

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD LEWIS COLEMAN, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

APPENDIX

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Filed: October 22, 2020

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Re: Case No. 20-1701, *USA v. Ronald Coleman, Jr.*
Originating Case No. : 1:17-cr-00136-1

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Karen S. Fultz
Case Manager
Direct Dial No. 513-564-7036

cc: Mr. Thomas Dorwin

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 20-1701

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 22, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
) ON APPEAL FROM THE UNITED
 v.) STATES DISTRICT COURT FOR
) THE WESTERN DISTRICT OF
 RONALD LEWIS COLEMAN, JR.,) MICHIGAN
)
 Defendant-Appellant.)

O R D E R

Before: SILER, CLAY, and THAPAR, Circuit Judges.

Ronald Lewis Coleman, Jr., a federal prisoner represented by counsel, appeals the district court's order denying his motion for compassionate release, filed under 18 U.S.C. § 3582(c)(1)(A). The parties waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2017, Coleman pleaded guilty to conspiring to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, distributing or possessing with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1), and being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). Coleman's guidelines range would have been 63 to 78 months, but he was subject to a ten-year minimum term under 21 U.S.C. § 841(b)(1)(B)(ii) for the conspiracy conviction because he had at least one predicate drug conviction. The district court

sentenced Coleman to concurrent prison terms of 120 months. We affirmed the district court's judgment. *United States v. Coleman*, 923 F.3d 450 (6th Cir. 2019).

In 2020, Coleman filed a *pro se* motion for compassionate release, arguing that release was warranted based on (1) the dangers posed by the COVID-19 pandemic and his family history of asthma and hypertension; and (2) the fact that, if sentenced at that time, the mandatory minimum term would be five years rather than ten years because his prior drug convictions no longer qualify as predicate offenses under § 841(b)(1)(B)(ii), given that he did not serve a prison term of more than twelve months for either conviction. Coleman's appointed counsel later filed a similar motion, adding that Coleman has a history of asthma, hypertension, allergies, and inhaler use, that he has a high level of community support, and that he has done everything possible to rehabilitate himself. Counsel also filed a supplement, noting that there was an active case of COVID-19 at FCI Oxford, where Coleman is housed.

The district court denied Coleman's motion, concluding that he failed to demonstrate that there was an extraordinary and compelling reason for his release. The court reasoned that the general risk from COVID-19 was not an extraordinary and compelling reason; that Coleman failed to show that he suffered from any chronic health issue that placed him at a higher risk of serious illness should he contract Covid-19; and that there were only two cases of COVID-19 at FCI Oxford. The district court further reasoned that the First Step Act's reduction of Coleman's mandatory minimum term was not an extraordinary and compelling reason to release him because, given that Congress declined to make the relevant provisions of the Act retroactive, *see United States v. Wiseman*, 932 F.3d 411, 417 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 1237 (2020) (mem.), it would circumvent congressional intent to find that the statutory change was an extraordinary and compelling reason for release.

On appeal, Coleman argues that the district court erred by concluding that (1) he failed to establish an extraordinary and compelling reason for his release based on the fact that his mandatory minimum sentence is lower after the First Step Act; and (2) he otherwise failed to

establish an extraordinary and compelling reason for his release, particularly in light of his respiratory problems and the dangers of COVID-19.

The compassionate release statute permits the district court to reduce a defendant's sentence, "after considering the factors set forth in section 3553(a) to the extent they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction" and that the "reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The district court must also find that the defendant "is not a danger to the safety of any other person or the community." *Id.*

We review the district court's denial of compassionate release for an abuse of discretion. *See United States v. Kincaid*, 802 F. App'x 187, 188 (6th Cir. 2020). Considering that Coleman failed to submit any evidence supporting his allegations that he suffers from health issues that place him at a high risk from COVID-19, and, in fact, Bureau of Prisons records contradict his assertions, the district court's determination that the general risk to Coleman from COVID-19 did not establish extraordinary and compelling reasons for compassionate release was not an abuse of discretion.

Moreover, given the lack of other significant factors supporting Coleman's release, the district court did not abuse its discretion in determining that the amendment to the mandatory minimum sentence for Coleman's offense alone did not rise to the level of an "extraordinary and compelling reason[]" warranting a sentence reduction.

Accordingly, we **AFFIRM** the district court's order denying Coleman's motion for compassionate release.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	No. 1:17-cr-136
-v-)	
)	Honorable Paul L. Maloney
RONALD L. COLEMAN, JR.,)	
Defendant.)	
)	

ORDER DENYING MOTION FOR COMPASSIONATE RELEASE

Defendant Ronald L. Coleman, Jr., is serving a 120-month term of imprisonment for conspiracy to distribute cocaine, possession with intent to distribute cocaine, and being a felon in possession of a firearm (ECF No. 76). Coleman filed a motion for compassionate release (ECF Nos. 121). The Court has had the benefit of briefing from appointed counsel (ECF Nos. 123, 126, 134) and a response from the Government (ECF No. 127). For the reasons to be explained, the motion will be denied.

