BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

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

WILLIAM DAVIDSON,
A.K.A. MUHAYMIN MUHAMMAD — Appellant,

v.

UNITED STATES OF AMERICA, — Appellee.

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

Cr. No. 1982 FEL 006288
Cr. No. 1982 FEL 007489

EDWARD R. MARTIN, JR.
United States Attorney

CHRISELLEN R. KOLB
CHRISTOPHER MACOMBER
* KATELYN B. BENTON
D.C. Bar #1020272
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Katelyn.Benton2@usdoj.gov
(202) 252-6829

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

Cases

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

Statutes

ISSUES PRESENTED

Whether the trial court abused its discretion by denying appellant Muhammad's motion under the Incarceration Reduction Amendment Act, where the court found that Muhammad continued to pose a danger to the community based on his failure to complete sex-offender training and his disciplinary record; where the court reasonably considered the D.C. Voluntary Sentencing Guidelines in finding that the interests of justice did not warrant release; and where the trial court properly evaluated the evidence under the preponderance standard in concluding that Muhammad failed to meet his burden to show entitlement to relief.

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COUNTERSTATEMENT OF THE CASE

Muhammad[1] was indicted in 1982 FEL 007498 and 1982 FEL 006288 for a string of heinous crimes against multiple victims, including murder, rape, and robbery, that he committed over a four-week period in October and November 1982

[1] As Muhammad indicates in his motion, he was born "William Davidson" and now uses the name "Muhaymin Muhammad."

(Record of Appeal (R.) at 113 (Indictment)); Supplemental Record (Sealed R.) at 262 (Indictment)).[2]

On January 19, 1984, Muhammad entered a global guilty plea resolving these cases (R. at 96). Pursuant to the plea agreement, Muhammad pled guilty to six offenses related to six incidents: Manslaughter (from an incident involving David Ball in October 1982)[3]; Rape (from an incident involving Barbaranette Bolden on October 31, 1982); First-Degree Murder (from an incident involving Ursula Brown on November 1, 1982); Assault with Intent to Rape (from an incident involving Gloria Ammann on November 2, 1982); Rape (from an incident involving Cecelia Kelton on November 8, 1982); and Armed Robbery (from an incident involving Evelyn Briggs on November 8, 1982) (R. at 125-26 (Judgment & Commitment Orders)).

On June 7, 1984, Muhammad was sentenced to 20 years to life for First-Degree Murder, 5 to 15 years for Manslaughter, 10 years to life for each count of Rape, 5 to 15 years for Assault with Intent to Rape, and 15 years to life for Armed Robbery (*id*.). The sentences for each count of conviction ran consecutive to each

[2] All citations to "R." are to the Record filed in Case No. 24-CO-296. All citations to "Sealed R." are to Supplemental Record No. 2 filed in Case No. 24-CO-296. All citations to the Records refer to the PDF page number.

[3] Defendant entered an *Alford* plea to the charge of Manslaughter in 1982 FEL 006288. *See North Carolina v. Alford*, 400 U.S. 25 (1970).

other (*id*.). Muhammad is currently serving an aggregate sentence of 65 years to life, of which he has served approximately 41 years (R. at 196). Muhammad is next eligible for parole in September 2032 (R. at 251).

On July 7, 2023, Muhammad filed a motion to reduce his sentence under the Incarceration Reduction Amendment Act (IRAA), D.C. Code § 24-403.03 (R. at 190). The government filed a response on October 31, 2023, opposing Muhammad's request for release (R. at 249). On December 19, 2023, the Honorable Craig Iscoe held a hearing on Muhammad's IRAA motion (A. at 117). On March 19, 2024, Judge Iscoe issued an order denying Muhammad's IRAA motion (R. at 303). On March 26, 2024, Muhammad filed a timely notice of appeal (R. at 333-34 (Notice of Appeal)).

Underlying Offenses

October 16, 1982

On October 16, 1982, Muhammad shot David Ball (A. at 227). Mr. Ball died the next day (*id*.). The government agrees with Muhammad's representation that on January 19, 1984, he entered an entered an *Alford* plea to Manslaughter in 1982 FEL 006288.

October 31, 1982

At 5:50 am, on October 31, 1982, Barbaranette Bolden was driving her car on I-95 near Alabama and Southern Avenues, SE, Washington, D.C. (R. at 304). Ms. Bolden was driving alone when a black Toyota, driven by Muhammad, bumped into her car (R. at 304). She and Muhammad pulled over their respective cars (*id*.). Muhammad, who exited the car with another individual, pulled a gun on Ms. Bolden and forced her into the back of the Toyota where he and the other male raped her (*id.*). On January 19, 1984, Muhammad pled guilty to Rape (R. at 43).

