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

REPLY BRIEF FOR APPELLANT

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Until the trial court's *sua sponte* order in this case, no one had ever suggested that an unsuccessful IRAA petitioner must wait for his appeal to resolve, *plus* an additional three years, before filing his second motion. Rather, everyone who had described the statute's waiting-period provision stated simply that the wait begins from the date of the trial court's final order. That is how the committee report accompanying the first version of the IRAA described the provision, stating 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[.]" D.C. Council, Comm. on the Judiciary, Rep. on Bill 21-0683 at 14 (Oct. 5, 2016) (hereinafter "2016 Committee Report"). That is also how the government described the statute in 2018, when it matter-of-factly explained that the waiting period for a second motion begins "after the denial" of the first motion. Brief for United States at 12, *Williams v. United States*, No. 16-CO-570 (Apr. 5, 2018). This Court read the statute the same way in *Williams*, when it stated that "[i]f a defendant's initial motion for a reduced sentence is denied, . . . [he] may file a second sentence reduction motion after five years[.]" *Williams v. United States*, 205 A.3d 837, 848 (D.C. 2019). And every other Superior Court judge to have mentioned the IRAA's waiting period has understood that period to begin on the date of the trial court's written order denying the initial motion.[1]

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[1] *See United States v. Scott*, No. 1994 FEL 000947, Order at 16 (D.C. Super. Ct. Mar. 23, 2023) (Cordero, J.) (ordering "that pursuant [to] D.C. Code § 24-403.03(d), Defendant Dwayne Scott may file a second IRAA motion three years from the date of this order"); *United States v. Henny*, No. 1993 FEL 004073, Order at 17 (D.C. Super. Ct. Dec. 6, 2022) (Ryan, J.) (ordering that second motion may be filed "as soon as three years following the issuing of this Order"); *United States v. Bishop*, No. 1994 FEL 012247, Order at 24 n.11 (D.C. Super. Ct. July 22, 2022) (Park, J.) (noting that "Mr. Bishop will be eligible under the statute to apply for IRAA relief

As Mr. Williams argued in his opening brief, the trial court was wrong to cast aside that common-sense consensus. All of the available evidence indicates that the D.C. Council intended for unsuccessful IRAA petitioners to be able to file their next motion three years after the date of the trial court's final order. That is the plain meaning of the text, as shown by how the government, this Court, and other Superior Court judges have explained the IRAA's waiting periods. It makes sense that the statute would be plainly understood that way, because the word "final" ordinarily refers to the point at which no further action is required by the court that rendered judgment. The legislative history confirms that plain meaning, as the committee report explaining the IRAA's effect stated that the waiting period begins on the date of "the order on the first application." 2016 Committee Report at 14. And interpreting the IRAA's waiting periods to begin on the date of the trial court's final order furthers the IRAA's overarching purpose—to reduce the incarceration of youthful offenders by providing them with opportunities to prove their rehabilitation—while avoiding the irrational consequence of pitting appellate review against the timing of a second motion, as the trial court's interpretation would.

The government acknowledges (at 19–20) that the word "final" commonly refers to the final judgment of the court of first review. None of its arguments support

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again in three years from the date of this order"); *United States v. White*, No. 1990 FEL 008180, Order at 14 (D.C. Super. Ct. Mar. 8, 2022) (Brandt, J.) (acknowledging that "perhaps in three (3) years, Mr. White will have made much more significant progress"); *United States v. Moore*, No. 1994 FEL 003752, Order at 26 (D.C. Super. Ct. Jan. 14, 2021) (Smith, J.) (noting that "Defendant may re-submit a second IRAA Motion three years after the date on this order").

