me in some ways similar to following somebody in a vehicle, smashing into a vehicle and then sexually assaulting them." Tr. 30. "[W]hen I see conduct that arguably is similar to that he engaged in prior to being placed in custody, it gives me some concern for the safety of the community." *Id. See also* Tr. 26 ("[The] offenses that concern me are the infractions . . . for stalking, sexual proposals, and threats and threatening bodily harm. Those are not Category 100 infractions, but they are serious ones and they relate in many ways to the offenses . . . ."); Order 11 ("Mr. Muhammad's infraction for 'stalking,' however, raises significant concerns, especially in light of Mr. Muhammad's convictions for two rapes, one attempted rape, one first degree murder, and one armed robbery, all of which he committed after sta[l]king the victims by driving on the beltway and stalking women who were driving alone."). The judge's inference of similarity grew from improper reliance on the prejudicial connotations of the word "stalking." The record did not

support the inference that the 2016 infraction was similar to Mr. Muhammad's offenses of conviction from 1982. The judge erred by relying on the prejudicial connotations from the term 'stalking' to make the inferential leap that Mr. Muhammad remains dangerous because of the repeated administrative complaints he filed in 2016.

Nor did the record support the judge's inference that the seven-year-old infraction indicated current dangerousness, especially in light of the ample evidence that he posed minimal risk to the community if released, including his PATTERN score, his "lowest possible" custody classification score, Dr. Keller's expert opinion, his lack of any 100-level offenses, and his clear disciplinary record since 2016 – all of which took into account his underlying offenses and his full disciplinary record, including the 2016 infraction. *See* supra, 25 – 26. Indeed, other evidence in the record established Mr. Muhammad's frequent use of the BOP administrative system to advocate for better treatment while incarcerated, which was sometimes to the ire of the BOP, but not dangerous. As one of his supporters noted, Mr. Muhammad "filed administrative remedies against unfair policies and practices, and the staff would unjustly disrupt his filing processes. Mr. Muhammad remained resilient because he was attempting to better conditions for all inmates regardless of race, creed or color. Never violent, just relentless in his pursuit of institutional judgement and justice." Def. Ex. 8. Prison staff corroborated this view of Mr. Muhammad. His counselor at USP Coleman I, where Mr. Muhammad was incarcerated for years, remembers Mr. Muhammad as "not a problem" on his unit even though he often would "file a lot" "for himself or other inmates" because "he

wanted everyone to be treated a certain way." Def. Motion 22. The judge erred by inferring current dangerousness, based on the 2016 infraction.

C. THE TRIAL COURT HELD MR. MUHAMMAD TO AN ERRONEOUSLY ELEVATED BURDEN OF PROOF IN REQUIRING EVIDENCE THAT "GUARANTEED" NON-DANGEROUSNESS AND DISCOUNTING WRITTEN SUBMISSIONS.

The trial court compounded the errors made in its dangerousness analysis by holding Mr. Muhammad to an erroneously high burden of proof, dismissing his uncontested "minimum" PATTERN score because it did not "guarantee" that he would not reoffend, and discounting the expert opinion of Dr. Keller and Mr. Muhammad's own statement of remorse because the defense offered them as written submissions rather than live testimony. Because IRAA requires petitioners to establish non-dangerousness by at most a preponderance of the evidence, *see Welch v. United States*, 319 A.3d 971, 977 (D.C. 2024); expressly permits applications for relief to "include affidavits or other written material," D.C. Code § 24-403.03(b)(1); and does not require live testimony, the trial court abused its discretion in demanding a "guarantee" and live testimony.

"Judicial discretion must . . . be founded upon correct legal principles, and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards." *In re J.D.C.*, 594 A.2d 70, 75 (D.C. 1991) (citations omitted); *Johnson*, 398 A.2d at 365. "Whether the court applied the correct legal standard is a question of law" subject to de novo review. *Mitchell v. United States*, 80 A.3d 962, 971

(D.C. 2013). A trial court errs as a matter of law when it "applies an incorrect standard of proof." *Cerovic v. Stojkov*, 134 A.3d 766, 777 (D.C. 2016).