November 1, 1982

Sometime between 1:30 a.m. and 7:30 a.m. on November 1, 1982, Ursula Brown was shot in the head behind 4343 Martin Luther King Avenue, S.W., Washington, D.C. (Sealed R. at 309). She was found naked from the waist down and semen was found in her vagina (*id*.). The bullet removed from Ms. Brown's head was fired from the same gun recovered near Muhammad upon his arrest on November 8, 1982, and which was registered to Muhammad's father (*id*. at 310). Additionally, Ms. Brown's vehicle had recently been damaged and black paint from the damaged area matched a known sample of paint removed from the black Toyota Muhammad was driving (*id*.). Muhammad also made statements that put him at the scene of the murder (*id*.). On January 19, 1984, Muhammad pled guilty to First-Degree Murder (R. at 42).

November 2, 1982

At around 2:00 a.m. on November 2, 1982, Gloria Ammann was driving on I-295 when a black Toyota bumped into her car (Sealed R. at 300). After Ms. Ammann and Muhammad exited their cars, Muhammad pulled out a gun, forced Ms. Ammann to enter the Toyota, and then raped and sodomized her (*id*.). Ms. Ammann identified Muhammad in a line up (*id*.). On January 19, 1984, Muhammad pled guilty to Assault with Intent to Rape (R. at 43).

November 8, 1982 - Rape

At approximately 12:45 a.m., on November 8, 1982, Cecelia Kelton was driving alone on I-295 near the Navy Yard area of Washington, D.C. when a Dodge Diplomat bumped into her car (Sealed R. at 301). Ms. Kelton pulled over to inspect the damage (*id*.). Muhammad exited the Diplomat, pulled a gun on Ms. Kelton, and forced her to his vehicle where he raped and sodomized her (*id*.). Ms. Kelton identified Muhammad in a lineup (*id*.). On January 19, 1984, Muhammad pled guilty to Rape (R. at 42).

November 8, 1982 – Armed Robbery

Sometime between 9:00 p.m. and 10:25 p.m. on November 8, 1982, Evelyn Briggs was driving on I-295 in Washington, D.C. when her car was bumped by another car (Sealed R. at 302). When she pulled over, Muhammad exited his vehicle,

pulled a gun on Ms. Briggs, and took her to his car where he fondled and then robbed her (*id*.). On January 19, 1984, Muhammad pled guilty to Armed Robbery (R. at 40).

The IRAA Proceedings

Muhammad's IRAA Motion

Muhammad asserted that he was eligible to petition for IRAA relief because he committed the instant offenses before the age of 25 and had been incarcerated for more than 15 years (R. at 203).

Muhammad asserted that [redacted] (Sealed R. at 200). Muhammad's [redacted] (*id*. at 202-03). Muhammad [redacted] (*id*. at 11).

Muhammad asserted that [redacted] (Sealed R. at 203). His work at his father's barber shop was so lucrative that Muhammad earned sufficient money to open his own shop, with his father's help (*id*. at 205). Muhammad dressed in three-piece suits and [redacted] (*id*.). He also began [redacted] (*id*.). Muhammad maintained that the three-week crime spree for which he is incarcerated was fueled by his PCP use (*id*.).

Relying on his disciplinary record while incarcerated, Muhammad contended that he sufficiently matured and rehabilitated such that he was no longer a danger to

the community (R. at 213). Muhammad argued that his 2016 infraction labeled "stalking" was a misnomer because the offense is a "catch-all classification within the BOP that includes a spectrum of conduct and in [Muhammad's] case was minor and noncriminal" (*id*. at 216-17).

Muhammad also pointed to his more than 1,500 hours of educational programming, including courses on drug abuse, recidivism reduction, finance, banking, skilled-labor, and parenting (despite insisting that he has not fathered any children) (R. at 219-22, 225). While in prison, Muhammad has maintained employment in food services, mechanical work, paint shop work, laundry services, and as a barber (*id*. at 222). Some of this employment was through the UNICOR program (*id*. at 223). Finally, Muhammad cites his sobriety and faith as further evidence of his development (*id*. at 225).

Muhammad also submitted a report authored by an expert psychologist, Dr. Shauna Keller, who concluded that Muhammad is at low risk of sexual recidivism (R. at 227). Muhammad also relied on the Bureau of Prison's PATTERN score, which categorized Muhammad with a "minimum" risk of general recidivism and a "low" risk of violent recidivism (*id*. at 232).

Muhammad argued that the interests of justice also support his release under the IRAA (R. at 234). Muhammad noted that he has lost nearly all close familial relatives, including grandparents, parents, and certain siblings; he also suffered

physically while detained, [redacted] (Sealed R. at 231-33). He set forth a re-entry plan listing options for housing, health care, employment, and support groups (R. at 238-42).

The Government's Opposition

The government agreed that Muhammad met the threshold IRAA eligibility requirements because he committed the instant offense at age 18 and he had been incarcerated for at least 15 years (R. at 257). After reviewing the IRAA factors, however, the government determined that the interests of justice did not warrant a sentence reduction because Muhammad failed to show substantial compliance with prison rules and sufficient educational programming (*id*. at 251).

As an initial matter, the government noted that it was unable to independently verify Muhammad's representations about his childhood and family life (R. at 257). However, the government argued that this factor alone would not support Muhammad's release (*id*.).