departing from that understanding here. It asserts that the phrase "*becomes* final" signals finality that attaches after *appellate* review, even though it concedes (at 25 n.4) that "becomes final" sometimes refers to a trial court's final order. It argues that the meaning of finality from an inapposite body of law (collateral review) informs the meaning of finality in the IRAA, but the case it relies on, *Clay v. United States*, 537 U.S. 522 (2003), does not support that conclusion. Nor does the canon against surplusage support the government's interpretation: as Mr. Williams's opening brief explained (at 14–15), the phrase "becomes final" serves to clarify which order controls in the event that the trial court denies the motion at the hearing, before it issues a final written opinion. The government concedes that there is no indication in the legislative history that the D.C. Council intended to make the waiting periods run from the end of any appeal, and its attempt to downplay the significance of the committee report's explanation that the waiting periods instead begin on the date of the previous "order" is unavailing. And on top of all that, the government certainly does not establish that its interpretation is so unambiguously correct that it can overcome the rule of lenity.

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

I. The plain, ordinary meaning of "becomes final" in this context refers to the trial court's final order.

The ordinary understanding of the IRAA's text weighs strongly in favor of concluding that Mr. Williams became eligible to file his second IRAA motion three

years after the date of the trial court's final order denying his first motion. "[I]n the absence of a statutory definition, words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Abed v. United States*, 278 A.3d 114, 126–27 (D.C. 2022) (internal quotation marks and alterations omitted). Here, experience shows that when legislators, lawyers, and judges read subsection (d) of the IRAA, their common understanding of its ordinary meaning is that the order on an initial IRAA application "becomes final" on the date of the trial court's final order. *See* 2016 Committee Report at 14; Brief for United States at 12, *Williams*, No. 16-CO-570; *Williams*, 205 A.3d at 848; *supra* n.1 (citing Superior Court orders).

This Court's opinion in *Williams* is clear evidence of subsection (d)'s plain, ordinary meaning. Tasked with simply communicating what subsection (d) means for the sake of understanding how the statute operates as a whole, the Court (echoing the government) explained that the provision's waiting periods run from the date of the trial court's denial order: "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[.]" *Williams*, 205 A.3d at 848 (emphasis added); *see also* Brief for U.S. at 12, *Williams*, No. 16-CO-570. The government now argues (at 38–39) that "[t]he relevant phrase in that sentence—'is denied'—could refer either to the initial denial by the trial court or to the definitive denial at the end of the litigation process." But it would be exceedingly strange and unnatural for this Court to refer to the end of the appellate process as the point at which a motion filed in Superior Court "is denied." The *Williams* Court used that phrase because on a plain read of the text, it

understood the waiting period for a second motion to begin *when the trial court* finally denies the first motion.[2]

The ordinary meaning of the word "final" supports that understanding. When used as a descriptor for "court order, decision, judgment, decree, or sentence," the word "final" is defined as "ending a court action or proceeding leaving nothing further to be determined by the court or to be done except the administrative execution of the court's finding *but not precluding an appeal*." WEBSTER'S THIRD NEW INT'L DICTIONARY UNABRIDGED 851 (1981) (emphasis added). As Mr. Williams noted in his opening brief (at 6, 12), Black's Law Dictionary similarly defines "final" as "not requiring any further judicial action *by the court that rendered judgment* to determine the matter litigated; concluded." Final, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added). The government agrees that this is an ordinary and common understanding of the word "final." Gov't Br. at 19–20.[3]

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[2] That was not a holding of *Williams*, but the dicta/holding distinction does not matter here. The point is not that this Court is bound by *Williams*, but rather that *Williams* illustrates how the plain text of subsection (d) is ordinarily read. Similarly, the government's description of subsection (d) in its brief in *Williams* is significant not because that "stipulation[]" or "concession" is binding, Gov't Br. at 39–40 n.7, but because it is another illustration of how subsection (d) is ordinarily read.

[3] However, the government artificially narrows this meaning of the word "final" to refer only to appealability. *See, e.g.*, Gov't Br. at 20. In fact, this general definition of "final" applies broadly; for instance, it informs not only when a matter is ripe for appeal, but also when a judgment has preclusive effect. *See Clay v. United States*, 537 U.S. 522, 527 (2003). And contrary to the government's suggestion (at 36), it is not "odd" to refer to a final order as "final" even though it is subject to change on appeal. *Cf.* Restatement (Second) of Judgments § 13, Comment *f* (Oct. 2023 update) (for purposes of res judicata, "[t]he better view is that a judgment otherwise final remains so despite the taking of an appeal").