While this Court has not decided the precise burden of proof by which an IRAA petitioner must establish non-dangerousness,[16] there is no question that the burden is no higher than preponderance of the evidence. *See Welch*, 319 A.3d at 977. That standard merely "requires proof that something more likely than not exists or occurred." *Haley v. United States*, 799 A.2d 1201, 1209 n.6 (D.C. 2002); *see also In re E.D.R.*, 772 A.2d 1156, 1160 (D.C. 2001) (explaining that the standard is met when the evidence "as a whole shows that the fact sought to be proved is more probable than not" (quoting Black's Law Dictionary 1182 (6th ed. 1990))). It does not come close to requiring a "guarantee," which is "a promise from someone that something will be done or will happen."[17]

In *Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021), this Court reversed a denial of compassionate release because it appeared that the trial court "may have applied a higher standard of proof" than the correct preponderance standard, where the trial court did not "say or indicate it applied the preponderance

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[16] *See Welch v. United States*, 319 A.3d 971, 977 (D.C. 2024) (assuming the preponderance standard where neither party argued otherwise); *Bishop v. United States*, 310 A.3d 629, 636 n.3 (D.C. 2024) (refraining from deciding whether the defendant must establish non-dangerousness by a reasonable probability or by a preponderance of the evidence because the defense had argued only in the reply brief that the reasonable probability standard applies). Mr. Muhammad has more than met his burden under either standard.

[17] *Guarantee (n.)*, Cambridge University Press. Cambridge dictionary. Retrieved November 4, 2024 from https://dictionary.cambridge.org/us/dictionary/english/guarantee.

standard to the ultimate issue of dangerousness" and instead used "language arguably implying otherwise in the absence of a clear statement to that effect." 251 A.3d at 730. Specifically, the trial court stated it "must be confident" in Bailey's non-dangerousness, that it must "*ensure* that the record" showed non-dangerousness, and that it must have "*sufficient comfort*" in finding non-dangerousness before granting compassionate release—all formulations this Court found to be "in serious tension with a preponderance standard." *Id.* (emphases in original). Although the trial court also stated it needed to consider whether certain factors "on balance" weighed for or against release—an expression that "resembles" a preponderance standard, *id.* at 730 & n.5—this Court concluded it could not presume on this record that the trial court "rigorously followed" the correct standard, especially where the statute itself "d[id] not articulate a clear standard" and this Court had not yet done so. *Id.* at 730.

Here, as in *Bailey*, the trial court never identified the preponderance standard or any other standard as the governing framework, and used language signaling that it held Mr. Muhammad to a much higher burden in establishing non-dangerousness. Specifically, it dismissed the highly persuasive, uncontested evidence from the government's own PATTERN risk assessment showing a "minimum" risk of recidivism on the ground that "while Mr. Muhammad's PATTERN score may serve as a general predictor of a person's behavior after release, a PATTERN score is *no guarantee* of how Mr. Muhammad will behave outside of prison." Order 16-17 (emphasis added). Where Mr. Muhammad needed

to establish at most that more likely than not he could be safely released, the trial court's demand for a "guarantee" of non-dangerousness was error.

The trial judge also erroneously elevated the burden on the defense by devaluing the defense's written submissions—namely, Dr. Keller's expert report and Mr. Muhammad's letter to the court—as inherently inferior to live testimony, even though IRAA expressly authorizes "affidavits or other written material" in support of the application. D.C. Code § 24-403.03(b)(1). The trial court did so even though the government did not object to Dr. Keller's written report or dispute its content, and despite explicitly assuring Mr. Muhammad at the hearing that it would not hold against him a decision not to speak.

