BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CO-374

NATHAN WELCH, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

Cr. No. 1996-FEL-2349

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
JOHN P. MANNARINO
THOMAS STUTSMAN
* ANNE M. COTTER
MD Bar
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Anne.Cotter2@usdoj.gov
(202) 252-6829

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Cases

* Authorities upon which we chiefly rely are marked with asterisks.

Other References

ISSUE PRESENTED

Whether the trial court abused its discretion in granting Welch a sentence reduction that made him eligible for parole but denying immediate release under the Incarceration Reduction Amendment Act (IRAA).

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CO-374

NATHAN WELCH, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On July 24, 1997, a jury found appellant Nathan Welch guilty of the following offenses: (1) first-degree murder while armed (premeditated); (2) felony murder while armed; (3) armed robbery; (4) possession of a firearm during a crime of violence; and (5) carrying a pistol without a license (Record on Appeal (R.) A at 9; R. B at 1-4; R. 17 at 1). On October 6, 1997, the Honorable A. Franklin Burgess sentenced

Welch to a total of 36 years and 8 months to life imprisonment (R. 5 at 2; R. 17 at 3).

On September 26, 2002, this Court affirmed Welch's convictions, affirmed the denial of Welch's first post-trial motion under D.C. Code § 23-110, and remanded the case "to enable the trial court to vacate certain merging convictions and resentence accordingly." *Welch v. United States*, 807 A.2d 596, 598 (D.C. 2002), cert. denied 537 U.S. 1132 (2003). Judge Burgess ultimately dismissed the armed robbery and first-degree murder convictions (R. 17 at 3; R. B at 16-17), and imposed a total sentence of 36 years and 8 months to life (R. 17 at 4), under which Welch would be eligible for parole on May 4, 2027 (R. 7 at 1; R. 12 at 3).

On August 19, 2022, Welch filed a motion to reduce his sentence under the Incarceration Reduction Amendment Act (IRAA), D.C. Code § 24-403.03 (R. 7).[1] The government filed a response on November 8, 2022, opposing Welch's request for immediate release but not opposing a

[1] Welch had previously filed several motions under D.C. Code § 23-110 and a motion for compassionate release under D.C. Code § 24-403.04 or, alternatively, a sentence reduction under Super. Ct. Crim. R. 35 (R. 17 at 4). The trial court denied all of Welch's motions, and this Court affirmed (*id.*).

sentence reduction that would accelerate Welch's parole eligibility (R. 12). On December 19, 2022, the government filed a supplement to its response (Sealed Record on Appeal (SR.) 1), and the Honorable Peter Krauthamer held a hearing on Welch's IRAA motion (R. B at 26). Welch filed a supplement to his release plan on January 3, 2023 (R. 15). On May 2, 2023, Judge Krauthamer issued an order granting Welch's IRAA motion in part; Judge Krauthamer denied Welch's request for immediate release but reduced his sentence (R. 17 at 22). That same day, Welch timely filed a notice of appeal (R. 18).

The Trial Evidence

On February 27, 1996, Welch murdered Michael Tyson and stole his truck. *Welch*, 807 A.2d at 598. Welch was attempting to sell drugs and met Donna Belton, Tyson's cousin, at a gas station. *Id*. When Welch complained that business was slow, Belton invited Welch to come to her house to sell drugs. *Id*. Welch did not have any drugs with him, so Belton offered to ask Tyson to drive Welch to pick up drugs. *Id*.

In exchange for drugs, Tyson agreed to give Welch a ride. *Welch*, 807 A.2d at 598. Welch and Tyson picked up Antwone Andrews in Tyson's truck, and Tyson drove them to the corner of First Street and Rhode

Island Avenue, NW. *Id.* Welch exited the truck under the guise of retrieving drugs that he had hidden behind a sign. *Id.* Welch, however, returned to the truck and shot Tyson three times in the head. *Id.* Welch and Andrews drove to a nearby Safeway parking lot and buried Tyson's body in a snowbank. *Id.*

Tyson's body was discovered several days later in the snowbank. *Welch*, 807 A.2d at 598-99. The investigation revealed that two of the bullets found in Tyson's head were fired from the same gun. *Id.* at 599. Additionally, law enforcement found bloodstained jeans at Welch's apartment, and DNA testing matched the blood to Tyson. *Id.* After Welch learned that Andrews had implicated him in the murder, Welch directed Andrews to write a letter to the government exculpating Welch. *Id.* Welch also called a friend from jail and stated that Andrews "snitched on him." *Id.*