Resisting the application of that definition in this context, however, the government points (at 20, 25–27) to the law of collateral review, where finality of a conviction attaches after all direct review has been exhausted. *See Clay*, 537 U.S. at 527. We should infer that meaning of the word "final" here, the government says, because the statute uses the phrase "*becomes* final," signaling that "finality is not inherent in the order denying the prior IRAA application" but rather comes to be at the end of the appellate process. Gov't Br. at 21. The government recognizes that this point does not count for much, though, conceding that not "*every* use of the phrase 'becomes final'" refers to finality that comes after an appeal. *Id.* at 25 n.4. For instance, it is normal to refer to a trial court's final order as the point at which a "'judgment *becomes final* for appellate review.'" *Id.* (some emphasis omitted) (quoting *Clay*, 537 U.S. at 527).[4] And the government's examples of when the phrase "becomes final" refers to the end of appellate review, *see* Gov't Br. at 22–25, only underscore Mr. Williams's point that when legislatures and courts mean to refer to that type of finality, they typically do so in clear and unambiguous language. *See* Opening Br. at 14; D.C. Code § 47-3304(b) (expressly listing the four points in the appellate process at which a decision of the Superior Court in a civil tax case may "become final"). It defies both logic and the rule of lenity to think that the D.C.

[4] That is particularly true in this context, where the trial court might deny the motion in an oral order that does not "become final" until the court completes its job and issues the required written opinion. D.C. Code § 24-403.03(b)(4). Only then does the court "ha[ve] nothing remaining to do," creating a final order. *United States v. Facon*, 288 A.3d 317, 332 (D.C. 2023) (citation omitted). *See* Opening Br. at 14–15; *infra* pp. 10–11.

Council meant to add potentially years of incarceration to IRAA petitioners' wait times by using the phrase "becomes final" without any of the express language that it usually employs to signal post-appeal finality.

The Supreme Court's definition of finality in the collateral review context, *see Clay*, 537 U.S. at 527, does not help the government's case.[5] Without any analysis of *Clay* itself, the government asserts (at 26) that the opinion's use of the shorthand "postconviction relief" broadly refers to *any* motion to reduce a sentence. But on its face, *Clay* refers only to finality in the context of collateral review, where courts must review the validity of a conviction at the time of judgment. The case was about how to interpret 28 U.S.C. § 2255, a collateral review statute. The Court repeatedly stated that it was addressing "finality in the context of collateral review." 537 U.S. at 524; *see also id.* at 527–28 ("[O]ur unvarying understanding of finality *for collateral review purposes* would ordinarily determine the meaning of 'becomes final' in § 2255." (emphasis added)). And the string-cite of cases in support of the proposition that "postconviction relief" is "a context in which finality has a long-recognized, clear meaning" were all cases about collateral review and retroactivity.

[5] In fact, the Court's definition of finality in the collateral review context does not even align with the government's proposed interpretation of the IRAA. *Clay* held that a criminal conviction is not final for the purposes of collateral review until the end of *all* direct review, including discretionary review in the Supreme Court. 537 U.S. at 527. The Court expressly "reject[ed] the issuance of the appellate court mandate as the triggering date" for finality in the collateral context. *Id.* at 524–25. But the government defends the trial court's ruling that the order denying Mr. Williams's first IRAA motion became final when "this Court issued its mandate." Gov't Br. at 17. Neither the trial court nor the government explains how it came to the issuance of the mandate as the point in the appellate process at which finality attaches.

Id. at 527.[6] *Clay* did not "create[] a background understanding of the term [final]," Gov't Br. at 26, outside of the collateral review context.

