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DISTRICT OF COLUMBIA COURT OF APPEALS

GOLDIE DOBIE,	:	
	:	
Appellant/Cross-Appellee,	:	
	:	Appeal No. 24-CO-294
v.	:	
	:	(2001-FEL-006539)
UNITED STATES OF AMERICA,	:	
	:	
Appellee/Cross-Appellant.	:	

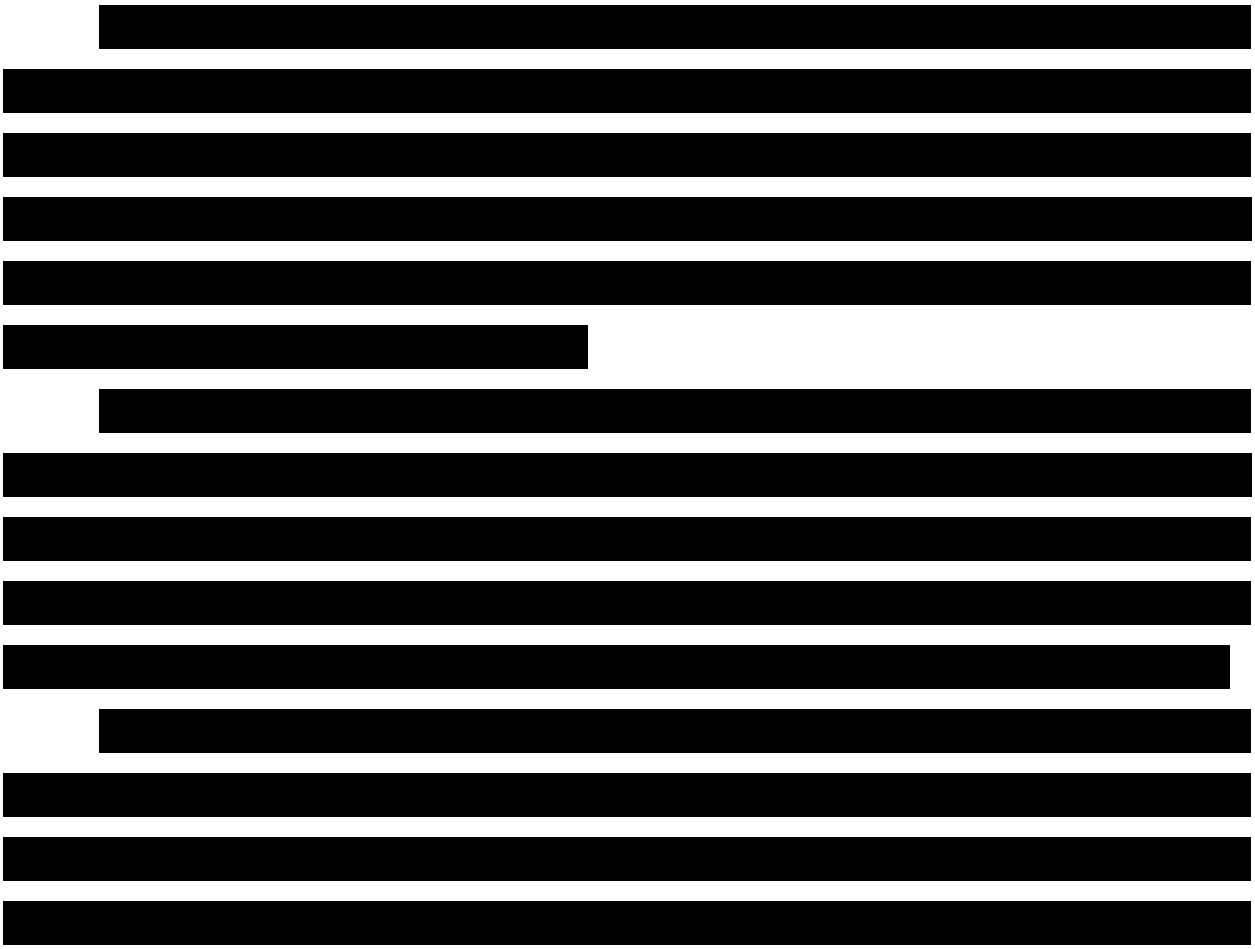
APPELLANT/CROSS-APPELLEE'S OPPOSITION TO
CROSS-MOTION FOR SUMMARY AFFIRMANCE AND
REPLY IN SUPPORT OF MOTION FOR SUMMARY REVERSAL