Welch presented evidence suggesting that Andrews murdered Tyson. *Welch*, 807 A.2d at 599. Welch's father and stepmother testified that Andrews came to their house before Welch's arrest and dropped off a bag that may have contained clothing, including the bloodstained jeans. *Id.* Two other witnesses also testified that they did not see Andrews and

Welch in Tyson's truck, contradicting Andrew's testimony that they had. *Id*. Welch did not testify. *Id*.

Welch's IRAA Motion

The IRAA

In response to recent Supreme Court precedent limiting lengthy sentences for crimes committed by juveniles, the D.C. Council passed the IRAA. *See Williams v. United States*, 205 A.3d 837, 846 (D.C. 2019). Under the IRAA, a defendant, who was convicted as an adult for an offense committed before the defendant's 25th birthday, may file a motion for a sentence reduction. D.C. Code § 24-403.03(b)(1). The "court shall reduce a term of imprisonment" if:

> (1) The defendant was sentenced pursuant to [D.C. Code] § 24-403 or § 24-403.01, or was committed pursuant to § 24-903, and has served at least 15 years in prison; and
>
> (2) The court finds, after considering the factors set forth in subsection (c) of this section, that the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.

D.C. Code § 24-403.03(a).

Section 24-403.03(c) provides that the court "shall consider" the following factors "in determining whether to reduce a term of imprisonment":

> (1) The defendant's age at the time of the offense;
>
> (2) The history and characteristics of the defendant;
>
> (3) Whether the defendant has substantially complied with the rules of the institution to which the defendant has been confined, and whether the defendant has completed any educational, vocational, or other program, where available;
>
> (4) Any report or recommendation received from the United States Attorney;
>
> (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
>
> (6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;
>
> (7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
>
> (8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
>
> (9) The extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense;

> (10) The diminished culpability of juveniles and persons under age 25, as compared to that of older adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime, and the defendant's personal circumstances that support an aging out of crime; and
>
> (11) Any other information the court deems relevant to its decision.

The IRAA requires the court to "hold a hearing on the motion at which the defendant and the defendant's counsel shall be given an opportunity to speak on the defendant's behalf." D.C. Code § 24-403.03(b)(2). The court "may consider any records related to the underlying offense," and may also "permit the parties to introduce evidence." *Id*. The court must "issue an opinion in writing stating the reasons for granting or denying" an IRAA motion. D.C. Code § 24-403.03(b)(4).

The Pleadings

In his motion, Welch argued that he was "an ideal candidate for relief under the IRAA" and that the IRAA statutory factors favored his request (R. 7 at 2). Specifically, Welch cited the following factors: (1) his young age at the time of the murder; (2) his "exemplary" institutional

conduct; (3) his maturity, rehabilitation, and reentry plan; (4) his psychological evaluation; and (5) his family and community circumstances at the time of the offense (*id*. at 21-26). Welch argued that, in light of these factors, there was "no credible reason to think" that Welch posed a danger to any person or the community (*id*. at 24). Moreover, Welch argued that the interests of justice supported his immediate release because he had been incarcerated for 26 years, which is "far longer" than the IRAA minimum requirement, and he put forth "overwhelming evidence of his rehabilitation" (*id*. at 26).

In response, the government opposed Welch's request for immediate release, but did not oppose a sentence reduction that would make him eligible for parole consideration (R. 12 at 4).[2] The government argued that immediate release was not appropriate due to the "cumulative" effect of the following three IRAA factors: (1) Welch's "troubling disciplinary history"; (2) Welch's "lackluster release plan"; and (3) the victim's family's opposition (*id*.). The government concluded that a limited reduction in Welch's sentence would allow the U.S. Parole

[2] Specifically, the government suggested that Welch's sentence be reduced to 30 years to life (R. 12 at 8).