As Mr. Williams explained in his opening brief (at 11, 25), the IRAA is nothing like a collateral review statute. Second-look sentencing laws like the IRAA and collateral review statutes "serve entirely different purposes and are governed by entirely different procedural and substantive rules." *United States v. McCall*, 56 F.4th 1048, 1072 (6th Cir. 2022) (en banc) (Moore, J., dissenting) (contrasting "collateral attacks and compassionate release"). The IRAA requires judges to consider the latest evidence of a person's rehabilitation to determine, among other things, whether they will pose a danger to others in the future. Collateral statutes, by contrast, require courts to look backwards to determine whether a conviction or sentence was valid in the first place. The IRAA's language does not draw from any collateral review statute,[7] and the D.C. Council had no reason to be aware of, let alone to consider or adopt, how courts have interpreted the word "final" in the collateral context.

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[6] The brief for the United States in *Clay* also referred to the relevant context as "the law of collateral review." *See* Brief for United States at 16, *Clay v. United States*, 537 U.S. 522 (2003) (No. 01-1500) ("'[F]inal' has a well-settled meaning in the law of collateral review, and that meaning informs the interpretation of when a judgment of conviction becomes 'final' within the meaning of Section 2255, which governs motions for collateral review by federal prisoners.").

[7] Rather, as the trial court noted, the language in subsection (d) of the IRAA appears to be modeled after the Sentencing Reform and Corrections Act of 2015, a proposed but never-enacted federal bill that would have required judicial review of sentences for people serving lengthy federal sentences for crimes committed as juveniles. *See* App. C at 11; 2016 Committee Report at 14 & n.72.

The surplusage canon does not support the government's interpretation, either. *Cf.* Gov't Br. at 29–33 (arguing that if the waiting period begins on the date of the trial court's final order, then "becomes final" is surplusage). As a threshold matter, the "preference for avoiding surplusage constructions is not absolute": when asked to choose between plain meaning, on the one hand, and an unusual meaning that avoids surplusage, on the other, "[w]e should prefer the plain meaning." *Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004); *see also Rotunda v. Marriott Int'l, Inc.*, 123 A.3d 980, 988–89 (D.C. 2015). So the plain meaning of the statute recognized by the 2016 Committee Report, the government and this Court in *Williams*, and several Superior Court judges would prevail even if it rendered some words surplusage. But there is no surplusage here. If the phrase "becomes final" were removed, as in the government's rewriting of the statute (at 30), then "the order on the initial application" could refer to either a non-final oral order issued at the hearing, or the final written order. The phrase "becomes final" clarifies that the starting point for the waiting period is the date of the court's final, written order, not the date of any earlier oral order. *See* Opening Br. at 14–15.[8]

[8] The government asserts that "the far more obvious way" to impose waiting periods that begin on the date of the trial court's final order "would be cutting the last dozen words of each sentence [in subsection (d)] and inserting 'later.'" Gov't Br. at 30–31. But the fact that a law *could* have been written more clearly or succinctly "does not excuse us from the responsibility of construing a statute as faithfully as possible to its *actual* text." *DePierre v. United States*, 564 U.S. 70, 82 (2011) (emphasis added) (reading a statute to include some redundancy, even though that "redundancy could have been avoided by simply drafting" one clause differently). Theorizing about different ways that the statute could have been written does not help the government, anyway. Its hypothetical revision leaves unclear whether "3 years later" would be measured from the date of the oral or written denial order in a case where the court

The government contests that understanding of the statute, staking its surplusage claim on two related points. First, it argues (at 32) that there is no need to clarify whether the oral order or the written order triggers the waiting period: an oral denial is really not an order at all, according to the government, if the court acknowledges that it will later issue the written opinion (as the statute requires). But a judge's statement that "your motion is denied"—or even "your motion *will be* denied"—fits comfortably within the ordinary meaning of the word "order." *See* Order, BLACK'S LAW DICTIONARY (11th ed. 2019) (explaining that "[t]he word generally embraces final decrees as well as interlocutory directions or commands").[9] Accordingly, when an IRAA petitioner appealed the trial court's "preliminary oral decision wherein the trial court indicated its intent to issue a written order from chambers," this Court ordered that he "show cause why th[e] appeal should not be dismissed as having been taken from *a non-final order*." Order, *Newman v. United States*, No. 22-CO-586 (D.C. Aug. 11, 2022) (emphasis added); *see also* Order,

