

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

RYAN SCOTT KIBBLE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

APPENDIX A

TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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992 F.3d 326
United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,
v.
Ryan Scott KIBBLE, Defendant - Appellant.

No. 20-7009
|
Argued: January 29, 2021
|
Decided: April 1, 2021

Synopsis

Background: Federal prisoner who was servicing 57 months' imprisonment after pleading guilty to one count of traveling to engage in illicit sexual conduct filed a motion seeking compassionate release based on COVID-19 concerns. The United States District Court for the Southern District of West Virginia, [2020 WL 3470508](#), David A. Faber, Senior District Judge, denied prisoner's motion. Prisoner appealed.

Holdings: The Court of Appeals held that:

[1] Court of Appeals would review the denial of prisoner's request for compassionate release, based on extraordinary and compelling circumstances, for an abuse of discretion, and

[2] district court adequately considered the sentencing factors in deciding prisoner's motion for compassionate release, and thus did not abuse its discretion by denying prisoner's motion.

Affirmed.

[Gregory](#), Chief Judge, and [Quattlebaum](#), Circuit Judge, filed separate opinions concurring.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (3)

[1] Criminal Law ➡ **Sentencing**

Court of Appeals would review the denial of federal prisoner's request for compassionate release, based on extraordinary and compelling circumstances, for abuse of discretion; like similar, parallel provision, the “extraordinary and compelling circumstances” provision provided permissive language that court “may” reduce a term of imprisonment upon considering the relevant sentencing factors. 📄 [18 U.S.C.A. §§ 3582\(c\)\(1\)\(A\)\(i\)](#), 📄 [3582\(c\)\(2\)](#).

[87 Cases that cite this headnote](#)

[2] Sentencing and Punishment ➡ **Commentary and policy statements****Sentencing and Punishment** ➡ **Change in facts**

Sentencing Guidelines policy statement rendering an incarcerated person seeking compassionate release based on extraordinary and compelling circumstances ineligible for a sentence reduction upon district court's determination that person is danger to safety of others applies only when a request for compassionate release is made upon motion of Director of the Bureau of Prisons (BOP) motion, and not when the incarcerated person files motion directly with district court. 📄 [18 U.S.C.A. § 3582\(c\)\(1\)\(A\)](#); 📄 [U.S.S.G. § 1B1.13](#).

[134 Cases that cite this headnote](#)

[3] Sentencing and Punishment ➡ **Change in facts**

District court adequately considered the sentencing factors in deciding federal prisoner's motion for compassionate release based on COVID-19 concerns, after finding extraordinary and compelling circumstances warranted reduction, and thus court did not abuse its discretion by denying prisoner's motion, although in denying the motion, court found it “very significant” that prisoner had served such a small portion of his sentence; in addition to considering the amount of time prisoner had already served, court gave great weight to the nature of prisoner's offense, noting that prisoner who pled guilty to traveling to engage in illicit sexual conduct, armed with condoms, crossed state lines for the express purpose of having sex with a 14-year-old girl. 📄 [18 U.S.C.A. §§ 3553\(a\)](#), 📄 [3582\(c\)\(1\)\(A\)](#).

[69 Cases that cite this headnote](#)

*327 Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. [David A. Faber](#), Senior District Judge. (2:19-cr-00077-1)

Attorneys and Law Firms

ARGUED: Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [Jennifer Rada Herrald](#), OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee. ON BRIEF: [Wesley P. Page](#), Federal Public Defender, [David R. Bungard](#), Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [Michael B. Stuart](#), United States Attorney, [Jennifer Rada Herrald](#), Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before [GREGORY](#), Chief Judge, [KEENAN](#), and [QUATTLEBAUM](#), Circuit Judges.

Opinion

Affirmed by published per curiam opinion. Chief Judge [Gregory](#) and Judge [Quattlebaum](#) wrote concurring opinions.

PER CURIAM:

*328 Ryan Kibble began serving a 57-month term of imprisonment at FCI Elkton shortly after he pled guilty to one count of traveling to engage in illicit sexual conduct, in violation of  [18 U.S.C. § 2423\(b\)](#),  [\(e\)](#). After the coronavirus began infecting staff and incarcerated persons at FCI Elkton, Mr. Kibble sought compassionate release. He argued that his chronic health conditions placed him at a heightened risk for contracting and suffering severe [complications from the disease](#). The district court denied the motion for compassionate release. For the reasons discussed below, we affirm.

I.

On March 1, 2019, Mr. Kibble logged onto an app called “Meet Me” and began talking with several “presumably single adult women.” J.A. 66. He “matched” with and started talking to someone who identified herself as an 18-year-old female. But upon learning that she was only 14, Mr. Kibble kept talking to her. He engaged her in sexual conversations: first via text message, then over the phone. Ultimately, the two arranged to meet in person and have sex.

As planned, Mr. Kibble left his Belpre, Ohio office the next day and drove to a parking lot in Parkersburg, West Virginia. There Mr. Kibble was greeted, not by a 14-year-old girl, but by law enforcement who immediately arrested him. The teenage girl that Mr. Kibble thought he was talking to was actually an undercover federal agent.

A grand jury indicted Mr. Kibble. Initially, the district court remanded him to the custody of the Bureau of Prisons. But a month later, it released him on his own recognizance. While out on bond, Mr. Kibble negotiated a plea agreement with the Government, in which he agreed to plead guilty to one count of traveling to engage in illicit sexual conduct and the Government agreed to dismiss the remaining count in the indictment. The parties also agreed that a sentence of 46–78 months, coupled with a 15-year term of supervised release, was appropriate. The district court conditionally accepted the negotiated plea.

Mr. Kibble remained out on bond for ten months in between his change-of-plea hearing on March 18, 2019 and his sentencing hearing on January 14, 2020. At sentencing, the district court calculated Mr. Kibble's guidelines range as 46-57 months' imprisonment. J.A. 133. The court rejected Mr. Kibble's request for a low-end sentence and imposed a 57-month term of imprisonment instead. In selecting this sentence, the court explained:

[A] sentence at the top of the guidelines was called for because of the egregious nature of the defendant's misconduct. Not only did the defendant express a willingness and a desire to engage in an illicit sexual relationship with a minor, he engaged in a conversation that even without consummating a sexual act would certainly contribute to, for want of a better word, the delinquency of the minor.

I find the defendant's behavior despicable and inexcusable. And I think this cries out for a sentence at the top of the guidelines, particularly to impose the maximum deterrent impact on others who might be tempted to engage in similar conduct.

The Court believes that sentence is sufficient but not greater than necessary to adequately punish the defendant for his serious offense behavior, to instill within the defendant and the public a proper respect for the law, and to provide for a proper period of incapacitation and a *329 suitable opportunity for rehabilitation. J.A. 152.

The court also imposed a 15-year term of supervised release and ordered Mr. Kibble to pay a \$5,000 special assessment. After imposing this sentence, the district court, without objection from the Government, continued Mr. Kibble's bond and allowed him to self-report. J.A. 154. Mr. Kibble began his prison sentence on February 14, 2020.

To Mr. Kibble's misfortune, he entered FCI Elkton only shortly before COVID-19 did. Mr. Kibble was born with [tricuspid atresia](#), a heart condition that has required two [open heart surgeries](#), a

[cardiac catheterization procedure](#), and a surgery to redirect blood from his lower body to his lungs. Mr. Kibble also has non-alcohol related [cirrhosis of the liver](#). Concerned that these underlying conditions would make him more susceptible to contracting COVID-19 and suffering serious complications, Mr. Kibble filed an emergency motion for compassionate release. He contracted the virus shortly thereafter.

The district court acknowledged that Mr. Kibble's medical conditions, when viewed in conjunction with the dire infection rate at FCI Elkton, presented “extraordinary and compelling reasons” for granting a reduced sentence under [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#). It nonetheless denied Mr. Kibble's motion, finding that he posed a danger to the safety of others and that the [18 U.S.C. § 3553\(a\)](#) factors counseled against early release. Mr. Kibble timely appealed.

II.

[1] To date, we have not decided in a published opinion what standard governs our review of a grant or denial of compassionate release under [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#). Several of our sister circuits review for an abuse of discretion, finding that “the standard applicable to other motions for sentence reductions under [§ 3582\(c\)\(2\)](#) [] instructive.” [United States v. Chambliss](#), 948 F.3d 691, 693 (5th Cir. 2020); *see also* [United States v. Jones](#), 980 F.3d 1098, 1112 (6th Cir. 2020) [United States v. Rodd](#), 966 F.3d 740, 747–48 (8th Cir. 2020); [United States v. Pawlowski](#), 967 F.3d 327, 330–31 (3d Cir. 2020). We now follow suit.

