

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

No: 19-2689

United States of America

Appellee

v.

Isaac Lee Loggins, Jr.

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Davenport
(3:02-cr-00142-SMR-2)

ORDER

The petition for rehearing is denied as overlength.

November 02, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 19-2689

United States of America,

Plaintiff - Appellee,

v.

Isaac Lee Loggins, Jr.,

Defendant - Appellant.

Appeal from United States District Court
for the Southern District of Iowa - Davenport

Submitted: April 15, 2020

Filed: July 31, 2020

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

COLLOTON, Circuit Judge.

In 2002, Isaac Loggins, Jr., pleaded guilty to three counts of Hobbs Act robbery, *see* 18 U.S.C. § 1951(a), and two counts of using a firearm during and in relation to those robberies. *See* 18 U.S.C. § 924(c). After all was said and done, the

district court¹ imposed a term of 353 months' imprisonment, including two consecutive sentences for the two firearms offenses.

In July 2019, Loggins moved to reduce his sentence based on asserted "extraordinary and compelling" circumstances. *See* 18 U.S.C. § 3582(c)(1)(A)(i). A motion under this section is sometimes described as a request for "compassionate release." *See United States v. Rodd*, No. 19-3498, 2020 WL 4006427, at *1 (8th Cir. July 16, 2020). Before the First Step Act of 2018, such relief was available only on motion of the Director of the Bureau of Prisons, but the new statute allows a prisoner to seek relief on his own initiative. The statute also provides that any reduction must be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

Despite the statutory amendment, commentary to the Commission's relevant policy statement, USSG § 1B1.13, still says that a reduction may be granted "only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A)." USSG § 1B1.13, comment. (n.4). The commentary also lists circumstances that could be "extraordinary and compelling," including medical condition, age of the defendant, family circumstances, or another reason "determined by the Director of the Bureau of Prisons." *Id.*, comment. (n.1). An application note acknowledges that the district court is "in a unique position to determine whether the circumstances warrant a reduction," after considering the factors set forth in 18 U.S.C. § 3553(a) and the circumstances listed in the policy statement. *Id.*, comment. (n.4).

The district court recognized that the First Step Act allows relief without a motion by the Director. R. Doc. 117, at 2. The court concluded, however, that

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

Loggins had not established extraordinary or compelling reasons to warrant compassionate release.

On appeal, Loggins argues that the district court, in evaluating a motion for reduction of sentence, is no longer constrained by the guideline commentary that limits permissible reasons for a sentence reduction. Although the commentary enumerates only three circumstances and other reasons “determined by the Director of the Bureau of Prisons,” Loggins maintains that the First Step Act allows the court to consider reasons that are neither listed in the policy statement nor “determined by the Director.”

We need not decide whether the statute supersedes the policy statement in this respect, because the district court’s order shows that it considered the circumstances urged by Loggins and found them insufficient. The court considered Loggins’s contention that current law no longer calls for “stacking” of consecutive sentences for multiple violations of 18 U.S.C. § 924(c), but explained that the change in law does not apply retroactively. The court also discussed Loggins’s efforts at rehabilitation, and commended him for his positive accomplishments while incarcerated, but found that they did not amount to extraordinary or compelling reasons warranting a reduction.

Loggins complains that the district court did not expressly consider the *combination* of his rehabilitative efforts and the change in penalties under § 924(c). Although the court rejected a freestanding argument for relief under the First Step Act based on the change in § 924(c) penalties, and did not refer again to § 924(c) in its discussion of compassionate release, we are not convinced that the court ignored that circumstance in reaching its ultimate conclusion. Where the court expressly considered post-sentencing rehabilitation (a circumstance not listed in § 1B1.13), the more natural inference is that the court did not feel constrained by the circumstances enumerated in the policy statement, but simply found that a non-retroactive change

in law did not support a finding of extraordinary or compelling reasons for release. The order did not misstate the law, and we do not require a district court to make a specific rejoinder to every circumstance cited in support of a reduction. *See United States v. Johnson*, 619 F.3d 910, 922 (8th Cir. 2010).

The district court has broad discretion in determining whether proffered circumstances warrant a reduction in sentence. The conclusion here was a reasonable exercise of that discretion. The order of the district court is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)	
)	NO. 3:02-cr-00142-SMR
Plaintiff,)	
vs.)	ORDER
)	
ISAAC LEE LOGGINS, JR.,)	
)	
Defendant.)	

Before the Court is Isaac Lee Loggins, Jr.'s Motion for Appoint Counsel to represent him in obtaining a sentence reduction under the First Step Act. *See* ECF No. 115. He challenges his sentence imposed in *United States v. Loggins*, 3:02-cr-00010 and 3:02-cr-00142 (S. D. Iowa). Loggins states he is entitled to relief under the new law of 18 U.S.C. § 924(c) and because extraordinary and compelling circumstances entitle him to compassionate release under the act.