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issues both, underscoring the role that "becomes final" plays in the actual text. And if the Council intended for the waiting period to begin at the end of any appeal, "the far more obvious way" to write the statute would have been: "If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years after any appeal on the 1st application has concluded."

[9] The government does not attempt to defend the trial court's interpretation of the word "'order' in subsection (d)" as referring "to the written opinion commanded by subsection (b)(4)," App. C at 8, which was the key step in the trial court's reading of the statute. *See* Opening Br. at 23–24 (explaining that the words "order" and "opinion" must mean different things in this statute).

Newman, No. 22-CO-586 (D.C. Sept. 7, 2022) (dismissing appeal "as taken from a non-final order").

Second, the government argues (at 32–33) that interpreting "becomes final" to refer to the trial court's final order does not add any practical clarity, because an oral order could be final if the court simply does not issue a written opinion. That implausible scenario is too unlikely to bear on the statute's plain meaning, though. Even if it is correct that an oral denial would be appealable as a final order if the trial court openly flouts the requirement to "issue an opinion in writing stating the reasons for granting or denying the application," D.C. Code § 24-403.03(b)(4), it is outlandish to presume that the D.C. Council would have expected such defiance of basic statutory requirements. Assuming instead that the Council wrote the statute with the understanding that judges would heed its written opinion requirement, the "becomes final" language provides clarity that the issuance of the written opinion is the triggering event for the waiting period. *See* App. C at 9 ("Without a written order, there is no final order on the matter. Therefore, there is no ambiguity on which order is final.").[10]

[10] Similarly, the possibility that a trial court might issue reconsideration or remand orders does not leave any uncertainty about when the order denying the initial application "becomes final." *Cf.* Gov't Br. at 27–29. Plainly read, the statute refers to the point at which the trial court finally disposes of the initial application. That point is when the court issues the required written order, regardless of what happens next. *See Taylor v. United States*, 603 A.2d 451, 458 (D.C. 1992) ("The denial of a motion to reconsider is not an appealable order.").

II. Legislative history and purpose confirm that an IRAA applicant may file a second motion three years after the trial court's final order on the first motion.

As Mr. Williams's opening brief explained (at 17–19), the IRAA's legislative history puts to rest any uncertainty about the D.C. Council's intent for subsection (d): the Council meant for that provision's waiting period to begin on the date of "the order on the first application," not the end of appellate review. 2016 Committee Report at 14. Reading the statute in light of its purpose—to provide young offenders meaningful opportunities for release based on their maturation and rehabilitation—further supports that conclusion. Given that purpose, it makes sense that the Council intended for waiting periods to run from the trial court's final order, thus allowing an initially unsuccessful petitioner to seek this Court's review of the trial court's decision without delaying his opportunity to file a second motion presenting updated evidence of the "further progress" that he has made since the first motion. *See Williams v. United States*, 205 A.3d 837, 855 (D.C. 2019); Opening Br. at 19–21.

The government agrees that the only legislative material to substantively reference the statute's waiting period is the 2016 Committee Report. That report sought to explain the "Purpose and Effect" of the legislation under review, 2016 Committee Report at 2, which included the "becomes final" language at issue here, *see* Opening Br. at 17. The effect of that language, the report explained, was to allow "a second application five years after the order on the first application." 2016 Committee Report at 14. In other words, the committee understood the effect of subsection (d) the same way that everyone else before the trial court in this case has understood it: the waiting period begins on the date of the trial court's final order.

The government does not claim that any legislative history supports its alternative interpretation. Rather, it asserts that "[t]he committee report sheds no light on the questions presented here" because it omits "the 'becomes final' language now at issue on appeal completely[.]'" Gov't Br. at 38. But legislative materials need not expressly refer to a statutory term in order to shed meaningful light on what the legislature intends that term to mean. To the contrary, committee reports are "a common source to determine legislative intent when [they] explain[] the committee's . . . understanding of a measure's *nature and effect*." 2A Norman J. Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 48:6 (7th ed. Nov. 2023 update) (emphasis added).[11] That is exactly what the 2016 Committee Report does with respect to the IRAA's waiting periods. And there is no way to reconcile the committee's explanation that a second motion may be filed "[three] years after *the order* on the first application" with the government's argument that such a motion is prohibited until three years after *the end of the appeal* on the first application. The committee report is clear and powerful evidence that the Council intended the IRAA's waiting periods to run from the date of the trial court's final order, not the exhaustion of appellate review.

Reading the IRAA in light of its evident purpose supports that interpretation. The government does not dispute that the overarching purpose of the IRAA is to reduce the incarceration of rehabilitated youthful offenders by providing them with

[11] *See also Doe v. Burke*, 133 A.3d 569, 581 (D.C. 2016) (McLeese, J., concurring in part and dissenting in part) ("We have found committee reports to be particularly persuasive evidence of legislative intent.").

meaningful opportunities to obtain release based on "their maturation and rehabilitation." *Williams*, 205 A.3d at 846. It also admits (at 41–43) that its interpretation will pit appellate review of a first motion's denial against the timing of a second motion's consideration. But according to the government, the intended role of the waiting periods in subsection (d) is to give an initially unsuccessful applicant time to make further progress after he receives a "guide" for what he should do differently to succeed on his next motion. *See* Gov't Br. at 34–36. The government argues that interpreting "final" to mean the end of all litigation on the first motion best serves that role, asserting that "the 'progress' that a defendant needs to make . . . will often only become clear when the litigation is over." *Id.* at 34.

The problem with that theory is that the government points to no evidence to support the idea that the D.C. Council's actual purpose for subsection (d) was to give initially unsuccessful applicants a roadmap for what to do differently to obtain relief the next time. In fact, the statute is clear on its face about what sorts of things a person should do to increase the likelihood of obtaining relief: the IRAA "identif[ies] a number of specific factors bearing on the defendant's maturation, rehabilitative progress and amenability to reform[] that the court must consider," *Williams*, 205 A.3d at 848, including substantial compliance with institutional rules and participation in educational and vocational programming where available, D.C. Code § 24-403.03(c)(3). Those enumerated factors belie the notion that the Council meant for subsection (d) to clarify the actions that a petitioner should take to improve his chances at release on a second motion.

The far more likely explanation for including waiting periods between successive motions is simple: evidence of a person's rehabilitation (or lack thereof) inevitably accumulates over time. Consistent with the IRAA's overall purpose, subsection (d) accordingly separates each motion by a time period within which a person can "make further progress" in attaining demonstrable maturity and rehabilitation before trying again. *Williams*, 205 A.3d at 855. That progress occurs independent of any appeal or its outcome, so there is no reason to toll the waiting period for a second motion while an appeal remains pending. Thus, as Mr. Williams's opening brief explained (at 20–21), the interpretation advanced by the trial court and now the government would unnecessarily pit appellate review against the timing of a second application.

The government argues that the D.C. Council might reasonably have intended that result, however, because "delays occasioned by an appeal—particularly delays in any later trial-court proceedings—are a predictable part of the appellate process." Gov't Br. at 40. For that proposition, the government cites the jurisdictional principle that an appeal "divests the trial court of its control over those aspects of the case involved in the appeal," *id.* (internal quotation marks and brackets omitted), which is why "'the trial court may not vacate, amend, or reduce a sentence'" during the pendency of a criminal appeal, *id.* (quoting *Bell v. United States*, 676 A.2d 37, 41 (D.C. 1996)).[12]

[12] The government separately relies (at 41–42) on an analogy to collateral attack proceedings for its assertion that delays occasioned by appeal are an expected feature of postconviction legislation. But again, the government's reliance on the law of collateral review is misplaced in this statutory context. *See supra* p. 8 (explaining

There is no reason that the Council would have expected (much less intended) that principle to delay a second IRAA motion's consideration, though, in light of the well-established procedures that allow a trial court to make an indicative ruling when an appeal is pending. *See, e.g.*, *Bell*, 676 A.2d at 41 ("If . . . the trial court has indicated a willingness to modify a sentence, . . . one of the parties, ordinarily the defendant, should move this court for a remand." (citing *Smith v. Pollin*, 194 F.2d 349, 349–50 (D.C. Cir. 1952)). If the appeal from the final order on the first motion is resolved in less than three years, the trial court will clearly have sole jurisdiction over the second motion at the three-year mark. And if the appeal remains in this Court for three years or longer, then the defendant may still have his second motion considered at that point by simply asking the trial court for an indicative ruling on that motion. *See* D.C. R. Crim. P. 37; *see also Bell*, 676 A.2d at 41. In other words, forcing a choice between appealing the denial of a first motion and having an earlier opportunity to start new litigation on a second motion is not an inevitable or even predictable result of this statutory scheme. Interpreting the IRAA to require that choice would cut against the statute's basic purpose for no good reason.

III. The government's interpretation cannot overcome the rule of lenity.

"[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*." *Carrell v. United States*, 165 A.3d 314, 322 n.22 (D.C. 2017) (en banc)

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that second-look sentencing and collateral review serve entirely different purposes and are governed by entirely different procedural rules).

(emphasis added) (quoting *Ruffin v. United States*, 76 A.3d 845, 858 (D.C. 2013)). There is no need to resort to that tiebreaker here, since the statute's plain meaning, legislative history, and purpose all point toward the D.C. Council's intent to start the waiting period on the date of the trial court's final order. But if nothing else, the Court cannot adopt the government's reading of the statute, because the IRAA does not *clearly and definitively* require an initially unsuccessful petitioner to wait to file a second motion until three years after all of the litigation on his first motion has concluded. Said differently, "[i]n these circumstances—where text, structure, and history fail to establish that the Government's position is unambiguously correct—we apply the rule of lenity and resolve the ambiguity in [the defendant's] favor." *United States v. Granderson*, 511 U.S. 39, 54 (1994).[13]

The government's argument that the rule of lenity should not apply even if the statute is ambiguous is meritless. It acknowledges (at 42) that the rule of lenity "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). And it does not dispute that the IRAA

[13] If the Court is left in doubt after considering the IRAA's plain meaning, history, and purpose, then it should have no trouble concluding that the statute is "grievously ambiguous." But the government is wrong in its suggestion (at 42) that "grievous" ambiguity is a prerequisite to applying the rule of lenity. Most of this Court's cases—including *Lee*, upon which the government relies—require only that the legislature's intent be in "genuine doubt." *See, e.g.*, *Lee v. United States*, 276 A.3d 12, 19 (D.C. 2022); *Fleming v. United States*, 224 A.3d 213, 231 (D.C. 2020) (en banc). *See also Wooden v. United States*, 595 U.S. 360, 392–94 (2022) (Gorsuch, J., concurring) (explaining that the "grievous ambiguity" standard cannot be squared with the Supreme Court's precedents or the historical function of the rule of lenity).

alters punishments imposed for past convictions. Rather, it invites the Court to read subsection (d) of the IRAA in isolation: that *provision* does not alter any punishment, the government says, because it "merely sets out the procedural waiting period for filing a subsequent IRAA petition." Gov't Br. at 42. This Court must decline that invitation for three reasons.