A. [redacted]

The government's opposition and cross-motion do not grapple with the crux of Mr. Dobie's argument [redacted]

IRAA was enacted in response to scientific research that "shed new light on the development of the brain during adolescence." D.C. Council, Comm. on the Judiciary, Rep. on B21-0683, at 3 (Oct. 5, 2016) ("2016 Committee Report"). At the heart of IRAA is the recognition that "children are different" in ways that "diminish the penological justifications" for long sentences. *Miller v. Alabama*, 567 U.S. 460, 472, 480 (2012). "[A]s any parent knows," and as scientific and sociological research has increasingly confirmed, "impetuous and ill-considered actions and decisions" are often part and parcel of youth. *Roper v. Simmons*, 543 U.S. 551, 569

(2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). "[A]dolescents are overrepresented statistically in virtually every category of reckless behavior." *Id.* (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 339 (1992)). But the qualities that make young people more prone to such behavior, such as "rashness, proclivity for risk, and inability to assess consequences," *Miller*, 567 U.S. at 472, are "transient" and tend to "cease with maturity as individual identity becomes settled," *Roper*, 543 U.S. at 570 (quoting Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, 58 Am. Psych. 1009, 1014 (2003)). Thus, the Supreme Court has explained that, from both a "moral standpoint" and a scientific one, "it would be misguided to equate the failings of a minor with those of an adult," *id.*, or to decide that a "juvenile offender forever will be a danger to society"—a decision "at odds with a child's capacity for change," *Miller*, 567 U.S. at 472-73 (quoting *Graham v. Florida*, 560 U.S. 48, 72 (2010)).



[redacted]

[redacted]

[redacted]

[redacted]

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1 [redacted]

[redacted]

B. The trial court further abused its discretion in its interest-of-justice analysis based on Mr. Dobie's Innocence Protection Act litigation.

As Mr. Dobie outlined in his motion, the trial court improperly punished Mr. Dobie for his unsuccessful Innocence Protection Act (IPA) litigation. Mot. at 18-19. The government's assertion that the trial court did not penalize Mr. Dobie for failing to accept responsibility for the 2002 shooting rings hollow. The trial court repeatedly suggested that Mr. Dobie's case merited harsher treatment than courts had afforded other IRAA movants who had previously pursued IPA litigation. S.R. 174-76 (Order at 23-25). This was because Mr. Dobie, unlike others, had not subsequently accepted responsibility, and because Mr. Dobie, unlike others, had pursued his IPA claim through appeal—an appeal in which, the trial court failed to acknowledge, Mr. Dobie was partially vindicated, *see Dobie v. United States*, No. 18-CO-680, Mem. Op. & J. at 7 (D.C. Apr. 23, 2020) (holding that the trial court was incorrect to conclude that [redacted] recantation testimony was not corroborated).

As a factual matter, the government fails to show that the trial court's perjury findings—which, as the government does not dispute, strongly informed the court's interest-of-justice analysis—were supported by the record. The government does not develop any argument defending the trial court's determination that Mr. Dobie *committed* perjury simply by signing an affidavit asserting his innocence as part of his IPA filing. *See* Gov't Mot. at 18-19. And it fails to

identify any evidence in the record that supports the trial court's conclusion that Mr. Dobie *suborned* perjury.

Tellingly, the IPA court never made any findings about Mr. Dobie's connection to [redacted] recantation. Nor did the IPA court ever conclude or even suggest that any perjury had occurred in those proceedings. The trial court here was in no position to make findings of perjury that the IPA court had not made. It was the IPA court that had the opportunity to observe [redacted] demeanor. Although this Court "defer[s] to those findings of fact that are directly related to the judge's presence in the courtroom," *Lopez v. United States*, 863 A.2d 852, 861 (D.C. 2004), these are not such findings. *Cf. Stringer v. United States*, 301 A.3d 1218, 1228 (D.C. 2023) (noting that factual findings not based on first-hand observations of a witness's demeanor are more likely to be found clearly erroneous). There are a number of factual findings—relating to Mr. Dobie's relationship to [redacted] recantation, the reasons [redacted] accounts were inconsistent, and whether other witnesses' accounts were truthful and accurate—necessary to find subornation of perjury. The trial court here did not make any such findings; nor could it have. *Cf. Harris v. Prast*, 459 F. Supp. 303, 305 (E.D. Wis. 1978) ("[U]nless the subornation of perjury occurred in [the trial judge's] presence or unless the record reflected independent evidence of subornation of perjury, it is not fair for the trial judge to presume that the false testimony of a defense witness was given at the defendant's direction. A friendly defense witness may lie on his own initiative and not necessarily at the defendant's direction."). Its conclusion that Mr. Dobie suborned perjury was clearly erroneous.

The government's analogy to the principle that courts may consider the fact that a defendant perjured himself at trial in imposing a sentence, Gov't Mot. at 19, only underscores how inappropriate the trial court's purported finding here was. The government relies on *Brandon v. United States*, 553 A.2d 640, 644 n.9 (D.C. 1989), which takes its discussion of the relevance of perjury to "rehabilitative potential," and thus sentencing decisions, from the federal sentencing context. *See id.* (citing *Banks v. United States*, 516 A.2d 524, 530-31 (D.C. 1986), and *United States v. Grayson*, 438 U.S. 41, 55 (1978)). In that context, the law erects careful

parameters around basing a sentencing decision on purported "perjury." A sentencing judge may apply a perjury enhancement only if the perjury was committed in her presence during the trial leading to the conviction at hand. *See Grayson*, 438 U.S. at 55; *People v. Marchese*, 608 N.Y.S.2d 776, 782 (N.Y. Sup. Ct. 1994) (noting that a "basic safeguard[] required under . . . *Grayson*" is that "the perjury must have been committed in the presence of the sentencing judge"). Moreover, she must make specific perjury findings,[2] informed by the possibility that someone "may give inaccurate testimony due to confusion, mistake, or faulty memory," *United States v. Dunnigan*, 507 U.S. 87, 95 (1993),[3] and with "consciousness of the frailty of human judgment," *Banks*, 516 A.2d at 530 (quoting *Grayson*, 438 U.S. at 55). Here, the trial court was too far removed from the IPA proceedings to draw any conclusions about whether what happened in those proceedings had any bearing on Mr. Dobie's rehabilitative potential, much less constituted perjury.

* * *

The government tacitly acknowledges that [redacted] and unsuccessful IPA litigation each played a significant role in the trial court's decision to deny release. Because these were "improper reasons" to deny release, reversal is required. *Johnson*, 398 A.2d at 367. Excising these improper factors and evaluating Mr. Dobie's motion in a manner consistent with IRAA's purposes would leave a court "with but one option it [could] choose without abusing its

[2] "It will not be enough, therefore, for a court to recognize conflicting testimony and to resolve, in its own mind, which witness is credible; nor will it be sufficient for a sentencing judge to broadly consider everything defendant said at trial to be perjurious." *United States v. Lawrence*, 308 F.3d 623, 633 (6th Cir. 2002). A court must identify specific examples of perjury and "apply the elements of perjury to those portions of the testimony." *Id.*

[3] Indeed, the Supreme Court has been careful to ensure that these possibilities—that someone might "give inaccurate testimony due to confusion, mistake, or faulty memory," or that a jury might find testimony "insufficient to excuse criminal liability" regardless of its truth—mean that it cannot follow automatically that someone who asserts their innocence at trial but is then convicted will be subject to a perjury enhancement. *Dunnigan*, 507 U.S. at 95. The trial court's leap from an unsuccessful IPA motion to perjury follows this prohibited line of thinking.

discretion, all the others having been ruled out." *Id.* at 364. Therefore, the Court should remand for resentencing to effectuate Mr. Dobie's immediate release.

CONCLUSION

This Court should summarily reverse the trial court's order denying relief and remand for resentencing to effectuate Mr. Dobie's immediate release.

Respectfully submitted,

/s/ Sarah McDonald
Jaclyn S. Frankfurt, Bar No. 415252
Shilpa S. Satoskar, Bar No. 457263
Sarah McDonald, Bar No. 90001349

PUBLIC DEFENDER SERVICE
633 3rd Street, NW
Washington, DC 20001
(202) 628-1200

Counsel for Goldie Dobie

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing opposition has been served, by this Court's electronic filing system, upon Chrisellen Kolb, Esq., Chief, Appellate Division, Office of the United States Attorney, on this 23rd day of December, 2024.

/s/ Sarah McDonald
Sarah McDonald, Bar No. 90001349