In the appendix accompanying the IRAA motion, the defense submitted Dr. Keller's written psychological evaluation report, which concluded based on an evaluation of Mr. Muhammad that he was at low risk of violent or sexual recidivism. Def. Motion 1; Def. Ex. 2 at 18. The government did not oppose the submission of Dr. Keller's written report, nor did it seek to rebut the report with competing expert evidence of any kind. Indeed, the government did not mention Dr. Keller's report either in its written pleading or at the hearing. And despite defense counsel's extensive reliance on the report at the hearing, the trial court likewise said nothing about Dr. Keller's report. It did not request the presence of the expert at the hearing, it did not ask any questions about Dr. Keller's methodology, and it did not avail itself of its ability under D.C. Code § 24-403.03(b)(2) to "direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion."

Nonetheless, in its written order, the trial court devalued Dr. Keller's conclusions that Mr. Muhammad presented a low recidivism risk and did not need sex offender treatment because she "was not made available at the evidentiary hearing for questioning or cross-examination," Order 19, and the court "did not have the opportunity to inquire of Dr. Keller about how she came to her conclusions . . . ." *Id.* at 15. This is despite the fact that, as the trial court recognized, "[t]he Government did not oppose Defendant's submission of the report and also did not assert that the Court could not rely on this report because the Defendant did not call Dr. Keller as a witness, thus depriving the Government the opportunity to cross-examine her." Order 18. Concluding that "Dr[.] Keller's conclusions . . . are based solely on a two-hour telephone conversation with Mr. Muhammad," the trial court determined that "[a]lthough the report provides one evaluator's assessment of Mr. Muhammad's tendency toward reoffending, it does not demonstrate to the Court that Mr. Muhammad would not be a danger upon release." Order 16-17.

Similarly, the trial court devalued Mr. Muhammad's letter to the court expressing remorse and taking responsibility for his offenses because he did not testify at the hearing—and did so despite expressly reassuring Mr. Muhammad that a decision not to speak would not be held against him. At the hearing, the judge said that "Mr. Muhammad is free to make a statement if he wishes, but does not have to." Tr. 40. Later, the trial court offered Mr. Muhammad an additional opportunity to speak before the end of the hearing, but assured him that his "[f]ailure to say anything will not be held against [him]." Tr. 47. After reading

extensively from Mr. Muhammad's letter, defense counsel explained that Mr. Muhammad was "quite nervous to be in court" and "over the years he has turned to . . . his written word as the best way to express himself and so he would just ask that the Court consider his letter to the court . . . ." Tr. 48. The judge responded, "Sure," and assured him "whether it's . . . orally or in writing, I understand—I certainly also understand nervousness in speaking in a setting such as this in a courtroom, it may be difficult for people to do." Tr. 48.

In sharp contrast to its statements at the hearing, however, the trial court devalued this evidence in its written order because it was submitted in writing and not through live testimony, explaining as follows:

> While he had no legal obligation to testify and subject himself to cross examination, Mr. Muhammad's decision not to testify made it more difficult for the Court to assess whether his letter, which may have been drafted or edited by others, was an accurate depiction of his feelings. As the moving party, the burden is on Mr. Muhammad to demonstrate that he is not dangerous. He chose not to exercise the opportunity to testify at the hearing and describe any remorse he felt, and why he believes he has matured while incarcerated.

Order 17.[18] The trial court went on to decide that even in combination, Mr. Muhammad's "minimum" PATTERN score—which the court discounted as not a "guarantee" of non-dangerousness—and his letter of remorse and Dr. Keller's

[18] In contrast, the trial court did not similarly devalue written testimony presented by the government. The trial court credited a written Victim Impact Statement, provided by a victim of one of the offenses for which Mr. Muhammad was imprisoned, noting the impact Mr. Muhammad's "actions had and still continue to have on her more than four decades later" and finding this factor weighed against release. Order 18.

written expert report—both of which the court devalued based on a lack of live testimony—were "not sufficient to meet his burden of demonstrating maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction . . . ." Order 17.

The trial court's uncommunicated requirement that Mr. Muhammad make his case through live testimony rather than written submissions contradicted IRAA's express approval of written submissions and the trial court's own representations to Mr. Muhammad. The IRAA statute explicitly contemplates written submissions, both with the initial application and upon the court's request. It provides that "[t]he application may include affidavits or other written material," D.C. Code § 24-403.03(b)(1), and allows judges to "direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion," D.C. Code § 24-403.03(b)(2). No provision in the statute makes live testimony a requirement. As a consequence, written submissions in IRAA proceedings are common practice in Superior Court. *See, e.g.*, *United States v. Johnel McQueen*, 2004 FEL 002363, Order at 9-10 (D.C. Super. Ct. Oct. 21, 2024) (citing psychologist's written report as a factor weighing in favor of granting IRAA); *United States v. Lemetrious Lawson*, 1990 FEL 001569, Order at 20 (D.C. Super. Ct. Oct. 18, 2024) (citing written letter from the defendant as a factor weighing in favor of granting IRAA); *United States v. Charles Jordan*, 2005 FEL 003698, Order at 6-7 (D.C. Super. Ct. Oct. 10, 2024) (citing written letter from defendant and written psychological evaluation as factors weighing in favor of relief). Written expert reports, in particular, play a crucial role, given the

significant financial burden that expert testimony can impose, as reflected in expert fee caps for CJA attorneys representing IRAA petitioners.[19]

By implicitly demanding live testimony in order to credit Dr. Keller's unrebutted opinion of non-dangerousness and Mr. Muhammad's letter expressing remorse, the trial judge imposed an evidentiary burden at odds with IRAA and beyond its demands. The court exacerbated its error when it failed to communicate its live testimony requirement to counsel at a time when the record could be supplemented, or to avail itself of the express authority to "direct" the defense to "expand the record" to resolve apparent—though unspecified—questions about Dr. Keller's methodology or Mr. Muhammad's sincerity. And the stark about-face between the judge's assurance at the hearing that Mr. Muhammad's decision not to testify would "not be held against [him]," Tr. 47, and the Order, which in fact held that choice against him as part of his failure to carry his "burden," Order 17, represents a uniquely unfair prejudice. Like the court's desire for a "guarantee" of non-dangerousness, this erroneously stringent evidentiary requirement impermissibly elevated Mr. Muhammad's burden of proof. *See Vining v. District of Columbia*, 198 A.3d 738, 754 (D.C. 2018) ("A court by definition abuses its

[19] The Superior Court allows CJA attorneys $2400 for expert fees, with a cap of $10,000 for cases where a judge certifies a need for "services of an unusual character or duration." D.C. Super. Ct. Admin Order No. 22 – 15, Criminal Justice Act (CJA), Counsel for Child Abuse and Neglect (CCAN), and Post-Conviction Juvenile Case Guideline Fees (July 25, 2022) https://www.dccourts.gov/sites/default/files/2022-07/Administrative_Order_22-15_CJA_CCAN_Juvenile_Post-Conviction_Guideline_Fees.pdf

discretion when it makes an error of law." (internal quotation marks and citation omitted)).

The trial court's error in requiring Mr. Muhammad to establish non-dangerousness by more than a preponderance of the evidence, using live testimony, requires reversal. Mr. Muhammad established by far more than a preponderance that he posed no risk of harm if released and that the interests of justice warranted release, through his "minimum" BOP PATTERN score and "lowest possible" custody classifications, both of which took into account his entire disciplinary and programming record in BOP; Dr. Keller's expert report concluding that he presented a low risk of recidivism and did not need sex offender treatment; his clean record since 2016; and a re-entry plan that demonstrated he would have the support to avoid reoffending after release. The record and the judge's findings below "le[ft] the trial court with but one option it may choose without abusing its discretion," *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979)—and that was to find that Mr. Muhammad was not dangerous and should be released.