First, reading subsection (d) in isolation "violates the cardinal rule that a statute is to be read as a whole." *Corley v. United States*, 556 U.S. 303, 314 n.5 (2009) (internal quotation marks and citation omitted); *see also Smith v. United States*, 508 U.S. 223, 233 (1993) ("Just as a single word cannot be read in isolation, nor can a single provision of a statute."). The government does not point to any authority suggesting that courts may violate that "cardinal rule" to determine whether the rule of lenity applies to a particular statutory provision.[14] Because the rule of lenity applies to the IRAA, it applies here.

Second, binding precedent establishes that the rule of lenity applies to a sentencing provision that determines *when* a person is eligible for substantive relief found elsewhere in the statute, even if the provision itself does not "fix or alter the punishment" when read in isolation. *See Holloway v. United States*, 951 A.2d 59

[14] The government cites (at 42–43) only a passing comment from *Dolan v. United States*, 560 U.S. 605 (2010), where the Court took up the question of whether a sentencing court retains authority to order restitution if it misses the statutory deadline for doing so. *Id.* at 607–08; *see* 18 U.S.C. § 3664(d). The Court observed that "Dolan ha[d] not provided . . . an example of an instance in which the 'rule of lenity' has been applied to a statutory time provision in the criminal context." 560 U.S. at 621. But that was all the Court said on the matter before "assuming for argument's sake that the rule might be so applied[.]" *Id.*

(D.C. 2008). *Holloway* concerned the timing of eligibility for sentencing under the Youth Rehabilitation Act, D.C. Code § 24-901 *et seq*. ("YRA"). At the time, the statute defined "Youth Offender" as "a person less than 22 years convicted of a crime other than murder." 951 A.2d at 60 (quoting D.C. Code § 24-901(6) (Supp. 2007)). The question on appeal was whether that definition applied "to persons who are less than twenty-two years of age *at the time of conviction*, but who reach their twenty-second birthday before sentencing." *Id.* (emphasis in original). None of the statute's substantive provisions—the ones that actually "fix or alter the punishment," *Luck*, 617 A.2d at 515—were at issue. But the Court applied the rule of lenity to resolve ambiguity about when a person is "convicted" within the meaning of the YRA, and therefore eligible to benefit from the rest of the statute's sentencing provisions: "[S]ince there is ambiguity in the language of the YRA and two reasonable constructions of the age eligibility requirement, the rule of lenity counsels the result we reach." *Holloway*, 951 A.2d at 65. Like the definition of "Youth Offenders" in the YRA, subsection (d) of the IRAA determines when a defendant is eligible for relief provided elsewhere in the statute. Accordingly, if the Court finds subsection (d) ambiguous, *Holloway* requires that the rule of lenity apply.

Third, the fundamental rationale for the rule of lenity supports its application here. The rule of lenity applies to sentencing statutes because it "embodies the instinctive distaste against men [and women] languishing in prison unless the lawmaker has clearly said they should." *Luck*, 617 A.2d at 515 (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971)). No one disputes that for Mr. Williams and other IRAA applicants waiting for another chance to prove their rehabilitation,

months and years of incarceration hang in the balance of how subsection (d) is interpreted. The Court must therefore apply the rule of lenity if it finds this part of the IRAA ambiguous, because "where uncertainty exists, the law gives way to liberty." *Wooden v. United States*, 595 U.S. 360, 390 (2022) (Gorsuch, J., concurring).[15]

[15] The government's surprising assertion (at 43–44) that *its* interpretation of the IRAA is *more* favorable to Mr. Williams does not merit serious consideration. Suffice it to say, the government does not point to any case where a court has considered two competing interpretations of a statute and held that the one subjecting the defendant to more incarceration is better for the defendant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

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I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
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(5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
(b) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
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(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving mental health services and/or under evaluation for substance-use-disorder services. *See* DCCA Order No. M-274-21, May 2, 2023, para. No. 2.

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.

F. Any other information required by law to be kept confidential or protected from public disclosure.

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No. 23-CO-645

Case Number(s)

December 7, 2023

Date