

BRIEF FOR APPELLEE

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DISTRICT OF COLUMBIA  
COURT OF APPEALS

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No. 24-CO-716

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HENRY ALLEN,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

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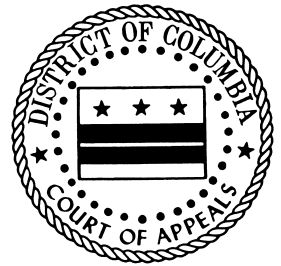
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## TABLE OF CONTENTS

|                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| COUNTERSTATEMENT OF THE CASE .....                                                                    | 1  |
| Factual Background and Procedural History .....                                                       | 1  |
| The Compassionate-Release Litigation.....                                                             | 3  |
| The Trial Court’s Ruling .....                                                                        | 7  |
| SUMMARY OF ARGUMENT .....                                                                             | 8  |
| ARGUMENT .....                                                                                        | 9  |
| The Trial Court Did Not Abuse Its Discretion In Denying<br>Allen’s Compassionate-Release Motion.....  | 9  |
| A. Standard of Review and Applicable Legal Principles. ....                                           | 9  |
| B. Discussion.....                                                                                    | 11 |
| 1. The trial court considered the totality of the<br>circumstances.....                               | 11 |
| 2. The trial court correctly considered rehabilitation<br>solely in the context of dangerousness..... | 15 |
| CONCLUSION.....                                                                                       | 29 |

## TABLE OF AUTHORITIES\*

### Cases

|                                                                                                                            |            |
|----------------------------------------------------------------------------------------------------------------------------|------------|
| <i>Aboye v. United States</i> , 121 A.3d 1245 (D.C. 2015) .....                                                            | 20         |
| <i>Bailey v. United States</i> , 251 A.3d 724 (D.C. 2021) .....                                                            | 10, 14     |
| <i>Bishop v. United States</i> , 310 A.3d 629 (D.C. 2024) .....                                                            | 29         |
| <i>Bolz v. District of Columbia</i> , 149 A.3d 1130 (D.C. 2016) .....                                                      | 20         |
| <i>Burke v. Groover, Christie &amp; Merritt, P.C.</i> , 26 A.3d 292 (D.C. 2011).....                                       | 20         |
| <i>Colbert v. United States</i> , 310 A.3d 608 (D.C. 2024).....                                                            | 10         |
| <i>Digital Realty Tr., Inc. v. Somers</i> , 583 U.S. 149 (2018) .....                                                      | 18         |
| <i>Doe v. Burke</i> , 133 A.3d 569 (D.C. 2016) .....                                                                       | 19         |
| <i>Howard Univ. Hosp./Prop. &amp; Cas. Guarantee Fund v. D.C. Dep’t of<br/>Emp. Servs.</i> , 952 A.2d 168 (D.C. 2008)..... | 28         |
| <i>In re D.B.</i> , 879 A.2d 682 (D.C. 2005) .....                                                                         | 11         |
| <i>In re J.D.C.</i> , 594 A.2d 70 (D.C. 1991) .....                                                                        | 11         |
| <i>In re M.M.D.</i> , 662 A.2d 837 (D.C. 1995) .....                                                                       | 18         |
| <i>Jarecki v. G.D. Searle &amp; Co.</i> , 367 U.S. 303 (1961) .....                                                        | 20         |
| * <i>Johnson v. United States</i> , 398 A.2d 354 (D.C. 1979).....                                                          | 11, 12, 27 |
| <i>Loughrin v. United States</i> , 573 U.S. 351 (2014) .....                                                               | 18         |
| <i>Nielsen v. Preap</i> , 139 S. Ct. 954 (2019) .....                                                                      | 29         |
| <i>Page v. United States</i> , 254 A.3d 1129 (D.C. 2021).....                                                              | 22         |
| <i>Paroline v. United States</i> , 572 U.S. 434 (2014).....                                                                | 20         |

---

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

|                                                                           |                           |
|---------------------------------------------------------------------------|---------------------------|
| <i>Russello v. United States</i> , 464 U.S. 16 (2016) .....               | 19                        |
| <i>Smith v. D.C. Dep’t of Emp. Servs.</i> , 548 A.2d 95 (D.C. 1988) ..... | 26, 28                    |
| * <i>Stringer v. United States</i> , 317 A.3d 875 (D.C. 2024) .....       | 16                        |
| * <i>United States v. Autrey</i> , 264 A.3d 653 (D.C. 2021)<br>.....      | 5, 10, 17, 19, 21, 22, 25 |
| <i>United States v. Bass</i> , 17 F.4th 629 (6th Cir. 2021) .....         | 26                        |
| <i>United States v. Brooker</i> , 976 F.3d 228 (2d Cir. 2020) .....       | 26                        |
| <i>United States v. McCall</i> , 56 F.4th 1048 (6th Cir. 2022) .....      | 11                        |
| <i>United States v. McGee</i> , 992 F.3d 1035 (10th Cir. 2021) .....      | 11                        |
| <i>United States v. McKinnie</i> , 24 F.4th 583 (6th Cir. 2022) .....     | 11                        |
| <i>United States v. Peoples</i> , 41 F.4th 837 (7th Cir. 2022) .....      | 26                        |
| <i>United States v. Ruvalcaba</i> , 26 F.4th 14 (1st Cir. 2022) .....     | 11                        |
| <i>United States v. Vaughn</i> , 62 F.4th 1071 (7th Cir. 2023) .....      | 11                        |