Commission, which "possesses unparalleled experience and expertise in assessing and managing recidivism . . ., to conduct an in-depth assessment of [Welch's] risk of recidivating and develop and implement strategies to monitor and control that risk" (*id*. at 8).[3]

The IRAA Hearing and Welch's Supplemental Filing

On December 19, 2022, Judge Krauthamer held a hearing on Welch's IRAA motion. Welch apologized to Tyson's family and said that he made a "horrendous mistake" (12/19/22 Transcript (Tr.) 16-17). Welch testified that PCP "played a major part in what happened" and that his age and immaturity were why he did not initially take accountability (*id*.). Welch's brother, Byron Meekins, testified that he owned a landscaping and moving company, so he would employ Welch and assist with housing (*id*. at 3-4, 10). Jessica Showell, Tyson's daughter, and Whitney Tyson, Tyson's wife, gave victim impact statements, and they both opposed Welch's release (*id*. at 12, 14, 16).

On January 3, 2023, Welch filed a supplement to his release plan pursuant to the trial court's December 20, 2022, order (R. 14, 15). In the

[3] The government filed a supplement to its response, which was a victim impact statement from Tyson's sister (SR. 1).

supplement, Welch outlined what he would specifically do on each day of the first week of his release (R. 14 at 2-3). Additionally, Welch provided an address of where he planned to stay while he looked for house and a letter of support (*id*. at 1, 5).[4]

The Trial Court's Order

On May 2, 2023, Judge Krauthamer issued an order granting a sentence reduction but not immediate release (R. 17 at 1). The trial court noted that Welch's eligibility under the IRAA was not disputed (*id*. at 7). The trial court then considered each of the IRAA factors enumerated in § 24-403.03(c) to explain its decision to grant a sentence reduction rather than immediate release (*id*.).

As to Welch's "history and characteristics" (subsection (c)(2)) and "family and community circumstances at the time of the offense" (subsection (c)(8)), the trial court found that the two factors provided context and weighed in favor of a reduction in sentence, but were neutral as to granting or denying immediate release (R. 17 at 9). Turning to

[4] Welch, acting pro se, also sent a letter to Judge Krauthamer on April 10, 2023 (R. 16). In that letter, Welch said that he should have been forgiven and that he considered the IRAA hearing a "public hanging" (*id*. at 1-2).

Welch's compliance with institutional rules and participation in educational, vocational, or other programming (subsection (c)(3)), the trial court found the factor weighed in favor of early parole but not immediate release (*id*. at 9, 14). Specifically, the trial court noted that most of Welch's infractions were of moderate severity and that Welch had no infractions since 2019 (*id*. at 10). The trial court, however, expressed concern about Welch being released to supervision because nearly all of the infractions involved a "pattern of disrespect for authority" (*id*. at 11). Further, Welch "minimized his role almost entirely" (*id*.). The trial court noted that Welch's programming record showed that he did experience a turning point in 2004, but Welch's record lacked employment with only one job listed (*id*. at 13-14).[5]

Regarding Welch's "maturity, rehabilitation, and fitness to reenter society" (subsection (c)(5)), the trial court was "not convinced" that Welch had met this factor, and found that Welch "remains angry and refuses to fully accept his role in the offense" (R. 17 at 14-15). The trial court found that Welch's statements showed he felt entitled to relief and that he had

[5] The trial court noted that Welch reported additional jobs during his psychological evaluation (R. 17 at 13-14).

not taken adequate steps to address his anger (*id*. at 15). Moreover, the psychologist's report stated that Welch should not be allowed near the crime scene, so the trial court believed this meant Welch had "not sufficiently dealt with his emotional response to triggers" (*id*.). The trial court also rejected Welch's argument that his release plan "evidence[d] his maturity" and stated that his plan was "as bare as could be regarding housing and employment" (*id*. at 16). The trial court concluded that Welch needed more structure, not just support, for immediate release (*id*. at 17).

Regarding the victim's family's statements (subsection (c)(6)), the trial court considered the impact on them as part of its evaluation of the interests of justice and concluded that immediate release was not in the interests of justice (R. 17 at 19). As to any physical, mental, or psychiatric reports (subsection (c)(7)), the trial court considered a psychological risk evaluation that Dr. Matthew Bruce, "an expert and specialist in sexual violence and risk assessment," performed in March 2022 (*id*.). Dr. Bruce found that Welch posed a low risk of violent reoffending and that Welch had successfully rehabilitated himself (*id*. at 19-20). The trial court did not doubt Dr. Bruce's conclusions but found that Welch's rehabilitation

was not "sufficient to merit relief under [the] IRAA" (*id*. at 20). As to Welch's role in the offense (subsection (c)(9)), the trial court noted that Welch was the primary actor but found the factor to be neutral (*id*. at 20-21). Finally, the trial court found that Welch's diminished culpability due to his age at the time of the offense (subsection (c)(10)) favored release (*id*. at 21).