II. THE TRIAL COURT ERRED WHEN IT RELIED ON FACTORS SET OUT IN THE D.C. VOLUNTARY SENTENCING GUIDELINES, INCLUDING THE NATURE AND SERIOUSNESS OF THE UNDERLYING OFFENSE AND PRINCIPLES OF DETERRENCE AND JUST PUNISHMENT TO DETERMINE THAT IT WAS NOT IN THE INTERESTS OF JUSTICE TO RELEASE MR. MUHAMMAD.

The trial court also erred in concluding that the interests of justice did not warrant release because the 42-year sentence Mr. Muhammad had already served was not sufficient to "reflect the seriousness of the offense" or "serve the

sentencing goals of punishment and general deterrence." Order 26-28. IRAA does not permit a court to deny relief on the ground that a petitioner deserves to serve more time because his offense was serious. *Bishop v. United States*, 310 A.3d 629, 649 (D.C. 2024). Nor does it permit judges to rely on authorities outside of IRAA—such as the determinate sentencing scheme and sentencing guidelines the judge invoked here—to guide the interests-of-justice analysis, especially not in a way that conflicts with IRAA itself. *See Williams v. United States*, 205 A.3d 837, 854 (D.C. 2019) ("IRAA itself clearly sets forth the criteria that the court must consider."). The trial court's erroneous interests-of-justice analysis requires reversal. *In re J.D.C.*, 594 A.2d 70, 75 (D.C. 1991) ("Judicial discretion must . . . be founded upon correct legal principles, and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards." (citations omitted)); *Johnson*, 398 A.2d at 365.

In *Bishop*, this Court emphasized the D.C. Council's efforts to curtail reliance on the nature of the underlying offense in an IRAA analysis, and pointedly "encourage[d] trial courts to bear in mind" specific legislative decisions calculated to achieve that end:

> [T]he D.C. Council removed language in factor three instructing courts to specifically consider the "nature of the offense[]"; expressed concern with an "over-reliance on the underlying offense" as a reason for "denying petitions of potentially rehabilitated defendants," 2020 Committee Report at 19; noted that "[i]ndividuals eligible to petition for relief under the IRAA have *all* served long sentences for *exclusively* serious offenses," *id*.; and made clear in factor ten that courts must consider the diminished culpability of those under age

> twenty-five "despite the brutality or cold-blooded nature of any particular crime," D.C. Code § 24-403.03(c)(10).

310 A.3d at 649 (internal citations omitted). Here, however, despite paying lip service to *Bishop* and purporting not to rely "solely or heavily . . . on the underlying offenses in making its decision," Order 9-10, the trial court placed the nature of the offense at the very heart of its interests-of-justice analysis, reasoning that "it would not be in the interests of justice to reduce a sentence that, when reduced, would not adequately reflect the seriousness of the offense." *Id.* at 27.

In reaching this conclusion, the trial court looked outside of the IRAA statute to the determinate sentencing scheme—which does not apply to Mr. Muhammad[20]—and the Voluntary Sentencing Guidelines Manual, both of which identify the "seriousness of the offense" as a factor to consider in sentencing. Indeed, the Sentencing Guidelines Manual says that the underlying offense is "one of 'the dominant factors in sentencing,'" because "'[a]s the seriousness of the offense . . . increase[s], the length of the prison sentence increases.'" Order 26 (quoting D.C. Sent'g Comm'n, Voluntary Sentencing Guidelines Manual at 1.1 (Sept. 1, 2023)).[21] The trial court further reasoned that "[t]he nature of the offense is relevant to both punishment and deterrence"—two "goals" identified in the

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[20] The determinate sentencing scheme applies to people who committed felonies "on or after August 5, 2000." D.C. Code § 24-403.01. Because Mr. Muhammad's offenses occurred in 1982, his sentence fell under the indeterminate sentencing scheme, D.C. Code § 24-403.