## **Statutes**

|                                     |                       |
|-------------------------------------|-----------------------|
| 18 U.S.C. § 3142(g) .....           | 9, 16, 17, 25         |
| 18 U.S.C. § 3553(a) .....           | 9, 16, 17, 25         |
| 18 U.S.C. § 3582(c)(1)(A) .....     | 23, 25                |
| 18 U.S.C. § 3582(c)(1)(A)(ii) ..... | 24                    |
| 28 U.S.C. § 994(t) .....            | 23, 24, 26            |
| D.C. Code § 24-403.03 .....         | 22                    |
| D.C. Code § 24-403.03(a)(2) .....   | 22, 27                |
| D.C. Code § 24-403.03(c)(5) .....   | 27                    |
| D.C. Code § 24-403.04 .....         | 3, 17, 18, 20, 21, 23 |

|                                     |                       |
|-------------------------------------|-----------------------|
| D.C. Code § 24-403.04(2) .....      | 18                    |
| D.C. Code § 24-403.04(3) .....      | 17                    |
| D.C. Code § 24-403.04(a) .....      | 7, 10, 16, 22, 24, 25 |
| D.C. Code § 24-403.04(a)(1).....    | 17, 18, 21            |
| D.C. Code § 24-403.04(a)(2).....    | 4                     |
| D.C. Code § 24-403.04(a)(3)(A)..... | 18                    |
| D.C. Code § 24-403.04(D) .....      | 18                    |
| D.C. Code § 24-403.04(a)(3).....    | 19, 21, 24            |

## **Rules**

|                            |        |
|----------------------------|--------|
| D.C. App. R. 27(d)(3)..... | 12     |
| D.C. App. R. 28(g) .....   | 12     |
| U.S.S.G. § 1B1.13.....     | 24, 25 |
| U.S.S.G. § 1B1.13(d) ..... | 26, 27 |

## **Other Authorities**

|                                                                                                                                           |    |
|-------------------------------------------------------------------------------------------------------------------------------------------|----|
| Committee on the Judiciary & Pub. Safety, Council of the District of<br>Columbia, Report on Bill No. 23-127 at 27-28 (Nov. 23, 2020)..... | 22 |
|-------------------------------------------------------------------------------------------------------------------------------------------|----|

## ISSUE PRESENTED

Whether the trial court abused its discretion when it concluded that appellant Henry Allen had failed to show an extraordinary-and-compelling reason for compassionate release: a) without explicitly employing a totality-of-the-circumstances analysis where this Court has never articulated that such a test applies and, in any event, the language in the trial court's order suggests that it considered all of Allen's arguments, and b) after declining to consider rehabilitation as one of Allen's extraordinary-and-compelling reasons where this Court has never directed courts to consider rehabilitation outside of the dangerousness analysis and where the text, legislative history, and controlling caselaw make clear that rehabilitation factors only into the dangerousness determination.

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BRIEF FOR APPELLEE

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**COUNTERSTATEMENT OF THE CASE**

**Factual Background and Procedural History**

On September 19, 2002, Detrick Ealy and his friend, Maurice Rogers, made the mistake of double-parking their car in the middle of Seaton Place, NE, where they intended to purchase marijuana. Mem. Op. and Judgment, *Allen v. United States*, No. 04-CF-401 (D.C. June 9, 2009). Appellant Henry Allen yelled at Ealy to “pull that mother f\*\*king car . . . out of the mother f\*\*king street, it’s hot out there” (*id.*). Fearing that

Allen was going to get a gun, Ealy and Rogers drove away and stopped on the corner of Third and Adams Streets, NE, near Rogers's mother's home (*id.* at 2-3). Ealy got out of the car and was urinating in an alley when "he heard gun shots and saw Rogers running towards him"; Allen was shooting at Rogers from behind (*id.* at 2). Rogers's mother saw the shooter running after Rogers, and then saw Rogers collapse to the ground (*id.* at 3-4). The shooter then sped off in a car (*id.*). Both Ealy and a second man, Douglas Smith, identified Allen as the shooter, and "other evidence (including evidence about [Allen] driving a Cadillac like the shooter's car) support[ed] the identification or similar-appearance testimony offered by Smith, Ealy, and" Rogers's mother (*id.* at 8).

On November 26, 2003, following a trial before the Honorable Geoffrey M. Alprin, a jury found Allen guilty of first-degree murder while armed, possession of a firearm during a crime of violence, and carrying a pistol without a license (Record on Appeal (R.) 95 (Govt's Opp. at 2)).<sup>1</sup> On April 23, 2004, Judge Alprin sentenced Allen to an aggregate term of 45

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<sup>1</sup> All citations to the Record are to the PDF page numbers.

years' imprisonment, to be followed by five years' supervised release (R. 19 (Docket at 8)).

On June 7, 2023, Allen filed a motion for compassionate release under D.C. Code § 24-403.04 (R. 72-83 (Def.'s Mot.); R. 143-143 (Def.'s Reply)), which the government opposed. The Honorable Michael J. Ryan held two hearings on Allen's motion on March 8, 2024, and May 17, 2024. On July 31, 2024, Judge Ryan issued an order denying Allen's motion for compassionate release (R. 183-195). Allen timely noted an appeal (R. 196-97).

On October 23, 2024, Allen filed a motion for summary reversal (MSR) of the trial court's denial of his compassionate-release motion. The government filed its motion for summary affirmance on November 13, 2024. On July 28, 2025, this Court issued an order denying both motions and directing the parties to instead file briefs.

### **The Compassionate-Release Litigation**

In his compassionate-release motion, Allen argued that (1) he no longer posed a danger to the community because he had rehabilitated himself and had assisted other inmates in their rehabilitation, and (2) "extraordinary and compelling reasons" justified his release, given his

rehabilitation, his age,<sup>2</sup> the fact that he had served more than 20 years in prison, and his increased susceptibility to complications from COVID-19 due to his medical history (which included stroke, nerve pain, gastroesophageal reflux, arthritis, lower-back pain, hypertension, hyperlipidemia, pre-diabetes, and thickened dystrophic yellowed nails) (R. 72-83 (Def.'s Mot. 1-12)). He argued that the court should consider each of his stated extraordinary-and-compelling reasons together (R. 142-143 (Def.'s Reply at 1-2) (“[T]he preponderance of Mr. Allen’s [extraordinary-and-compelling circumstances] claim is his poor health generally, his age, his over 20 years of incarceration, and his extraordinary rehabilitation.”)).

In opposition, the government argued that Allen had not shown extraordinary-and-compelling reasons for release because (1) several of his medical conditions did not increase his vulnerability to COVID-19, (2) although Allen suffered from two conditions (hypertension and history of

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<sup>2</sup> Allen noted that he was “close to the per se eligibility described in paragraph (a)(2)” and “one of paragraph (a)(3)’s examples” because he was 56 years old when filed his motion (R. 72-72 (Def.'s Mot. at 2)). See D.C. Code §§ 24-403.04(a)(2) and (a)(3) (movant may be eligible for compassionate release if, among other factors, the movant is at least 60 years old).

stroke) that could increase his vulnerability to COVID-19, he was fully-vaccinated against the virus, and had not shown he remained “acutely vulnerable” to severe illness or death from the virus as required by *United States v. Autrey*, 264 A.3d 653, 659 (D.C. 2021) (R. 105-113 (Govt’s Opp. at 12-20)). Further, the government argued that Allen had not shown that he was no longer a danger to the community in light of, among other reasons, his significant criminal history; his disciplinary history while in the Bureau of Prisons (BOP) (12 infractions, including three for possessing a dangerous weapon); the lack of programing geared toward helping him obtain employment or addressing the causes of his criminal behavior; and his primary role in murdering Rogers (R. 113-119 (Govt’s Opp. at 20-26)). The government also argued that it opposed Allen’s argument that the combination of his medical conditions, age, time in prison, and rehabilitation together constituted an extraordinary-and-compelling reason for release (5/17/24 Transcript (Tr.) 61-62).

The trial court issued an order scheduling a hearing on Allen’s motion and requesting that Allen “expand the record” to include “any further details on Mr. Allen’s health conditions and resulting risk from COVID-19, including but not limited to any medical special opinion

testimony regarding Mr. Allen's specific vulnerability" to the virus, as well as "any other particularized information regarding Mr. Allen's medical conditions" (R. 149-150 (Nov. 17, 2023, Order at 1-2)). Allen subsequently submitted an affidavit authored by Marcia Bell, R.N., who opined on the severity of Allen's medical conditions and his resulting susceptibility to COVID-19 (Sealed Record (SR.) 153-160 (Aff. of Marcia L. Bell, RN, BSN, CAPA)).

At a hearing on March 8, 2024, the trial court expressed doubt that the Bell affidavit was admissible evidence, stating: "I know that nurses do great work. But what you're relying on Ms. Bell to tell me would seem to be uniquely the province of doctors." (3/8/24 Tr. 4.) Allen's counsel requested a continuance to obtain evidence to address the court's concerns. At the next hearing on May 17, 2024, however, Allen's counsel stated: "we do not have expert testimony to present, so we'll have to rest on the record as it currently exists" (5/17/24 Tr. 24). The court then heard testimony from Larry Hagans (who had previously been granted compassionate release and spoke to the conditions at one of the prisons

where Allen had been incarcerated),<sup>3</sup> and considered victim-impact statements from Rogers’s brother, mother, and daughter (all of whom opposed Allen’s early release), and argument from the parties consistent with their filings (see generally 5/17/24 Tr. 1-67).

### **The Trial Court’s Ruling**

The trial court denied Allen’s compassionate-release motion in a 12-page order. The court first concluded that Allen had not established an extraordinary-and-compelling reason warranting compassionate release. Judge Ryan observed that Allen—a vaccinated, then-57-year-old man who has served more than 20 years of his sentence—did not claim eligibility based on any of the specifically enumerated reasons in § 24-403.04(a) (R. 185 (Order at 3)). The court acknowledged that Allen would “apparently qualify under section (a)(2) in February of 2027” (R. 185 (Order at 3)). Because of the outstanding admissibility issues about the Bell affidavit, however, the trial court did not credit the medical opinions proffered by Allen’s purported expert and thus concluded that there was

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<sup>3</sup> Among other things, Hagans stated he had been incarcerated with Allen at USP Sandy, but he later corrected the record and confirmed that the two men had not been at USP Sandy at the same time (6/12/24 Tr. 5).

“insufficient proof” that Allen remained “acutely vulnerable” to COVID-19 despite being fully vaccinated (R. 187-188, 190 (Order at 5-6, 8)).

As to Allen’s argument that his rehabilitation should be considered as an extraordinary-and-compelling reason for release, the trial court “conclude[d], based on the statute and an extensive review of compassionate release case law, that this argument has little textual or precedential support” (R. 190-191 (Order at 8-9)). Instead, the court considered Allen’s rehabilitation as part of its dangerousness analysis, and ultimately found that Allen had shown he is no longer a danger to any person or the community (R. 191-194 (Order at 9-12)).

## **SUMMARY OF ARGUMENT**

There is no case law in this jurisdiction requiring a trial court to consider a compassionate-release movant’s stated extraordinary-and-compelling reasons for release together as opposed to individually. Even assuming that such a requirement exists, the trial court appropriately considered Allen’s stated reasons for release.

Moreover, the trial court appropriately declined Allen’s invitation to consider rehabilitation as part of his extraordinary-and-compelling reason for release. The text, legislative history, and current controlling

case law make clear that the trial court should consider rehabilitation in the context of analyzing whether a compassionate-release movant remains a danger to the community.

## **ARGUMENT**

### **The Trial Court Did Not Abuse Its Discretion In Denying Allen's Compassionate-Release Motion.**

#### **A. Standard of Review and Applicable Legal Principles.**

The District's compassionate-release statute provides:

(a) Notwithstanding any other provision of law, the court shall modify a term of imprisonment imposed upon a defendant if it determines the defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a) and evidence of the defendant's rehabilitation while incarcerated, and:

(1) The defendant has a terminal illness, which means a disease or condition with an end-of-life trajectory;

(2) The defendant is 60 years of age or older and has served at least 20 years in prison; or

(3) Other extraordinary and compelling reasons warrant such a modification, including:

(A) A debilitating medical condition involving an incurable illness, or a debilitating injury from which the defendant will not recover;

(B) Elderly age, defined as a defendant who:

- (i) Is 60 years of age or older;
  - (ii) Has served the lesser of 15 years or 75% of the defendant's sentence; and
  - (iii) Suffers from a chronic or serious medical condition related to the aging process or that causes an acute vulnerability to severe medical complications or death as a result of COVID-19;
- (C) Death or incapacitation of the family member caregiver of the defendant's children; or
- (D) Incapacitation of a spouse or a domestic partner when the defendant would be the only available caregiver for the spouse or domestic partner.

D.C. Code § 24-403.04(a). It is the compassionate-release movant's "burden to establish they are non-dangerous by a preponderance of the evidence." *Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021). It is likewise the movant's burden to establish eligibility by a preponderance of the evidence. *Autrey v. United States*, 264 A.3d 653, 659 (D.C. 2021). The movant must show both non-dangerousness and eligibility, so a failure to show either forecloses early release. *See id.* at 654 ("the statute's two core requirements" are "that [the defendant] is both eligible and non-dangerous").

This Court reviews the denial of a motion for compassionate release for abuse of discretion. *Colbert v. United States*, 310 A.3d 608, 612 (D.C.

2024). The trial court’s discretion must be “founded upon correct legal principles” and “drawn from a firm factual foundation.” *In re D.B.*, 879 A.2d 682, 691 (D.C. 2005) (quoting *In re J.D.C.*, 594 A.2d 70, 75 (D.C. 1991), and *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979)).

## **B. Discussion.**

### **1. The trial court considered the totality of the circumstances.**

As Allen concedes (Brief at 25), this Court has never squarely held that the trial court *must*, in evaluating a movant’s extraordinary-and-compelling reasons for release, consider those reasons together rather than individually. And although some federal circuit courts “have held that it is *permissible* to consider reasons jointly as well as severally,” *United States v. Vaughn*, 62 F.4th 1071, 1072-73 (7th Cir. 2023) (emphasis supplied) (citing *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022) and *United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021)), at least one federal circuit has said just the opposite. See *United States v. McKinnie*, 24 F.4th 583, 588 (6th Cir. 2022) (“[W]hy would combining unrelated factors, each individually insufficient to justify a sentence reduction, amount to more than the sum of their individual parts?”); *United States v. McCall*, 56 F.4th 1048, 1066 (6th Cir.