Coleman requests that the Court grant him compassionate release from prison. He fears that if he stays in prison, he will contract COVID-19, the coronavirus disease declared a pandemic by the World Health Organization on March 11, 2020 and declared a national emergency by President Trump on March 20, 2020. Coleman is currently incarcerated at Oxford FCI, located in Oxford, Wisconsin. The BOP reports that one inmate and one staff member are currently infected with the virus at Oxford FCI. *See COVID-19 Cases, Federal Bureau of Prisons, www.bop.gov/coronavirus (last visited July 13, 2020).*

“Federal courts are forbidden, as a general matter, to ‘modify a term of imprisonment once it has been imposed,’ 18 U.S.C. § 3582(c); but the rule of finality is subject to a few narrow exceptions.” *Freeman v. United States*, 546 U.S. 522, 526 (2011); *see United States v. Curry*, 606 F.3d 323, 326 (6th Cir. 2010). In the First Step Act, Congress amended 18 U.S.C. § 3582(c)(1)(A), the provision authorizing compassionate release. Prior to the amendments, only the Bureau of Prisons could file a motion with the Court seeking compassionate release. *See, e.g., Crowe v. United States*, 430 F. App’x 484, 484-85 (6th Cir. 2011) (per curiam). As amended, the statute now permits prisoners to file a motion with the court subject to certain limitations. The statute allows a prisoner to seek relief in the courts “after the defendant has exhausted all administrative rights to appeal a failure by the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier” 18 U.S.C. § 3582(c)(1)(A). The defendant must also establish “extraordinary and compelling reasons[.]” *Id.* at § 3582(c)(1)(A)(i). Finally, the court must find that the sentence reduction “is consistent with applicable policy statements issued by the Sentencing Commission. *Id.* at § 3582(c)(1)(A).

Coleman has exhausted his administrative remedies. At some point, Coleman submitted a request to the warden at Oxford FCI. On May 19, 2020, he received a response denying that request. The 30-day window to appeal the denial has since closed.

However, Coleman has not demonstrated extraordinary and compelling reasons for compassionate release. When considering extraordinary and compelling reasons under the compassionate release provision, this Court looks at the individual defendant’s characteristics

and underlying health conditions and the situation at the defendant's place of incarceration. *See, e.g., Miller v. United States*, Case No. 16-20222-1, 2020 WL 1814084, at *4 (E.D. Mich. Apr. 9, 2020) (collecting cases). A threat of infection, which applies to all prisoners, generally will not establish the sort of extraordinary and compelling reasons required by statute. *See, e.g., United States v. McMurray*, Case No. 1-18-cr-10010, 2020 WL 2044700, at *1 (W.D. Tenn. Apr. 28, 2020) (citing *United States v. Eberhart*, Case No. 13-cr-313, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25, 2020)).

Coleman has not demonstrated extraordinary and compelling reasons for his release. He does not allege that he suffers from any chronic health issues that place him at higher risk of serious illness should he contract COVID-19. Further, there are only two cases of COVID-19 at Oxford FCI. Coleman's general threat of infection and the situation at Oxford FCI are insufficient to establish extraordinary and compelling reasons for compassionate release.

Coleman also argues that the First Step Act provides extraordinary and compelling reasons for compassionate release. At the time Coleman was sentenced, 21 U.S.C. § 841(b)(1)(B) required a mandatory minimum sentence of 120 months because Coleman's criminal history showed two prior "serious drug" felonies. The First Step Act changed the definition of a "serious drug felony" under 21 U.S.C. § 802(57), and that impacted defendants like Coleman: if Coleman were to be sentenced today, he would only receive a mandatory minimum sentence of 60 months because one of his prior convictions no longer qualifies as a "serious drug felony." Coleman now argues that he should be entitled to the benefit of this change: the disparity between the sentence he received and the sentence he

would receive today is an extraordinary and compelling reason that should authorize a sentence reduction. Coleman cites an out-of-circuit district court case that recently applied this logic to reduce a defendant's sentence: *United States v. Marks*, Case No. 03-CR-6033L, 2020 WL 1908911 (Apr. 20, 2020).

However, this argument ignores relevant in-circuit precedent. Recently, the Sixth Circuit confirmed that while portions of the First Step Act are retroactive, the changes to mandatory minimum sentences under § 841 are not retroactive. *United States v. Wiseman*, 932 F.3d 411, 417 (6th Cir. 2019). Defendants sentenced before the First Step Act's effective date of December 21, 2018 cannot benefit from the Act unless they meet the limited criteria for retroactive application. *Id.* Coleman was sentenced in January 2018, and he does not meet the criteria for retroactive application. Congress expressly declined to make the changes to "serious drug" felonies retroactive, and this Court declines to use the "extraordinary and compelling reasons" language to circumvent congressional intent. While Coleman's sentence may be different if he were convicted and sentenced today, the sections of the First Step Act that influence that decision are not retroactive. Therefore, the Court finds that this is not an extraordinary and compelling reason sufficient to reduce his sentence.

Accordingly, Coleman's motions for compassionate release (ECF Nos. 121, 123, 126) are **DENIED**.

IT IS SO ORDERED.

Date: July 16, 2020

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge