

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 18, 2020

Lyle W. Cayce
Clerk

No. 20-10536
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAMES L. RUDZAVICE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas

USDC No. 4:07-CR-138-1
USDC No. 4:20-CV-505

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

James Rudzavice was convicted of child pornography offenses and sentenced to 360 months in prison. *United States v. Rudzavice*, 586 F.3d 310, 312-13 (5th Cir. 2009). He appeals from the district court's denial of a motion

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

for compassionate release under 18 U.S.C. § 3582(c)(1)(A), in which he argued that the threat of COVID-19 in prison constituted extraordinary and compelling reasons for release. He asserts on appeal that he has already contracted COVID-19 once and fears reinfection. He also asserts that the district court was biased, and he seeks a remand for reconsideration by a different judge.

We need not decide whether the risk of reinfection constitutes an extraordinary and compelling reason for compassionate release because the district court did not abuse its discretion by concluding that Rudzavice remained a danger to the safety of others and that his immediate release after serving less than half of his sentence would not be in the interest of justice and would minimize the seriousness of his crimes. *See United States v. Chambliss*, 948 F.3d 691, 692-93 (5th Cir. 2020).

The judgment is AFFIRMED. Rudzavice's motion for appointment of counsel and all of his other requests for relief are DENIED.

NORTHERN DISTRICT OF TEXAS

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MAY 19 2020

CLERK, U.S. DISTRICT COURT
By _____ Deputy _____

JAMES L. RUDZAVICE,

§

§

§

VS.

§

NO. 4:20-CV-505-A

(NO. ~~XXXXXX~~162XX)

UNITED STATES OF AMERICA,

§

4:07-cr-138-A(1)

§

Respondent.

§

ORDER

Came on for consideration the motion of movant, James L. Rudzavice, for compassionate release. The court, having considered the motion, the record, and applicable authorities, finds that the motion should be denied.

A court may, on motion of the Director of the Bureau of Prisons or of the defendant after exhausting his administrative remedies, reduce or modify a term of imprisonment after considering the factors of 18 U.S.C. § 3553(a), if "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A). In commentary, the Sentencing Guidelines describe "extraordinary and compelling reasons" to include medical conditions such as terminal illness, serious deterioration in mental or physical health because of aging, and family circumstances such as incapacitation of the caregiver of defendant's minor children. USSG § 1B1.13 (policy statement). The Fifth Circuit has described these as "compassionate release

claims." United States v. Chambliss, 948 F.3d 691 (5th Cir. 2020). Although the commentary says that there can be "in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C) [medical and family reasons]," the court is not inclined to believe that such "other reasons" include the circumstances described by movant here. Movant is only 57 years old. The Bureau of Prisons is in a much better position to evaluate movant's situation and determine whether he is safer where he is now placed than he would be if released.

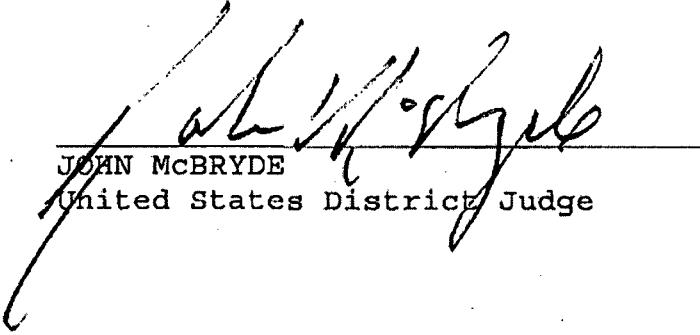
See United States v. Gileno, No. 3:190cr-161(VAB)-1, 2020 WL 1307108 (D. Conn. Mar. 19, 2020).

If the court is mistaken and movant has spelled out extraordinary and compelling reasons for his early release, the court still would not reduce his sentence. Movant has not shown that he is not a danger to the safety of others, and the court is not persuaded, and cannot find, that movant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g). USSG 1B1.13 (policy statement). Further, weighing the factors of 18 U.S.C. § 3553(a), the court is not inclined to grant relief. Movant is serving a sentence of 360 months.

Immediate release of movant would not be in the interest of justice. Rather, it would minimize the seriousness of his crimes and conduct and encourage every other prisoner who could not obtain relief under 28 U.S.C. § 2255 to seek compassionate relief for extraordinary and compelling circumstances. See United States v. Cantu, No. 1:05-CR-458-1, 2019 WL 2498923, at *5 (S.D. Tex. June 17, 2019) (discussing appropriateness of relief where the determination is narrow and unlikely to have far-reaching implications); United States v. Nevers, No. 16-88, 2019 WL 7281929, at *5-6 (E.D. La. Dec. 27, 2019) (same).

The court ORDERS that movant's motion be, and is hereby, denied.

SIGNED May 19, 2020.


JOHN McBRYDE
United States District Judge