2022) (same). Given that existing, noncontrolling case law indicates only that a court *may* consider multiple reasons together to constitute an extraordinary-and-compelling reason for release, the trial court here can hardly be faulted for instead considering Allen’s reasons individually. *See Johnson v. United States*, 398 A.2d 354, 361 (D.C. 1979) (“Discretion signifies choice . . . and do[es] not preordain a single permissible conclusion. . . .”).<sup>4</sup>

In any event, the trial court’s order here suggests that it *did* consider the totality of the circumstances in ruling on Allen’s compassionate-release motion. The court acknowledged that “Allen requests compassionate release on the grounds that his ‘extraordinary transformation,’ medical conditions *and* risk of COVID-19 complications or death as a result of his medical conditions, constitute an ‘extraordinary and compelling reason’” to modify his sentence (R. 184 (emphasis supplied)). The court expressly recognized that it could “consider all evidence to find a[n] ‘extraordinary and compelling’ reason that warrants

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<sup>4</sup> Allen’s argument (Brief at 20 & n.9; MSR at 2-3) that this Court has explicitly directed trial courts to address the “totality of the circumstances” relies on an unpublished disposition, in violation of this Court’s rules. D.C. App. R. 27(d)(3), 28(g).

resentencing” (R. 185). The heading above the court’s discussion of Allen’s stated extraordinary-and-compelling reasons was also framed in the conjunctive (R. 186 (“Mr. Allen’s health conditions and rehabilitative efforts do not present a basis for statutory relief”)). And the court’s substantive discussion makes clear that it (1) also considered Allen’s argument that his age and prison time thus far, “in addition to his susceptibility to COVID-19 and medical concerns,” were “closely analogous” to a statutory extraordinary-and-compelling reason for release and (2) appropriately (as discussed *infra*) declined to consider rehabilitation as part of that same calculus (R. 191). That Allen does not like the manner in which the trial court ultimately weighed his arguments does not mean that the trial court erred in its analysis.<sup>5</sup>

Moreover, even assuming there are some cases in which multiple, individually insufficient circumstances could combine to establish

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<sup>5</sup> The fact that the trial court examined each reason presented by Allen sequentially does not mean that the court engaged in a “divide-and-conquer analysis” (Brief at 24 (citation omitted)). The court logically had to weigh the merits of each proffered reason individually before it could assess them together. That it found that certain factors did not, by themselves, make Allen eligible (see *id.* at 23-24) does not mean that the court failed to *consider* Allen’s argument that, taken together, they could make him eligible; the court simply disagreed.

“extraordinary and compelling” reasons for release, Allen’s is not such a case. First, Allen is fully vaccinated against COVID-19, and, although he was given the opportunity to do so, failed to present admissible evidence showing that he still faces an acute vulnerability to severe illness or death from COVID-19 despite vaccination. The trial court specifically requested “any further details on Mr. Allen’s health conditions and resulting risk from COVID-19” (R. 150 (Nov. 17, 2023, Order at 1-2)). Allen does not challenge the trial court’s refusal to credit his expert’s affidavit “without a showing of admissibility” given the trial court concerns about whether the affiant was qualified to offer the specialized opinions contained in her affidavit (R. 188 (Order at 6 (“the defense did not further expand the record as it related to Mr. Allen’s specific medical claims”))). Because the trial court was left to evaluate Allen’s medical evidence without the information the court had requested to understand the impact of that evidence, Allen cannot now reasonably complain that the trial court did not fully consider his medical conditions either individually or together with his other claimed circumstances. *Bailey*, 251 A.2d at 729 (defendant bears burden to show entitlement to release). Second, it is not clear why the fact that Allen is a few years shy of 60

should weigh in favor of release. This circumstance is common, not “extraordinary”: many prisoners incarcerated for lengthy terms will near the age of 60 at some point, and nearly all will be able to point to additional factors in their favor. And again, as set forth *infra*, the trial court appropriately declined to consider Allen’s rehabilitation in the context of its extraordinary-and-compelling analysis. Accordingly, Allen’s arguments (Brief at 15-25; MSR at 1-2, 9, 16) that the trial court erred by considering each alleged extraordinary-and-compelling reason in isolation rather than in combination must fail.

**2. The trial court correctly considered rehabilitation solely in the context of dangerousness.**

Contrary to Allen’s claim (Brief at 25-33; MSR at 2, 17-18), the trial judge did not abuse his discretion in considering rehabilitation in the context of dangerousness and declining to double-count that rehabilitation as an extraordinary-and-compelling reason for release. First, nothing in the text of § 24-403.04(a) explicitly obligates the trial court to consider rehabilitation as part of a defendant’s extraordinary-and-compelling reason for release. Second, this Court’s published precedent supports the trial court’s conclusion about the appropriate role

of rehabilitation in the compassionate-release analysis. As this Court recently stated, a defendant seeking compassionate release must make two showings: “that the movant is (1) not a danger to the safety of any other person or the community, and (2) eligible for release[.]” *Stringer v. United States*, 317 A.3d 875, 877 (D.C. 2024) (internal quotations marks and footnote omitted). In a footnote specifically discussing the dangerousness requirement, this Court elaborated that “an individual must show that the individual is ‘not a danger to the safety of any other person or the community’ based on factors from 18 U.S.C. §§ 3142(g) and 3553(a) and ‘evidence of the defendant’s rehabilitation while incarcerated.’” *Id.* at 877 n.3 (quoting D.C. Code § 24-403.04(a)). Thus, given the existing law of this jurisdiction, the trial judge correctly considered Allen’s rehabilitative efforts as part of its dangerousness analysis. *See* R. 192-194 (Order at 10-12) (finding that Allen’s disciplinary record, educational and vocational programming, and family and community support outweighed his “lengthy criminal history

involving violence and weapons” and “the violent nature of the offense for which Mr. Allen is incarcerated”).<sup>6</sup>