Noting that it is the movant's burden to show "substantial compliance" with prison rules, the government argued that Muhammad's 27 infractions over the course of his incarceration demonstrate a "consistent pattern of [Muhammad] refusing to comply with the rules of the institution where he resides" (R. at 257-58). The government noted that this pattern includes several 200-Level offenses for

"Stalking," "Making Sexual Proposal/Threat," and "Threatening Bodily Harm" (R. at 258).

The government focused on a "particularly alarming" infraction for Stalking, dated December 12, 2016 (R. at 258). Prior to this date, Muhammad received "verbal counseling" concerning his [redacted] (Sealed R. at 251-52). This verbal counseling came in response to "inappropriate emails" Muhammad sent to [redacted], who he addressed as "Dear Beloved" (*id*. at 252). In these emails, Muhammad told [redacted] "how she needs to do her job" (*id.*). After complaining to another staff member about the [redacted] response, Muhammad said: "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me" (*id*.). During the "verbal counseling," Muhammad was explicitly warned that repeated behavior would earn an incident report for Stalking (*id*.).

Despite this warning, on September 7, 2016, Muhammad accused a female Cook Supervisor of stealing money, not preparing his meals properly, and lying to him (Sealed R. at 252). Muhammad referred to the employee as "House Negro" and "Lucifer" (*id*.). These missives caused the employee to feel "very upset" and that "her safety would be in danger if [Muhammad] was released to general population" (*id*.). [redacted]

[redacted] (*id*.). The government was particularly concerned that even after serving multiple decades of a sentence involving his repeated targeting of female victims, Muhammad continued this pattern by repeatedly targeting female staff members in BOP (R. at 260).

The government argued that Muhammad's programming, which averaged out to less than four hours of programming every month, was not compelling (R. at 260). Particularly lacking was any substantive programming concerning sexual therapy or sex-offender treatment (R. at 260). The government noted that Muhammad was on a waitlist for sex-offender treatment in 2015, but the record evinces that he has made no further efforts to obtain this programming (R. at 260-61).

The government viewed Muhammad's reentry plan as a "fine start," but noted that it, too, lacked any programming related to sexual-offender treatment (R. at 264).

Based on the totality of the factors listed in D.C. Code §22-403.03(c), the government argued that Muhammad had not met his burden to show that he deserved relief and asked the trial court to deny Muhammad's IRAA motion (R. at 265).

On November 16, 2023, the government supplemented its opposition with a victim impact statement from Cecelia Kelton (R. at 268). Ms. Kelton detailed the events of November 8, 1982, the physical and emotional impact it had on her, and noted that, although her faith helped her to forgive, she will not forget (R. at 271).

Muhammad's Reply Brief

In response to the government's opposition, Muhammad argued that his PATTERN score and his statements of remorse demonstrate his maturity, rehabilitation, and fitness to reenter society (R. at 276-79). Muhammad also noted that the government failed to present evidence rebutting Dr. Keller's assessment or showing that Muhammad's crime spree was not caused by PCP use (*id*. at 279, 290).

Muhammad argued that the government has "overblown" his 2016 offense for "stalking" and encouraged the trial court to essentially disregard it, claiming that it his prior convictions "played a significant role" in BOP's finding that he violated the rules (R. at 283-84). With respect to Muhammad's infraction for "Making Sexual Proposal/Threat," he argues that it was not a threat but rather a sexual proposal not made directly to a staff member (*id*. at 284).

With respect to Muhammad's history of programming, he notes that the total hours completed ignored time spent on education, including time in the UNICOR program (R. at 286-87). Muhammad also pointed to an amicus brief in another case to argue that D.C. inmates with long sentences are deprioritized for programming such as sex-offender treatment (*id*. at 287).

The Evidentiary Hearing

On December 19, 2023, Judge Iscoe held a hearing on Muhammad's IRAA motion. Muhammad argued that each of the 11 factors under the IRAA support his

release (A. at 120, 139). Muhammad declined to call any witnesses or make an oral statement to the court (*id*. at 120, 160). The government reiterated its opposition to release is based on Muhammad's concerning pattern of discipline and his lack of programming (*id*. at 140). The court acknowledged that it was concerned with Muhammad's offenses for "stalking, sexual proposals, and threats and threatening bodily harm" (*id*. at 142), and questioned Muhammad concerning his lack of sex-offender treatment. The court provided Muhammad an opportunity to make a statement, but he declined (*id*. at 156-57, 160).[4]

The Trial Court's Decision

On March 19, 2024, Judge Iscoe issued an order denying Muhammad's IRAA motion (A. at 169). Muhammad met the threshold eligibility requirements under D.C. Code § 24-403.03 (*id*. at 178). The court then examined the required statutory factors, in turn.

Under § 24-403.03(c)(1), the court noted that Muhammad was 18 years old when he committed the offenses, weighing this factor in favor of release (A. at 179).

Under § 24-403.03(c)(2), the court found that Muhammad's "difficult childhood" weighed in favor of release (A. at 179).

[4] The court told Muhammad that he did not have to make a statement and that "[f]ailure to say anything will not be held against you" (A. 156, 163-64).

Under § 24-403.03(c)(3), the court examined Muhammad's "27 disciplinary infractions," focusing on the 2016 infraction for "stalking" (A. 179). This infraction "raise[d] significant concerns, especially in light of Mr. Muhammad's convictions for two rapes, one attempted rape, one first degree murder, and one armed robbery, all of which he committed after staking [*sic*] the victims by driving on the beltway and stalking women who were driving alone" (*id*.). The trial court detailed the facts underlying the 2016 infraction (*id*. at 180). Muhammad sent multiple emails to a female staff member that began with the words "Dear Beloved," and "informed her how she needed to do her job" (*id*.). Muhammad then complained to another staff member about the female staff member, saying, "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me" (*id*.). Muhammad received a verbal warning but was told he would incur an infraction if he repeated the behavior (*id*.). Despite this warning, during a five-week period between September and October 2016, Muhammad filed five complaints against another female staff member, accusing her of stealing, not preparing meals properly, and lying (*id*.).

Judge Iscoe noted Muhammad's assertion at the evidentiary hearing that the nature of his prior convictions influenced BOP's investigation and ultimate adverse disciplinary finding but found that there was "no support for this assertion" (A. at 180). The court rejected Muhammad's argument that the infraction involved mere

annoyance, particularly because the target of Muhammad's repeated filings did not believe she would be safe "unless he was held in conditions more stringent than those in a medium level security institution" (*id.*).

The court also found it "significant" that this infraction did not result from "a single outburst or loss of temper," but rather from a prolonged and repeated behavior over the course of several months towards two different women (A. at 181). The court also found it "noteworthy" that the "infraction occurred approximately 34 years into his incarceration" (*id*.).

Pursuant to § 24-403.03(c)(3), the court analyzed Muhammad's programming (A. at 181). Muhammad's total programming amounted to "only slightly more than three hours per month," and lacked any sex- offender programming, "despite having been convicted of raping two different women and attempted to rape another" (*id*.). The trial court acknowledged Muhammad's argument that it was difficult to obtain sex-offender treatment given prison transfers and de-prioritization of D.C. inmates serving life sentences (*id*. at 182). However, the trial court concluded that "it is alarming that Mr. Muhammad has never received this important treatment over 42 years" (*id.* at 182). Additionally, because Muhammad chose not to call any witnesses at the evidentiary hearing, the trial court noted that it "did not have the opportunity to inquire of Dr. Keller about how she came to her conclusions that Mr. Muhammad, who was indicted on 45 charges related to the stalking and sexual assaulting of

women, and especially who again was accused of stalking two women in 2016, would benefit from this type of treatment" (*id*. at 183). Given his convictions involving serious sex offenses against five different women, the trial court found that Muhammad remained a danger to the community due to his 2016 infraction for stalking two women and his lack of sexual-offender treatment (A. at 183). The court found that § 24-403.03(c)(3) weighed against release (*id*.).

Under § 24-403.03(c)(4), the court noted the U.S. Attorney's Office's opposition to Muhammad's motion for release because of his limited programming and disciplinary record (A. at 183). This factor weighed against release (*id*.).

Under § 24-403.03(c)(5), the court found that Muhammad had not demonstrated sufficient maturity, rehabilitation, and a fitness to reenter society (A. at 184). In reaching this conclusion, the court pointed to Muhammad's 2016 stalking infraction, which occurred when he was 52 years old, and his statement at the time that, "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me" (*id*.). The court found that Muhammad's continued behavior, "especially after receiving a warning, show[ed] a lack of maturity and rehabilitation, and disregard for the rules of the institution" (*id*.).

The trial court revisited Dr. Keller's conclusion that Muhammad no longer needed sex-offender treatment, noting that this conclusion was "based solely on a two-hour telephone conversation" (A. at 184). Additionally, the court noted that

Muhammad's PATTERN score could serve as a general predictor of dangerousness but does not "guarantee" good behavior outside of prison (*id*. at 185). The court also found it significant that Muhammad "will not have stable housing or familial support" (*id*.).

Finally, the Court noted that it was Muhammad's burden to establish that he is no longer dangerous (A. at 185). Muhammad's decision not to testify and to rely instead on his letter, "made it more difficult for the Court to assess whether his letter, which may have been drafted or edited by others, was an accurate depiction of his feelings" (*id*.). In total, the Court found that Muhammad's letter, his PATTERN score, and Dr. Keller's letter were "not sufficient to meet his burden of demonstrating maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction" (*id*.). This factor weighed against release (*id*.).

Under § 24-403.03(c)(6), the court considered the victim impact statement of one of Muhammad's rape victims (A. at 186). The statement detailed the impact of Muhammad's crime, including "the long-term physical and mental effects" (*id*.). While the victim appeared to forgive Muhammad, the Court found that her statement revealed the impact his actions continue to have "more than four decades later" and ultimately concluded that this factor weighed against release (*id*.).