The trial court concluded that Welch was not a danger to the community; however, because Welch's release plan was weak and the victim's family opposed release, the trial court found that immediate release was not appropriate and in the interests of justice (R. 17 at 21). Instead, the trial court found that Welch's sentence still served "a legitimate purpose in redressing his murder of Michael Tyson in 1996 and helping Mr. Welch achieve rehabilitation sufficient to assuage the [c]ourt's concerns" (*id*.). The trial court changed Welch's sentence so that all terms ran concurrently, which reduced his aggregate sentence by six years (*id*. at 22).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying Welch's request for immediate release under the IRAA. Welch's various challenges to the trial court's measured opinion lack merit. First, the trial court properly found that Welch had not been sufficiently rehabilitated in light of his lack of maturity and failure to address his continued anger. Second, the trial court appropriately weighed the IRAA factors in determining that Welch's release would not be in the interests of justice. Third, the trial court's findings regarding Welch's remorse, disciplinary history, and employment were founded in the record. Fourth, the trial court did not fail to consider an enumerated factor and evaluated the evidence before it regarding Welch's health. Finally, the trial court correctly applied the preponderance standard of proof.

ARGUMENT

The Trial Court did not Abuse its Discretion by Denying Welch's Request for Immediate Release.

A. Standard of Review and Applicable Legal Principles

A defendant seeking relief under the IRAA bears the burden to establish by a preponderance of the evidence that they are "not a danger

to the safety of any person or the community and that the interests of justice warrant a sentence modification." D.C. Code § 24-403.03(a)(2); *see Williams*, 205 A.3d at 850 (defendant bears the burden of proof); *Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021) ("the preponderance standard is the 'default rule'"). The trial court's ultimate decision regarding resentencing under the IRAA is based on a "discretionary consideration of multiple factors without preordained weights assigned to them." *Williams*, 205 A.3d at 854. This Court reviews a trial court's IRAA ruling "for abuse of discretion." *Id.* at 848; *see also Griffin v. United States*, 251 A.3d 722, 723-24 (D.C. 2021) (motions for sentence reduction under D.C.'s compassionate release statute reviewed for abuse of discretion); *Cook v. United States*, 932 A.2d 506, 507 (D.C. 2007) (motions for sentence reduction reviewed for abuse of discretion). Additionally, absent clear error, this Court accepts the trial court's factual findings. *Tann v. United States*, 127 A.3d 400, 465 (D.C. 2015).

B. Discussion

The trial court did not abuse its discretion in denying Welch's request for immediate release. In its lengthy opinion, the trial court carefully considered the record evidence as it related to each of the

IRAA's multiple factors. *Williams*, 205 A.3d at 854. While Welch may disagree with how the trial court weighed the IRAA factors and its conclusions from the record evidence, his complaints do not form a basis for reversal. *See Sharps v. United States*, 246 A.3d 1141, 1159 n.90 (D.C. 2021).

1. The trial court did not abuse its discretion by finding that Welch had not been sufficiently rehabilitated.

Contrary to Welch's claim (Br. 15-17), the trial court did not abuse its discretion in finding that Welch was not sufficiently rehabilitated to merit relief under the IRAA. Welch complains (Br. 16) that the trial court contradicted Dr. Bruce's psychological risk evaluation and made findings "not founded in the record." His claim is meritless. In its detailed analysis, the trial court considered Dr. Bruce's evaluation and conclusions and weighed that information against evidence of Welch's lack of rehabilitation (R. 17 at 14-16, 19-20). While the trial court had "no reasons to doubt Dr. Bruce's conclusions," the trial court was not required to give his opinions controlling weight. *See Robinson v. United States*, 50 A.3d 508, 523 (D.C. 2012) ("[T]he weight to be given an expert opinion is for the [fact-finder] to decide."); *cf. Fitzgerald v. United States*, 228 A.3d