Indeed, the text and structure of § 24-403.04 demand the conclusion that rehabilitation be considered in the context of dangerousness. Section 24-403.04 requires modification of a defendant’s sentence if the court makes two findings. First, the court must find that the defendant is not a danger to a person or the community, “pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a) and evidence of the defendant’s rehabilitation while incarcerated.” § 24-403.04(a). Second, the court must find that the defendant is eligible for release for “extraordinary and compelling reasons.” § 24-403.04(a)(1)-(3). The statute “lists six examples of ‘extraordinary and compelling reasons’ for relief: two primary examples and four ‘other’ illustrative examples in a catch-all provision.” *Autrey*, 264 A.3d at 656. The primary examples are

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<sup>6</sup> To be sure, federal cases construing the federal compassionate-release statute are “highly relevant” in construing the D.C. compassionate-release statute. *Bailey*, 251 at 729-730. Although federal authority might be persuasive, the trial court was not obligated to rely on these cases where, as here, the defendant advanced an argument supported by language about rehabilitation contained in the federal statutory scheme but conspicuously absent from the D.C. statute.

that the defendant either has a “terminal illness” or has served at least 20 years in prison and is at least 60 years old. § 24-403.04(a)(1)-(2). The illustrative examples are: a debilitating medical condition; elderly age, defined as a defendant who is at least 60 years old, has served a certain portion of his sentence, and suffers from a chronic medical condition or is acutely vulnerable to COVID-19; death or incapacitation of the caregiver of the defendant’s children; and incapacitation of the defendant’s partner when the defendant is the only available caregiver. § 24-403.04(a)(3)(A)-(D).

The inclusion of rehabilitation in the dangerousness analysis makes its omission from the eligibility provisions significant. The fact that a legislature “includes particular language in one section of a statute but omits it in another” suggests that it “intended a difference in meaning.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 161 (2018) (quoting *Loughrin v. United States*, 573 U.S. 351, 358 (2014)). In some circumstances, an “omission” alone “can mean the legislature did not think about the idea at all.” *In re M.M.D.*, 662 A.2d 837, 844 (D.C. 1995). But § 24-403.04’s dangerousness provision shows that the Council clearly thought about rehabilitation, so its omission from the eligibility analysis

“must be assumed to be deliberate.” *Doe v. Burke*, 133 A.3d 569, 574 (D.C. 2016). “When the legislature uses a term or phrase in one . . . provision but excludes it from another, courts do not imply an intent to include the missing term in [the] . . . provision where the term or phrase is excluded.” *Id.* (alterations in original) (quoting 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 46.6 (7th ed. 2015)). The Court should thus not imply an intent to include rehabilitation in the extraordinary-and-compelling-reasons analysis. To the contrary, the court should infer the opposite: “it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion.” *Id.* (quoting *Russello v. United States*, 464 U.S. 16, 23 (2016)). If the D.C. Council had intended to include rehabilitation as a possible “extraordinary and compelling reason[ ]” warranting a sentencing modification, it would have said so, rather than referencing it solely in connection with the compassionate-release statute’s dangerousness inquiry.

That conclusion is unaffected by the fact that the list of “extraordinary and compelling reasons” in § 24-403.04(a)(3) is not exhaustive or exclusive. *See Autrey*, 264 A.3d at 656 (describing it as a

“non-exhaustive catch-all provision”); *see also, e.g., Aboye v. United States*, 121 A.3d 1245, 1249 (D.C. 2015) (“[T]he participle including typically indicates a partial list.”) (quoting Black’s Law Dictionary (10th ed. 2014)). Section 24-403.04’s non-exclusive catch-all provision does not turn it into a generic sentence-reduction statute in which a court may consider any and all possible reasons for finding a defendant eligible for early release. Instead, the extraordinary-and-compelling reasons enumerated in the statute necessarily cabin the catch-all provision’s scope. “The maxim *noscitur a sociis*, that a word [or phrase] is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word [or phrase] is capable of many meanings in order to avoid the giving of unintended breadth’ to words in a statute.” *Burke v. Groover, Christie & Merritt, P.C.*, 26 A.3d 292, 302 n.8 (D.C. 2011) (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)); *see also Paroline v. United States*, 572 U.S. 434, 447 (2014) (“[i]t is . . . a familiar canon of statutory construction that [catchall] clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated.”) (alterations in *Paroline*); *Bolz v. District of Columbia*, 149 A.3d 1130, 1139 (D.C. 2016) (“The canon of *ejusdem generis* counsels that

the meaning of a catchall term is informed by the list of words preceding it.”). Each reason for eligibility listed in § 24-403.04 relates to age, illness, or incapacitation, either of the defendant or of a family member. *See* § 24-403.04(a)(1)-(3). The statute’s catch-all provision is thus best read to encompass similar health-related reasons, such as an acute vulnerability to COVID-19 that does not satisfy the explicit conditions for eligibility. *See Autrey*, 264 A.3d at 656.

That is also consistent with the statutory history, because the original impetus for the compassionate release statute was the COVID-19 pandemic. *See Autrey*, 264 A.3d at 656. When permanently enacting § 24-403.04, the D.C. Council specifically recognized a link between the statute’s “other extraordinary and compelling reasons” catch-all provision and its enumerated provisions:

Superior Court judges have consistently interpreted the “[o]ther extraordinary and compelling reasons” language in D.C. Code 24-403.04(a)(3) as including relief to defendants whose age, medical conditions, or other circumstances increase their vulnerability to death or severe illness from COVID-19, for example, even if they do not meet the definition of “elderly” based on their age or length of imprisonment, and even if their medical conditions do not rise to the level of “terminal” or “debilitating.”

Committee on the Judiciary & Pub. Safety, Council of the District of Columbia, Report on Bill No. 23-127 at 27-28 (Nov. 23, 2020). Consistent with that history, this Court has noted that the catch-all is “flexible” in the context of “evolving scientific knowledge” of the pandemic. *Autrey*, 264 A.3d at 656; *see also Page v. United States*, 254 A.3d 1129, 1130 (D.C. 2021) (court has “discretion to consider any reasonable factor that directly impacts on the determination of whether an applicant is ‘at risk of severe illness or death from COVID-19’”). That understanding of the way in which the catch-all provision is flexible again reflects that the provision is concerned with illness and incapacitation. Its scope is far narrower than, for example, the Incarceration Reduction Amendment Act (IRAA), D.C. Code § 24-403.03, which asks a court to determine “the interests of justice” based on an array of factors. *See* § 24-403.03(a)(2), (c). And the catch-all is not a general authorization for trial judges to modify a sentence for any reason at all, unmoored from the text of the compassionate-release statute.

Allen (at 10-14, 28-30) draws the wrong conclusion from comparing the D.C. statute to its federal counterpart. Far from showing that § 24-403.04(a) allows unlimited consideration of rehabilitation as an

extraordinary-and-compelling reason justifying early release, a comparison shows that the D.C. Council eliminated all consideration of rehabilitation in the eligibility analysis by moving its role completely into the dangerousness analysis.

The federal scheme for compassionate release consists primarily of three authorities. First, 18 U.S.C. § 3582(c)(1)(A) provides for reduction of prison terms either based on age and length of imprisonment or based on “extraordinary and compelling reasons.” It further specifies that “such a reduction” must be “consistent with applicable policy statements issued by the [United States] Sentencing Commission.” *Id.* In turn, 28 U.S.C. § 994(t) directs the Commission to promulgate policy statements “describ[ing] what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” The only further statutory direction is that “[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.” *Id.*

Finally, the U.S. Sentencing Guidelines contain the policy statements envisioned by these statutes. When the D.C. Council enacted § 24-403.04 in 2020, the Guidelines contained two commentary notes

relevant here.<sup>7</sup> First, note 1 outlined four categories of extraordinary-and-compelling reasons: medical conditions, age, family circumstances, and other reasons. *See* U.S.S.G. § 1B1.13 cmt. n.1(A)-(D). Second, note 3 echoed § 994(t), providing that “rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason.” U.S.S.G. § 1B1.13 cmt. n.3.

The D.C. Council plainly drew upon the federal scheme. Every enumerated eligibility provision of § 24-403.04(a) has a federal counterpart. Paragraph (1) of § 24-403.04(a), concerning terminal illness, tracks U.S.S.G. § 1B1.13 cmt. n.1(A)(i). Paragraph (2), providing eligibility based on age and time served, is similar to 18 U.S.C. § 3582(c)(1)(A)(ii). Subparagraphs (A) and (B) of § 24-403.04(a)(3), which concern serious medical conditions and elderly age, are similar to U.S.S.G. § 1B1.13 cmt. n.1(A)(ii) and (B). And subparagraphs (C) and (D), relating to family circumstances, track U.S.S.G. § 1B1.13 cmt. n.1(C)(i) and (ii). Both schemes also allow for release based on unenumerated

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<sup>7</sup> The Guidelines have since been amended, including by moving key provisions from the commentary to the Guidelines themselves. *See* U.S.S.G. app. C, amend. 814 (effective November 1, 2023). All references in this brief are to the 2020 version of the Guidelines.

extraordinary-and-compelling reasons—the D.C. statute by providing that the list of extraordinary-and-compelling reasons is non-exhaustive, *see Autrey*, 264 A.3d at 656, and the federal scheme by explicitly allowing for “an extraordinary and compelling reason other than” the enumerated reasons, *see* U.S.S.G. § 1B1.13 cmt. n.1(D).

But there is a critical difference between the relevant federal laws and D.C.’s compassionate-release statute with respect to rehabilitation. Section 24-403.04(a) requires courts to consider rehabilitation as a factor in assessing dangerousness, along with the factors set out in 18 U.S.C. §§ 3142(g) and 3553(a). The federal equivalent does not: neither the federal statutes nor the Guidelines mention rehabilitation as a factor in assessing dangerousness. Instead, § 3582(c)(1)(A) only requires consideration of the § 3553(a) factors, and, for assessments of dangerousness, the § 3142(g) factors. Thus, under D.C. law, rehabilitation is part of the dangerousness analysis, whereas under federal law, it is not.

Federal law does not, however, prohibit all consideration of rehabilitation in the early-release context; rather, there, it is part of the eligibility analysis. As noted above, Congress prohibited the use of

rehabilitation “alone” to justify release. 28 U.S.C. § 994(t). Though framed as a prohibition, as a practical matter federal courts have taken this as an invitation to “consider a defendant’s rehabilitation efforts” as one factor in assessing “extraordinary and compelling reasons.” *United States v. Bass*, 17 F.4th 629, 637 (6th Cir. 2021); *accord, e.g., United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022); *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020). Indeed, when the Sentencing Commission amended the relevant Guideline in 2023, it made explicit what courts had long understood: “Pursuant to 28 U.S.C. § 994(t) . . . rehabilitation of the defendant . . . may be considered in combination with other circumstances.” U.S.S.G. § 1B1.13(d) (2023).

“Had the Council intended to provide the same benefits for” those seeking compassionate release under the D.C. statute, and wanted rehabilitation to be considered as part of the eligibility analysis, “it seems unlikely that it would have deleted a provision” from the federal statute it used as a model “which would have accomplished precisely that result.” *See Smith v. D.C. Dep’t of Emp. Servs.*, 548 A.2d 95, 100 (D.C. 1988). Indeed, the D.C. Council did not merely omit the provision concerning rehabilitation. Instead, while otherwise paralleling the federal scheme,

it moved the reference to rehabilitation from the extraordinary-and-compelling-reason analysis to the dangerousness analysis. Comparison with the federal scheme thus underscores that, in the D.C. statute, rehabilitation plays no role in assessing eligibility. Moreover, notably, we are aware of no published decision from this Court citing to U.S.S.G. § 1B1.13(d)—the provision of the federal statutory scheme addressing rehabilitation. Accordingly, the trial court here can hardly have abused its discretion in concluding that the D.C. compassionate-release statute requires the court to consider the extent of a defendant’s rehabilitation within the dangerousness analysis without also requiring the court to factor a defendant’s rehabilitative efforts into the extraordinary-and-compelling circumstances analysis. *Johnson*, 398 A.2d at 361.

Allen also draws the wrong conclusion (Brief at 12-13) from the fact that “the omnibus legislation” that permanently codified the compassionate-release statute also expanded eligibility under the IRAA. The IRAA explicitly directs courts to consider “rehabilitation” in determining *both* whether “the defendant is not a danger to the safety of any person or the community” *and* whether “the interests of justice warrant a sentence modification.” § 24-403.03(a)(2), (c)(5). That contrasts

sharply with the compassionate-release statute, which only directs courts to consider rehabilitation in assessing dangerousness. “Where a statute, with reference to one subject, contains a given provision, the omission of such [a] provision from a similar statute concerning a related subject . . . is significant to show [that] a different intention existed.” *Howard Univ. Hosp./Prop. & Cas. Guarantee Fund v. D.C. Dep’t of Emp. Servs.*, 952 A.2d 168, 174 (D.C. 2008) (alterations in original) (quoting *Smith*, 548 A.2d at 100 n.13). The IRAA shows that the D.C. Council knew how to direct a court to consider rehabilitation not only in assessing dangerousness, but also in otherwise deciding whether to modify a sentence. It did so in the IRAA, but not in the compassionate-release statute. That further shows that the trial court correctly declined to consider rehabilitation in assessing whether Allen was eligible for release based on extraordinary-and-compelling circumstances (see R. 190-91 (Order at 8-9)).

In any event, this Court should decline to read into the compassionate-release statute a requirement that rehabilitation must be considered as part of the analysis of extraordinary-and-compelling reasons favoring early release. Placing rehabilitation within the

dangerousness analysis—as suggested by the structure of the statute, the legislative history, and this Court’s guidance in *Stringer*—gives purpose to the rehabilitation clause as a counterbalance to factors like the nature of the offense and a defendant’s criminal history. Adopting Allen’s view would render the clause surplusage. *See, e.g., Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (“[T]he interpretive canon against surplusage” is “the idea that ‘every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.’”).<sup>8</sup>

## CONCLUSION

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

Respectfully submitted,

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<sup>8</sup> In the event this Court concludes that the trial court erred, the Court should remand for further consideration of whether Allen’s rehabilitation, combined with the other factors, establishes extraordinary-and-compelling grounds for release. *Cf. e.g., Bishop v. United States*, 310 A.3d 629, 649 (D.C. 2024) (remanding in IRAA case).

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/s/

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## **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, Paul Maneri, Esq., PManeri@pdsdc.org, on this 8th day of September, 2025.

/s/

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