Under § 24-403.03(c)(7), the court considered Dr. Keller's opinion and Muhammad's BOP Inmate Profile, the latter of which classified Muhammad as

needing "Stable, Chronic Care," and concluded that this factor weighed slightly in favor of release (A. at 187).

Under § 24-403.03(c)(8), the court summarized Muhammad's proffered physical and emotional abuse suffered during his childhood, noting that neither the government nor the court could independently verify the proffered information (A. at 188). With no reason to doubt Muhammad's account of his childhood, the court found that this factor weighed in favor of release (*id*.).

Under § 24-403.03(c)(9), the court noted that while acting alone "Muhammad committed manslaughter against one victim, rape against two additional victims, and assault with intent to rape" a fourth separate victim (A. at 189). While acting with a co-defendant, Muhammad committed first-degree murder and an armed robbery of separate victims on separate dates (*id*.). The court found no indication in the record that the co-defendant was older or that Muhammad committed the offenses due to peer pressure, and so held that this factor weighed against release (*id*.).

Under § 24-403.03(c)(10), the court found that Muhammad's diminished capacity due to age weighed in favor of release (A. 190).

Under § 24-403.03(c)(11), the court considered Muhammad's reentry plan, noting that he did not have a stable housing plan and would instead rely on transitional housing where he would live among a vulnerable population, including female residents, employees, and volunteers (A. at 192). This fact, in conjunction

with Muhammad's "ignore[ance] or den[ial] of his need for sex offender treatment" led the court to conclude that this factor weighed against release (*id*.).

Assessing the totality of the factors, the court found that the majority weighed against release and concluded that Muhammad did not meet his burden of demonstrating that he will no longer be a danger to the community if released (A. at 192).

Independently, the court went on to assess whether the interests of justice would support release (A. at 194). The court assessed whether, under the District of Columbia's current Voluntary Sentencing Guidelines, a 42-year sentence for convictions of one count of manslaughter, one count of first-degree murder, two counts of rape, one count of armed robbery, and one count of assault with intent to rape would be in the interests of justice (*id*. at 195). The court considered the mandatory minimum sentences for first-degree murder, armed robbery, and assault with intent to rape, plus the severity of the remaining charges and the fact that many of the charges in the 42-count indictment were dismissed (*id*. at 196). The court reasoned that a sentencing judge could choose a sentence close to the middle of the guidelines for each remaining (non-mandatory minimum) offense, resulting in a sentence of 108.5 years of incarceration (*id*. at 196). Thus, the court concluded that allowing Muhammad to serve a sentence of 42 years for these offenses would not satisfy the interests of justice (*id*.).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying Muhammad's motion for IRAA relief. The court meticulously reviewed each of the requisite factors as required by D.C. Code § 24-403.03(c). Contrary to Muhammad's claim, the court did not err in finding that Muhammad remained dangerous because he failed to substantially comply with prison rules and failed to complete sex-offender treatment.

The court did not err in considering the D.C. Voluntary Sentencing Guidelines when determining whether the interests of justice supported release. The statute expressly permits the trial court to consider "[a]ny other information the court deems relevant to its decision." D.C. Code Ann. § 24-403.03(c)(11). By looking to the Voluntary Guidelines to examine whether Muhammad's sentence would comport with now-prevailing norms for these crimes, the trial court commendably sought objective indicia to guide its analysis.

Finally, nothing in the order suggests that the court did not apply the preponderance-of-the-evidence standard in evaluating Muhammad's claims.

ARGUMENT

The Trial Court Did Not Abuse Its Discretion in Denying Muhammad's IRAA Motion.

Muhammad argues that the trial court abused its discretion when it denied his IRAA motion because: (1) it erred in finding that the lack of sex offender treatment

contributed to a dangerousness finding (Br. at 29-36); (2) it erred in inferring dangerousness from a 2016 stalking infraction (Br. at 36-41); (3) it erred in relying on the current D.C. Voluntary Sentencing Guidelines in assessing whether the interests of justice supported release (Br. at 49-56); and (4) it improperly elevated Muhammad's burden of proof (Br. at 41-49). Muhammad's claims are meritless.

A. Standard of Review and Applicable Legal Principles

The IRAA "establishe[d] a sentence review procedure intended to . . . ensur[e] that all juvenile offenders serving lengthy prison terms have a realistic, meaningful opportunity to obtain release based on their diminished culpability and their maturation and rehabilitation." *Williams v. United States*, 205 A.3d 837, 846 (D.C. 2019). The defendant bears the burden to establish by a preponderance of the evidence that he 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)(2); *Welch v. United States*, 319 A.3d 971, 977 (D.C. 2024).