[21] The judge also endorsed the reasoning of a non-precedential District Court opinion, *United States v. White*, 2023 U.S. Dist. LEXIS 142049, at *18-19 (D.D.C. Aug. 4, 2023). Order 8-9.

determinate sentencing statute. Order 27. It then consulted the Sentencing Guidelines and what it believed to be "applicable mandatory minimum sentences" to estimate the sentence Mr. Muhammad might receive for his 1982 offenses if he were "sentenced today" in the first instance, concluding that he would "likely" receive "at minimum, 11 years longer" than he had already served. Order 27-28. It concluded that "reducing Mr. Muhammad's sentence so that he only serves 42 years would not serve the sentencing goals of punishment and general deterrence, and therefore would not be in the interests of justice." *Id.* at 28.

The trial court's interests-of-justice analysis relied overwhelmingly on the nature of Mr. Muhammad's offenses, flouting this Court's cautionary directive in *Bishop* and defying the statutory text and legislative history that case highlighted. It not only invoked the "seriousness of the offense" as an important factor—even the "dominant" factor—in its own right, but also used it as the baseline for deciding that his 42 years fell short of a "just punishment" or an adequate deterrent. The entire analysis flowed from the premise that the more serious the offense, the longer the sentence must be to be "just."

IRAA rejects that premise. It reflects the determination that because young people are fundamentally different from adults in ways that make them less culpable and more capable of change, continued incarceration is not in the public interest for those who can demonstrate "maturity and rehabilitation" after committing crimes in their youth and serving at least 15 years in prison. *Williams*, 205 A.3d at 849; 2020 Committee Report at 12; *see also Bishop*, 310 A.3d at 645-46. The statute thus directs judges to consider specific factors calculated to assess

a petitioner's current dangerousness and rehabilitation. *See* D.C. Code § 24-403.03(c). It does not permit judges to deny relief on retributive grounds.

As this Court observed in *Bishop*, the Council has repeatedly amended IRAA to prevent judges from doing just what the trial court did here, and ruling that the interests of justice do not support release because the underlying offense was very serious. The Council not only deleted "the nature of the offense" as a required "standalone" consideration in Factor (c)(2), "in response to the over-reliance on the underlying offense by the USAO as an argument for denying the petitions of potentially rehabilitated defendants." 2020 Committee Report at 19. It also amended Factor (c)(10) to add language explicitly stating that the diminished culpability and hallmark features of youth counsel against *all* "lengthy terms in prison, *despite the brutality or cold-blooded nature of any particular crime*." Omnibus Public Safety and Justice Amendment Act of 2018, D.C. Law 22-313, § 16(b)(3)(B) (eff. May 10, 2019) (emphasis added). By explicitly stating that lengthy prison terms are inappropriate even for "brutal," "cold-blooded" offenses, the Council dictated that lengthy sentences are *not* fair punishment for young people. And Factor (c)(10)'s language is mandatory; it forecloses "case-by-case determinations of the degree to which the underlying offense was motivated by the 'hallmark features of youth.'" *Bishop*, 310 A.3d at 646.

The statute's uniform eligibility threshold of "15 years in prison," without regard to the offense of conviction, *see* D.C. Code § 24-403.03(a)(1), likewise reflects the legislative determination that a 15-year term is long enough to satisfy goals of retribution and deterrence, even when a petitioner committed very serious

crimes. As the Council explained, IRAA-eligible defendants—those who have served at least 15 years—"have *all* served long sentences for *exclusively* serious offenses . . . ." 2020 Committee Report at 19; *Bishop*, 310 A.3d at 649. The trial court's ruling that the interests of justice did not support release because justice required a sentence longer than 42 years for Mr. Muhammad's convictions therefore flatly contradicted IRAA's text, purpose, and legislative history.

The trial court erroneously ignored the existence of IRAA and the legislative findings it reflects when it deemed the sentencing guidelines "a useful reference in determining what amount of incarceration . . . would be in the interests of justice." Order 27. However long a sentence the guidelines might permit if Mr. Muhammad were sentenced today in the first instance, because he was only 18 at the time of his offenses, IRAA ensures that he would be eligible to seek release after serving 15 years, even if he had not yet served the mandatory minimum term. *See* D.C. Code § 24-403.03(e)(2)(A) (permitting a judge granting an IRAA motion to "issue a sentence less than the minimum term otherwise required by law"). Mr. Muhammad has served nearly three times that term. If a judge could invoke the interests of justice to deny release whenever the guidelines authorize a longer sentence than an IRAA petitioner has already served, IRAA would be rendered a nullity.

The trial court further erred in turning to authorities outside of IRAA—specifically, the determinate sentencing statute and the sentencing guidelines—to guide its interests-of-justice analysis. The error was especially acute because the key feature the trial court drew from these other sources was the centrality of the

"seriousness of the offense"—in flagrant conflict with IRAA. *See Johnson*, 398 A.2d at 365 (explaining that a trial court abuses its discretion where it "relie[s] upon an improper factor" (citation omitted)). IRAA is a standalone "resentencing" scheme that "clearly sets forth the criteria that the court must consider" in reducing a sentence. *Williams*, 205 A.3d at 849, 854. It does not refer courts to the factors in the determinate sentencing scheme or the sentencing guidelines. IRAA's silence about any factors outside those it itself sets out stands in contrast to the compassionate release statute, which explicitly directs judges to consider the factors of the federal pretrial detention statute, 18 U.S.C. § 3142(g), and the federal sentencing statute, 18 U.S.C. § 3553(a), in determining whether an individual is "a danger to the safety of any other person or the community." D.C. Code § 24-403.04(a). The Council knew how to refer judges to statutory factors outside IRAA, and if it had meant to do so here, "it surely could have said so." *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1237 (D.C. 1990).[22]

[22] Indeed, when the Council first enacted IRAA, it borrowed heavily from a federal bill, but omitted the bill's cross-reference to the federal sentencing statute, which directs judges to consider retributive goals, including "the need for the sentence imposed . . . to reflect the seriousness of the offense." *See* D.C. Council, Comm. on the Judiciary, Rep. on Bill 21-0683 at 14 & n.72 (Oct. 5, 2016) (citing Sentencing Reform and Corrections Act of 2016, S. 2123, 114th Cong. § 209 (2015)) ("SRCA"). The Council's decision to omit any equivalent reference to factors in either the District's determinate sentencing statute, D.C. Code § 24-403.01, or the federal scheme when it otherwise borrowed the SRCA nearly verbatim indicates a choice—from IRAA's very inception—not to import a traditional broad-scale sentencing inquiry that includes retributive principles based on the nature of the offense.

Even if IRAA somehow permitted trial courts to borrow from outside authorities in conducting its interests-of-justice analysis, it plainly does *not* permit courts to rely on extra-IRAA authorities to do what IRAA itself forbids, and put the nature of the offense at the center of the analysis. This is precisely what the trial court did when it cited the determinate sentencing statute and the Sentencing Guidelines Manual for the principle that the "seriousness of the offense" is an important factor in its own right and also a way to gauge whether a particular sentence is long enough to serve the goals of "just punishment" and deterrence. The trial court interests-of-justice analysis relied on a flawed framework and an improper factor, and requires reversal.

CONCLUSION

For the reasons set out above, Mr. Muhammad respectfully requests that this Court vacate the judgment of the Superior Court and remand the case for resentencing to effectuate his immediate release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served electronically via the Appellate E-Filing System, upon Chrisellen Kolb, Esq., Chief, Appellate Division, Office of the United States Attorney on this 18th day of November, 2024.

/s/ Areeba Jibril
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