429, 440 (D.C. 2020) (fact-finder "may credit portions of a witness's testimony and discredit others"). Further, the IRAA mandates that "[t]he *court* . . . consider" the IRAA factors, not an expert. D.C. Code § 24-403.03(c) (emphasis added).[6]

Moreover, contrary to Welch's argument (Br. 16-17), the trial court's findings regarding Welch's rehabilitation were based in the record. The trial court found that Welch had not adequately demonstrated maturity and rehabilitation, in part, because of Welch's letters that he submitted as part of the IRAA proceedings (R. 17 at 15-16).[7] In the letter Welch sent after the IRAA hearing, Welch failed to fully accept responsibility for his offense, and instead focused on the impact this case has had on him, and declared an entitlement to relief (*id.*). Moreover, the trial court found that the letter demonstrated that Welch had not learned to control his anger when triggered (*id.*). The trial court also found that Dr. Bruce's statement that Welch should not be allowed

[6] Welch states (Br. 17) that the trial court adopted Dr. Bruce's finding that Welch was successfully rehabilitated. The trial court, however, stated that it had "no reasons to doubt Dr. Bruce's conclusions" and did not explicitly adopt his findings (R. 17 at 20).

[7] The trial court also noted that the Bureau of Prisons (BOP) classified Welch as "a medium risk of recidivism" (R. 17 at 16).

near the scene of the offense to be significant, because it showed that Welch had not "sufficiently dealt with his emotional response to triggers" (*id.*). While Dr. Bruce did not expressly address that concern, the trial court was "free to make its own independent evaluation of the evidence." *Nest & Totah Venture, LLC v. Deutsch*, 31 A.3d 1211, 1222 (D.C. 2011). In other words, the trial court did precisely what the IRAA mandates: the trial court weighed Dr. Bruce's conclusions against Welch's own statements and other evidence and permissibly concluded that Welch was not sufficiently rehabilitated (R. 17 at 14-17). *See Williams*, 205 A.3d at 854.

2. The trial court did not abuse its discretion by finding that Welch's immediate release was not in the interests of justice.

Contrary to Welch's argument (Br. 17-18), the trial court appropriately considered the victim impact statements in determining that Welch's immediate release would not be in the interests of justice. Relying on *Bailey*, 251 A.3d at 731, Welch argues (Br. 17-18) that the trial court should have only given the victim impact statements "limited consideration." But *Bailey* is inapposite. There, this Court "detect[ed] no

error in the trial court's limited consideration of victim impact statements" in the context of compassionate release, because victim impact statements "are relevant to compassionate release decisions only insofar as they inform the determination of a prisoner's . . . dangerousness." *Bailey*, 251 A.3d at 731; *see* D.C. Code § 24-403.04 ("the court shall modify a term of imprisonment . . . if it determines the defendant is not a danger . . . pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a)). Unlike the compassionate release statute, the IRAA does not limit the trial court's consideration of any of the enumerated factors. *See* D.C. Code § 24-403.03(a)(2) (requiring a sentence reduction if "[t]he court finds, after considering the factors set forth in subsection (c) . . ., that the defendant is not a danger . . . and that the interest of justice warrant a sentence modification"). Thus, Welch can show no abuse of discretion, because the IRAA required the trial court to consider the victim impact statements, and it was within the trial court's discretion to determine how much weight to give such statements. *Williams*, 205 A.3d at 854; *see Sharps*, 246 A.3d at 1159 n.90 ("It is not [this Court's] function to engage in the discretionary balancing of relevant factors that is committed to the trial court" (cleaned up)).

Next, Welch complains (Br. 18-19) that the trial court abused its discretion in finding that Welch's release plan was weak. The trial court noted that Welch had been promised jobs, including by Meekins who testified at the IRAA hearing, but "no one provide[d] the specific nature or location of the jobs or [Welch's] ability to do them" (R. 17 at 16). After the trial court warned Welch that his plan was too vague and directed him to supplement it, Welch still failed to provide any meaningful detail about his employment plans (*id*.). *See* R. 15. Moreover, his supplement only provided a one-week plan that the trial court found was "overly ambitious" and unrealistic (R. 17 at 16). And regarding Welch's housing plan, in his supplement he changed where and with whom he planned to stay, and, other than the address, provided no details of the home, such as how long he could stay there (*id*. at 16-17). *See* R. 15 at 1.