"The [trial] judge is obligated to accord the prisoner a fair hearing and to make findings and conclusions supported by the record with respect to the pertinent factors enumerated in the IRAA." *Williams*, 205 A.3d at 854. To be eligible for a sentence reduction under the IRAA, the defendant must have: (1) committed his crime before his 25th birthday; (2) been sentenced pursuant to D.C. Code §§ 24-403 or 24-403.01

(i.e., received either an indeterminate or a term-of-years sentence, respectively), or been "committed" pursuant to D.C. Code § 24-903 (i.e., received a Youth Rehabilitation Act sentence); and (3) served at least 15 years in prison. D.C. Code § 24-403.03(a), (b). If the defendant meets those threshold requirements, the trial court "shall" reduce the "term of imprisonment imposed" if the court also determines, after considering the factors in subsection (c), "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), (a)(2).

Under subsection (c) of the IRAA, the trial court must consider:

> (1) The defendant's age at the time of the offenses;
>
> (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 [D.C. Code] § 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 crimes, 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.

D.C. Code § 24-403.03(c). The trial court is afforded discretion in deciding how to balance these factors; they do not have "preordained weights assigned to them." *Williams*, 205 A.3d at 854.

This Court reviews a trial court's IRAA ruling for abuse of discretion. *Williams*, 205 A.3d at 848. In reviewing for abuse of discretion, the Court "must determine whether the decision maker failed to consider a relevant factor, whether [the decision maker] relied upon an improper factor, and whether the reasons given reasonably support the conclusion." *Bishop v. United States*, 310 A.3d 629, 641 (D.C. 2024) (quoting *Crater v. Oliver*, 201 A.3d 582, 584 (D.C. 2019) (internal quotation marks omitted). This Court's "role in reviewing the exercise of discretion is supervisory in nature and deferential in attitude." *Bishop*, 310 A.3d at 641 (quoting *In re Z.W.*, 214 A.3d 1023, 1037 (D.C. 2019) (internal quotation marks omitted)).

B. Muhammad Fails to Show an Abuse of Discretion.

The trial court conducted a thorough review of the evidence, methodically evaluated each of the IRAA factors, and considered the parties' arguments before reaching its decision. Because the court engaged in a reasoned analysis based on a firm factual foundation in determining that Muhammad did not meet his burden on dangerousness or the interests of justice, the court did not abuse its discretion in denying the IRAA motion.

First, Muhammad claims (Br. at 24-30) that the trial court erred in finding current dangerousness based on his failure to obtain sex-offender treatment over his 41 years of incarceration because there was no evidence in the record that such treatment was available to him. Muhammad asserts that he has been on the waitlist for such treatment since 2015, BOP's most recent individualized treatment plan did not recommend such treatment, and Dr. Keller concluded it was not necessary (Br. at 31). Muhammad goes so far as to claim that there was no "factual foundation" to suggest that such treatment would be relevant to his rehabilitation.

The trial court reasonably rejected Muhammad's claim. The court found sufficient factual support in Muhammad's convictions for two counts of rape, one count of assault with intent to rape, and one count of first-degree murder where the victim was found partially naked with semen in her vagina (A. at 181-83). Muhammad's 2016 infraction for "stalking," which occurred when he was 52 years

old and 34 years into his incarceration, underscored his on-going need for sex-offender treatment (*id*. at 179, 183-84). This record provides ample evidence for the trial court to conclude that sex-offender treatment was warranted, notwithstanding Dr. Keller's or the BOP's assessments otherwise.

The trial court acknowledged that Muhammad has been waitlisted for sex-offender treatment since 2015 but noted that Muhammad failed to establish the program was unavailable to him before 2015 (A. at 182). *See Williams*, 205 A.3d. at 850 (IRAA movant bears the burden of proof). Muhammad argues that his pre-2015 state of mind concerning whether he needed sex-offender treatment is "not relevant" (Br. at 25). However, it was Muhammad who proffered the entirety of his programming record (>1,500 hours) as evidence of his rehabilitation. More importantly, the IRAA requires judges to assess whether releasing a defendant would endanger the community. If the judge reasonably concludes that a defendant needs sex-offender treatment, it is reasonable to deny the defendant's motion for release until that treatment occurs. The inability of the prison to provide these services (or the length of the waitlist) does not override the court's responsibility under IRAA to protect the community.

Next, Muhammad argues (Br. at 30-35), that the trial court improperly used the shorthand of the offense "Stalking" to equate his administrative complaints with his underlying offenses. The "stalking" shorthand comes from the title of Code 225

(Sealed R. at 156) and the trial court repeatedly used quotation marks around the word to identify the use of the shorthand (A. at 175, 180-81, 183, 192), as did Muhammad (Br. at 33). In any event, the trial court did not rely solely on the title of the offense that was assigned by prison authorities and instead identified the specific nature of Muhammad's conduct that gave rise to its "significant concerns" (A. at 179). Specifically, the court noted that the conduct began shortly after he arrived at USP Yazoo City, and continued months later against a different female employee, despite a verbal warning that Muhammad would incur an infraction if he repeated the behavior (*id*. at 180). After the initial offense, Muhammad demonstrated his lack of maturity, rehabilitation, and conformance to prison rules by stating, "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me" (*id*.). Muhammad again engaged in similar conduct against a second female employee, by describing her as "Lucifer," "Fat Rat," and the "House Negro," and by accusing her of theft, lying, and not preparing meals properly (*id*.). The trial court then noted the similarities between this targeted and repeated harassment towards female BOP employees with Muhammad's repeated and targeted attacks on women driving alone in D.C. more than 40 years ago (*id*. at 193).