I. BACKGROUND

Loggins pleaded guilty to multiple counts of robbery and two counts of using a firearm during and relation to a crime of violence. *Loggins*, 3:02-cr-00142, J. 1, ECF No. 18. The Honorable Charles R. Wolle sentenced Loggins to 84 months on the robbery charges and an additional 120 months and 300 months each on the weapon charges, for a total of 504 months. *Id.* at 3.

II. ANALYSIS

Loggins asserts that counsel could help him obtain relief under the First Step Act addressing either his enhanced sentences, ECF No. 115 at 2–3, or for compassionate release. *Id.* at 3–5.

Under the First Step Act of 2018, it is now unlawful to “stack” § 924(c) weapon enhancements. *See* Pub. L. No. 115-391, sec. 403(a), § 924(c), 132 Stat. 5194, 5221–22 (2018) (amending 18 U.S.C. § 924(c)(1)(C) “by striking ‘second or subsequent conviction under this subsection’ and inserting ‘violation of this subsection that occurs after a prior conviction under

this subsection has become final.”). Loggins’s second 300-month enhancement was imposed at the same time the Court imposed the first 120-month enhancement. *See Loggins*, 3:02-cr-00142, ECF No. 18. Thus, his sentence would be different if imposed today.

Changes in criminal penalties, however, are only retroactive when the new law explicitly states the change applies retroactively. *United States v. Orr*, 636 F.3d 944, 957–58 (8th Cir. 2011) (citing Federal Savings Statute, 1 U.S.C. § 109 for proposition that decriminalization of previous conduct is not retroactive unless expressly provided for in new legislation). The First Step Act provides that the changes to § 924(c) “apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.” Sec. 403(b), 132 Stat. at 5222. As stated above, Loggins’s sentence was imposed in 2002 which is before the First Step Act was passed. ECF No. 18. (Oct. 25, 2002). Thus, Loggins is not entitled to relief under the First Step Act.

Alternatively, Loggins asks the Court to grant his request for compassionate release pursuant to the First Step Act, 18 U.S.C. § 3582(c). ECF No. 115 at 4–5. Under this section, a defendant may file a motion for compassionate release if he has exhausted administrative remedies through the Bureau of Prisons, 18 U.S.C. §3582(c)(1)(A), and the Court finds extraordinary and compelling reasons warrant such a reduction. *Id.* at § 3582(c) (1)(A)(i).

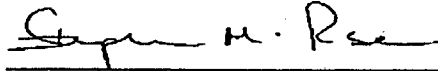
The Court commends Loggins for his positive accomplishments while he has been incarcerated. Loggins describes how he has worked hard in prison, earned an Associate of Arts degree, participated in all self-help programming offered, became a certified companion to those on suicide watch, and used personal time to teach classes to other and create items to donate to hospitals and homeless shelters. The Court encourages Loggins to continue to take advantage of programming that will benefit him once he is released. Nonetheless, the Court does not find these to be extraordinary or compelling reasons to warrant compassionate release.

II. CONCLUSION AND RULING

As there are no grounds for relief under the First Step Act, **IT IS ORDERED** that Defendant Loggins's motion counsel is **denied**. ECF No. 115.

IT IS SO ORDERED.

Dated this 25th day of July, 2019.

A handwritten signature in black ink, appearing to read "Stephanie M. Rose", is written over a horizontal line.

STEPHANIE M. ROSE
UNITED STATES DISTRICT JUDGE

Ch. 1 Pt. A

§1B1.13. Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

- (1) (A) extraordinary and compelling reasons warrant the reduction; or
(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;
- (2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
- (3) the reduction is consistent with this policy statement.

Commentary

Application Notes:

1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

- (i) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end of

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life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

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(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) **Age of the Defendant.**—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) **Family Circumstances.**—

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- (i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.
- (ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) **Other Reasons.**—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. **Foreseeability of Extraordinary and Compelling Reasons.**—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. **Rehabilitation of the Defendant.**—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.

4. **Motion by the Director of the Bureau of Prisons.**—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether

the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.

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5. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is authorized by 28 U.S.C. § 994(t) to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” This policy statement implements 28 U.S.C. § 994(a)(2) and (t).

<i>Historical Note</i>	Effective November 1, 2006 (amendment 683). Amended effective November 1, 2007 (amendment 698); November 1, 2010 (amendment 746); November 1, 2016 (amendment 799); November 1, 2018 (amendment 813).
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