Contrary to Welch's argument (Br. 19), the trial court's assessment of his plan was founded in the record; the trial court's order illustrates that it carefully considered Welch's submissions and the testimony at the IRAA hearing, but concluded that Welch's plan was insufficient (R. 17 at 16-17). Welch's disagreement with the trial court's assessment of his release plan is not grounds for reversal. *See Anderson v. Bessemer City*,

470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the fact[-]finder's choice between them cannot be clearly erroneous."); *cf. Dorsey v. United States*, 60 A.3d 1171, 1205 (D.C. 2013) (recognizing trial court's prerogative "to determine credibility and weigh the evidence"). Nor is Welch's disagreement with the weight that the trial court placed on his weak release plan grounds for reversal. *See Williams*, 205 A.3d at 854; *Sharps*, 246 A.3d at 1159 n.90.

Finally, Welch contends (Br. 19-20) that trial court abused its discretion by leaving "Welch exposed to a life sentence."[8] Welch ignores that the IRAA specifically contemplates the partial grant of an IRAA motion by "lowering the minimum terms imposed" and making a prisoner "eligible for parole much earlier," *Williams*, 205 A.3d at 849, which is what the trial court did here, *see* D.C. Code § 24-403.03(d) ("If the court

[8] Welch states (Br. 19) that "contrary to the trial court's findings, 'the interests of justice' are not served by leaving the release decision to the U.S. Parole Commission." To be clear, the trial court did not specifically find that allowing the U.S. Parole Commission to determine release was in the interests of justice; rather, the trial court found that the "'interests of justice' do not merit immediate release" (R. 17 at 22). The trial court also explicitly rejected the government's suggestion that the U.S. Parole Commission was better equipped to determine whether to release Welch (*id.* at 22 n.10).

denies or *grants only in part* the defendant's 1st application under this section . . ." (emphasis added)). Moreover, Welch has two more opportunities to seek further IRAA relief, so his potential release is not left solely in the hands of the U.S. Parole Commission. *See* D.C. Code § 24-403.3(d). If Welch fails to meet his burden in three IRAA applications, that "does not mean he has been denied what the Eighth Amendment requires." *Williams*, 205 A.3d at 854.

3. The trial court based its findings regarding Welch's remorse, disciplinary history, and employment on a firm factual foundation.

The trial court did not abuse its discretion because it based its findings regarding Welch's remorse, disciplinary history, and employment on a firm factual foundation. First, contrary to Welch's claim (Br. 21-23), there was ample evidence in the record supporting the trial court's conclusion that Welch had not adequately expressed remorse. For example, in Welch's letter to the trial court after his IRAA hearing, he stated that he is "unable to ever live normally" and "unable to go back to the free world because [his] murder convictions are too much to bare (sic) for some" (R. 16 at 1). Welch then complained that he "lost [his] life to a

flawed justice system" and refers to his sentence as "the outlandish banishments that's been given to [him]" (*id.*). Welch continued to offer excuses for his crimes, insisting that he "should have been forgiven for the shit storm that [he had] been in" and that "[e]ven after 27 years of imprisonment, [he] is still explaining how [his] undeveloped brain led to [his] misbehaving" but "for some reason that's being way overlooked in [his] situation" (*id.* at 2, 4). Welch also dismissed the IRAA hearing itself as a "public hanging!!!" and stated "all that judge did [was] only allow[] the victim's family to demean, insult, and attack [his] pedigree as if NOBODY CAN EVER CHANGE" (*id.* at 2) (emphasis original). Welch concluded by criticizing the trial court for the time it was taking to decide his IRAA motion (*id.* at 3-4). Welch points to other statements he made that he believes demonstrate remorse (Br. 21-23); however, the trial court properly took the entire record into account, and permissibly found that, in light of Welch's letter after the IRAA hearing (R. 16), "whatever remorse [Welch] expressed [was] gone and replaced by entitlement" (R. 17 at 15).

Second, Welch complains (Br. 24) that the "trial court's finding that [he] minimized his disciplinary infractions is not firmly rooted in the

evidence of record." Welch asserts that the trial court "misconstrued his explanations as 'minimizations'" (*id.* (quoting R. 17 at 10-11)). Welch, however, explained that most his infractions occurred at during a time that he believed he "was being targeted by officers" (R. 7 at 15). Moreover, Welch claimed that the incident where he punched an officer and broke his nose "was actually facilitated by officers" (*id.* at 15-16). Welch also attributed his misconduct to "learning [antisocial behaviors] from others" (*id.* at 16). While Welch now claims these statements were explanations, not minimizations, the trial court was not required to see it that way. *See Anderson*, 470 U.S. at 574. And even if characterized as "explanations," they were self-serving, in that they deflected responsibility for Welch's misconduct onto others.

Third, Welch asserts (Br. 25) that the trial court was "unequivocally wrong" for finding that Welch's employment record was uncorroborated. Welch claims (Br. 24-25) that Dr. Bruce's psychological evaluation corroborated his employment because the evaluation cited Bureau of Prisons (BOP) records. In the evaluation, Dr. Bruce stated that "Welch reported" his various jobs and that his "work assignments reflect increasingly levels of challenge, complexity responsibility, and trust" (R.

7 at 41). Dr. Bruce then noted that Welch had received "satisfactory" evaluations and cited the "Individualized Needs plan – Program review, 11/13/2020" (*id*. at 41 & n.6). Dr. Bruce's citation appears to only support that Welch had received "satisfactory" evaluations, and Welch did not provide that document with his IRAA motion (*see id*.).

Accordingly, as the trial court recognized, Welch's employment history was uncorroborated because Welch did not provide any underlying documents that supported his own statements. *See Williams*, 205 A.3d at 850 (defendant bears the burden of proof under the IRAA). Nonetheless, the trial court acknowledged the employment that Welch had reported and that he received positive reviews (R. 17 at 14). The trial court concluded that Welch showed that "he can hold down employment" and the record was a "net positive" (*id*.). Therefore, the lack of corroboration appears to be of little consequence to the trial court's determination.

Thus, the trial court had a "firm factual founding" for its findings regarding Welch's remorse, disciplinary history, and employment. *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979). "That the record might have supported a different outcome is no basis for upending the

trial court's decision." *Macklin v. Johnson*, 268 A.3d 1273, 1279 (D.C. 2022); *see Roberts v. United States*, 216 A.3d 870, 886 (D.C. 2019) ("When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the [factfinder]."); *In re K.C.*, 200 A.3d 1216, 1233 (D.C. 2019) (stating that this Court's role is "supervisory in nature and deferential in attitude" when reviewing a trial court's decision); *Brooks v. United States*, 993 A.2d 1090, 1093 (D.C. 2010) (recognizing that "the decision-maker exercising discretion has the ability to choose from a range of permissible conclusions") (quoting *Johnson*, 398 A.2d at 361-62)); *see also Dorsey*, 60 A.3d at 1205.

4. The trial court did not fail to consider an enumerated factor.

Contrary to Welch's claim (Br. 25-27), the trial court did not fail to consider an enumerated factor, specifically, "[a]ny reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professional." D.C. Code § 24-403.03(c)(7). As Welch acknowledges (Br. at 26), the trial court considered a psychological risk evaluation by Dr. Bruce. Further, the trial court found that BOP's

classification of Welch's physical health as "[L]evel 2 – stable chronic care" and mental health as "Care Level 1" did not impact Welch's release (R. 17 at 19). Although the trial court noted that Welch's medical record was part of the record from his compassionate release motion, Welch did not submit any physical health reports in support of his IRAA motion (*id.*). Moreover, Welch exclusively relied on Dr. Bruce's evaluation when he argued that subsection (c)(7) weighed in favor of his release (R. 7 at 25-26).

For the first time on appeal, Welch argues that he should be immediately released under the IRAA because his health conditions "may shorten his lifespan and make it more likely that he ultimately serves a life sentence" (Br. 27). Because Welch did not squarely raise his physical health as a reason for immediate release, he cannot fairly claim that the trial court abused its discretion in failing to do so sua sponte. *See, e.g.*, *Littlejohn v. United States*, 73 A.3d 1034, 1038 (D.C. 2013) (argument not raised in motion before trial court in collateral proceeding is waived on appeal); *Mitchell v. United States*, 977 A.2d 959, 968 (D.C. 2009) (same). Moreover, contrary to Welch's suggestion (Br. 25-26), the trial court did not entirely fail to consider Welch's physical health; the trial court noted

that BOP's classifications of Welch's physical and mental health did not alter its analysis (R. 17 at 19). Further, as Welch notes (Br. 26), Dr. Bruce's evaluation contained a "brief summary" of Welch's physical health, and the trial court considered the evaluation (R. 17 at 15-16, 19-20). The IRAA does not require the trial court to delve into a detailed analysis of every factor; rather, the IRAA only mandates that the trial court "consider" each factor, which it did here. D.C. Code § 24-403.03(c)(7).