Considering Muhammad's lack of sex-offender programming, his convictions for multiple rapes and violent offenses, and his more recent conduct in prison, the court concluded that the lack of sex-offender programming contributed to

Muhammad's continued dangerousness (A. at 182). Had Muhammad completed this programming, he no doubt would have pointed to it as evidence to support his rehabilitation and, in turn, diminished risk of dangerousness. The trial court did not abuse its discretion by viewing Muhammad's 2016 infraction as evidence of the need for sex-offender treatment. *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.").

Finally, Muhammad claims (Br. at 49-56) that the trial court improperly used the current D.C. Voluntary Sentencing Guidelines as one factor in determining whether the interests of justice weigh in favor of release. Under D.C. Code § 24-403.03(c)(11), the court was permitted to consider "any other information the court deem[ed] relevant to its decision." *See Coleman v. United States*, 202 A.3d 1127, 1138 (D.C. 2019) (if statute's language is plain, courts generally look no further). Muhammad's claim (at 28) that the trial court cannot consider "authorities outside of the IRAA" ignores the existence of the catch-all provision permitting judges to consider any other information it deems relevant. D.C. Code § 24-403.03(c)(11). Nor can Muhammad show that current sentencing standards are an irrelevant consideration. The IRAA itself rests on the notion that courts should reexamine sentences imposed long ago through the lens of current, presumably more informed, practices. By looking at the Voluntary Sentencing Guidelines adopted in the District

to reflect more recent practices and scientific knowledge, the trial judge appropriately exercised its discretion.[5]

C. The Trial Court Applied the Correct Legal Standards in Evaluating Muhammad's Proffered Evidence.

Muhammad argues (Br. at 41-49) that the trial court improperly elevated Muhammad's burden of proof by applying a heightened evidentiary standard, discounting his expert's opinion, and discrediting his written statement. Each of Muhammad's claims fail.

First, there is no evidence that the trial court applied anything but a preponderance standard. Muhammad relies on *Welch v. United States*, 319 A.3d 971 (D.C. 2024), in arguing that this Court has not clearly established the IRAA court's standard of review (Br. at 42). Contrary to Muhammad's claims, there is no controversy over which standard applies. *See Welch*, 319 A.3d at 911 (both parties agree preponderance standard applies); *Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021) ("preponderance standard is the 'default rule'"). While it is true that the trial court here did not specify the standard of review applied, this Court "presume[s]

[5] Because the court had already determined that Muhammad had not met his burden regarding dangerousness, any error in examining whether the interests of justice warrant release was harmless. *See Kotteakos v. United States*, 328 U.S. 750, 765 (1946) (non-constitutional error is harmless if "the judgment was not substantially swayed by the error").

that the trial judge knew the proper standard of proof to apply and did in fact apply it." *Welch*, 319 A.3d at 977.

Muhammad attempts to elevate the trial court's commentary concerning one of many pieces of evidence, the PATTERN assessment, to argue that the court elevated his burden of proof. At the evidentiary hearing, the court made clear that it viewed the PATTERN score as having limited utility because "one side or the other is always citing to the PATTERN score and the other side not" (A. at 147). The trial court further recognized that the PATTERN score could not "guarantee [] how Mr. Muhammad will behave outside of prison" (A. at 185). Although Muhammad complains about the trial court's choice of words ("guarantee"), this Court has made essentially the same point in other cases. *Cf. United States v. Facon*, 288 A.3d 317, 338 (D.C. 2023) ("facts about Facon's activities while in the highly regulated environment of prison" … "did not explain why those activities supported a finding that Facon was rehabilitated and would not endanger others if released from such an environment"). Moreover, the PATTERN score here incorporates BOP's assessment that sex-offender treatment was not warranted (A. at 125), an assessment with which the trial court disagreed. While perhaps an inartful use of the word "guarantee," the government's review of the trial court's reasoning is simply that the PATTERN score alone (after discrediting Dr. Keller and Muhammad's letter) did not satisfy the defendant's burden of establishing a lack of danger.

With respect to Dr. Keller's letter, the Court noted that because Muhammad chose not to present any testimony, it "did not have the opportunity to inquire of Dr. Keller about how she came to her conclusions that Mr. Muhammad, who was indicted on 45 charges related to the stalking and sexual assaulting of women, and especially who again was accused of stalking two women in 2016, would [not] benefit from [sex offender] treatment" (A. at 183). The court therefore did not abuse its discretion by disagreeing with Dr. Keller's conclusion on this point. *See Waldman v. Levine*, 544 A.2d 683, 689 (D.C. 1988) ("expert testimony is not binding on the trier of fact, and the trier of fact is given considerable latitude in determining the weight to be given such evidence") (citation omitted); *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.") (internal quotation marks and citation omitted). Here, Muhammad chose not to call Dr. Keller as a witness, a strategic decision that was his to make, but the court was not required to accept Dr. Keller's opinion.[6]

[6] Muhammad asserts (Br. 48) that there is a financial burden of securing expert testimony, citing the total cap on expert fees. But Muhammad did not claim at the evidentiary hearing or in the instant appeal that he had reached that cap. Of course, other IRAA petitioners have provided the trial court with expert testimony in an effort to meet their burden. *E.g.*, *Henny v. United States*, 321 A.3d 621 (D.C. 2024) (one testifying expert); *Bishop v. United States*, 310 A.3d 629 (D.C. 2024) (two testifying experts); *Long v. United States*, 312 A.3d 1247 (D.C. 2024) (one testifying expert); *cf. DeVeau v. United States*, 483 A.2d 307 (D.C. 1984) (three testifying experts).

The Court was similarly not obligated to accept Muhammad's letter. As an initial matter, any statement made by a prisoner requesting release contains intrinsic bias. But here, the trial court had two statements from Muhammad to consider. The first was made shortly after his transfer to USP Yazoo City when Muhammad was warned about harassing emails sent to female BOP employees. Muhammad said, "I have two life sentences, I don't give a damn about slapping an officer or what's going to happen to me" (A. at 180). Later, in support of release, Muhammad submitted a letter accepting responsibility and expressing his remorse. These two contrasting statements understandably made it difficult for the court to assess Muhammad's true state of mind. While it is certainly Muhammad's choice whether to testify, it is also Muhammad who carries the burden of proof.

Muhammad's decision not to testify was knowing, voluntary, and not influenced by the trial court's later statements made to comfort a person appearing before it. At the evidentiary hearing, in accordance with D.C. Code § 23-403.03(b)(2), the trial court gave Muhammad an opportunity to make a statement to the court (A. at 156). Muhammad conferred with counsel twice, after which counsel said, "Nothing further from the defense, Your Honor" (A. 160). Muhammad thus made a knowing and voluntary waiver of his right to be heard at the IRAA hearing. After this waiver and after a discussion of Muhammad's return to BOP through the writ process, the trial court said, "I had given you the opportunity to let Mr.

Muhammad speak if he wished" (A. at 163). Notably, the court used the past tense. While not obligated to provide a second opportunity, the Court appeared to do so while noting that "[f]ailure to say anything will not be held against you" (*id*.). Muhammad declined a second time, with counsel noting that Muhammad was "quite nervous" before the court and opted to instead rely on his written letter (A. 163-64). The trial court was left to weigh two contradictory statements from Muhammad. That it ultimately discredited his more recent statement that was written in advance of the hearing, possibly with the assistance of others, is not an abuse of discretion.

Muhammad claims (Br. at 44-47) that the court "devalued" his evidence. In essence, he argues that the trial court gave his evidence improper weight. Generally, on review for abuse of discretion, an argument that the trial court "should have given more weight to factors favorable to [the appellee] . . . is not a basis for reversal." *Sharps v. United States*, 246 A.3d 1141, 1159 n. 90 (D.C. 2021). "[S]o long as the evidence provides sufficient support for the trial court's order, [this Court] will not substitute [its] judgment ... for that of the judge who heard the evidence." *Blackson v. United States*, 897 A.2d 187, 194 (D.C. 2006) (internal quotation and brackets omitted); *Fridman v. Orbis Bus. Intel. Ltd.,* 229 A.3d 494, 513 (D.C. 2020) ("Discretion signifies choice.") (internal quotations omitted).

Ultimately, Muhammad conflates the court's duty to weigh evidence with the burden of proof Muhammad carried as an IRAA movant. Nothing in the court's

order suggests that anything but the preponderance-of-evidence standard was used. Thus, this Court should affirm the trial's courts denial of Muhammad's IRAA motion. *See Welch,* 319 A.3d at 977 ("Neither of these statements by the trial court indicates that it applied a higher standard than preponderance of the evidence—both statements were made in the context of evaluating the evidence submitted by Mr. Welch as to specific factors, not assessments of the weight of the evidence as a whole. And in analyzing the relevant factors to determine whether to reduce Mr. Welch's sentence, the trial court properly weighed the evidence favoring immediate release against evidence counseling against immediate release.").

CONCLUSION

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

Respectfully submitted,

EDWARD R. MARTIN, JR.
United States Attorney

CHRISELLEN R. KOLB
CHRISTOPHER MACOMBER
Assistant United States Attorneys

__/s/_____
KATELYN B. BENTON
D.C. Bar #460109
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530

Katelyn.Benton2@usdoj.gov
(202) 252-6829

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, Safa Ansari-Bayegan, Esq., Public Defender Service, on this 31st day of January, 2025.

__/s/_____
KATELYN B. BENTON
Assistant United States Attorney