5. The trial court applied the correct standard of proof.

Although the trial court did not cite the preponderance standard of proof in its order, "[a]bsent any indication to the contrary, [this Court] presume[s] that the trial judge knew the proper standard of proof to apply and did in fact apply it." *In re C.T.,* 724 A.2d 590, 597 (D.C. 1999); *cf. Fearwell v. United States*, 886 A.2d 95, 100 (D.C. 2005) ("[In] a bench trial . . . the judge is presumed to know the law."). Here, the trial court weighed the required statutory factors and concluded that it was "not convinced" that immediate release was appropriate, which is consistent with a reasonable application of the preponderance of the evidence standard (R.

17 at 21). *See, e.g., In re E.D.R.*, 772 A.2d 1156, 1160 (D.C. 2001) ("Black's Law Dictionary defines a preponderance of the evidence as '*evidence which is of greater weight or more convincing* than the evidence presented in opposition to it; that is evidence which is [sic] as a whole shows that the fact sought to be proved is more probable than not.'" (emphasis added)).

Welch contends (Br. 28) that the trial court held him to "an impossibly high standard" by finding that he had not reached "the highest level of rehabilitation and maturity" and that his release plan was "weak."[9] Welch, however, fails to overcome the presumption that the trial court knew and applied the correct standard of proof. Nowhere did the trial court misstate the law. *See United States v. Loggins*, 966 F.3d

[9] Welch does not explain how the trial court's finding that his release plan was "weak" is inconsistent with the preponderance standard of proof (*see* Br. 28). The trial court noted that, after directing Welch to supplement his vague release plan, Welch changed where he intended to live and provided no details regarding "how realistic it would be to live there in the long or short term" (R. 17 at 17). Moreover, regarding his employment plans, Welch provided no information regarding his ability to perform any of the jobs that he had been promised (*id.* at 16). The trial court's concerns with Welch's reentry plan do not demonstrate an erroneously heightened standard of proof; rather, it shows only that the trial court weighed whether Welch's plan was satisfactory.

891, 893 (8th Cir. 2020) (declining to attribute erroneous reasoning to district court that denied compassionate release where it had not misstated the law). While the "highest level" may have been an imprecise phrase, other portions of the trial court's thoughtful 23-page order indicate that it applied the preponderance standard. For example, the trial court later stated that Welch's rehabilitation was not "sufficient" and that he was "not quite rehabilitated yet" (R. 17 at 20, 21). Moreover, the trial court expressly weighed the prosecution and defense evidence in reaching its decision. *See, e.g.*, R. 17 at 11 (finding that a factor favored a reduction in sentence but not immediate release); *id.* at 14 (same); *id.* at 19 (same); *id.* at 21 (stating that a factor did "not push the [c]ourt in either direction regarding release"); *id.* (finding that a factor "weigh[ed] in favor of granting release in connection with the other factors in his favor"). The trial court's balancing of the two sides is precisely what the preponderance standard requires. *See, e.g., Butler v. United States*, 481 A.2d 431, 441 (D.C. 1984) (preponderance standard requires weighing prosecution evidence against defense evidence).

CONCLUSION

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

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
JOHN P. MANNARINO
THOMAS STUTSMAN
Assistant United States Attorneys

/s/
ANNE M. COTTER
MD Bar
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Anne.Cotter2@usdoj.gov
(202) 252-6829

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.

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

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
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(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;
(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(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 or under evaluation for substance-use-disorder services.

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

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

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

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

Initial Here

G. I certify that I am incarcerated, I am not represented by an attorney (also called being "pro se"), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.

/s/
Signature

23-CO-374
Case Number(s)

Anne Cotter
Name

12/8/2023
Date

Anne.Cotter2@usdoj.gov
Email Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Anne Keith Walton, Esq., waltonlawdc@gmail.com, on this 8th day of December, 2023.

/s/
ANNE M. COTTER
Assistant United States Attorney