[Section 3582\(c\)\(2\)](#)’s language mirrors [§ 3582\(c\)\(1\)](#)’s in relevant respects. Like [§ 3582\(c\)\(1\)](#), it provides that a “court *may* reduce [a] term of imprisonment,” upon considering the [§ 3553\(a\)](#) factors, if certain conditions are met. [18 U.S.C. § 3582\(c\)\(2\)](#) (emphasis added). Like our prior unpublished decisions on this issue, we see no reason to adopt different standards for these parallel provisions.¹ We therefore review the district court's denial of Mr. Kibble's motion for abuse of discretion.

¹ See, e.g., [United States v. Blevins](#), 832 F. App'x 192 (Mem.) (4th Cir. 2020) (unpublished) (per curiam); [United States v. Boyd](#), 831 F. App'x 648 (Mem.) (4th Cir. 2020) (unpublished) (per curiam); [United States v. Trotman](#), 829 F. App'x 607, 608 (4th Cir. 2020) (unpublished) (per curiam); [United States v. Adamson](#), 831 F. App'x 82, 83 (4th Cir. 2020) (unpublished) (per curiam); [United States v. Sloan](#), 823 F. App'x 173, 174 (4th Cir. 2020) (unpublished) (per curiam); [United States v. Taylor](#), 820 F. App'x 229, 230 (4th Cir. 2020) (unpublished) (per curiam); [United States v. Aquino](#), 813 F. App'x 127, 128 (4th Cir. 2020) (unpublished)

(per curiam); [United States v. Bunch](#), 812 F. App'x 157, 157 (4th Cir. 2020) (unpublished) (per curiam); [United States v. Hill](#), 809 F. App'x 161, 162 (4th Cir. 2020) (unpublished) (per curiam).

III.

Before 2018, district courts could only reduce a term of imprisonment under [§ 3582\(c\)\(1\)\(A\)](#) “upon motion of the Director *330 of the Bureau of Prisons.” [18 U.S.C. § 3582\(c\)\(1\)\(A\) \(2002\)](#). BOP used its power to identify candidates for compassionate release with noted infrequency. [United States v. Brooker](#), 976 F.3d 228, 231–32 (2d Cir. 2020) (citing U.S. Dep't of Just. Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program 1 (2013), <https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf>) (last visited March 25, 2021) (saved as ECF opinion attachment). For years, BOP resisted congressional efforts to expand eligibility for compassionate release. [Id.](#); [United States v. Jones](#), 980 F.3d 1098, 1110 (6th Cir. 2020). So, when Congress passed the First Step Act in 2018, it amended [18 U.S.C. § 3582\(c\)](#). See First Step Act, [Pub. L. 115-391 § 603\(b\), 132 Stat. 5194, 5239 \(2018\)](#) (titled “Increasing the Use and Transparency of the First Step Act”). As amended, [§ 3582\(c\)](#) permits incarcerated persons to file motions for compassionate release directly with the district court so long as they first exhaust their administrative remedies. *Id.*²

²

To satisfy [§ 3582\(c\)\(1\)\(A\)](#)'s exhaustion requirement, incarcerated persons must first ask the BOP to file a motion for compassionate release on their behalf, and then, either (1) appeal the BOP's failure to bring a motion on their behalf, or (2) allow 30 days to lapse after making the request, whichever comes first. [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#). Courts are split over the question of whether, and under what circumstances, a court may waive [§ 3582\(c\)\(1\)\(A\)](#)'s exhaustion requirement. That issue does not arise here, however, as it is undisputed that Mr. Kibble exhausted his administrative remedies. Opening Br. at 5–6; Response Br. at 10; J.A. 362–63.

Relevant here, [§ 3582\(c\)\(1\)\(A\)](#) permitted the district court to reduce Mr. Kibble's term of imprisonment if it first found that “extraordinary and compelling reasons warrant[ed] such a reduction,” then considered the [§ 3553\(a\)](#) factors, and ultimately determined that the requested reduction was consistent with the “applicable policy statements issued by the Sentencing Commission.” [18 U.S.C. § 3582\(c\)\(1\)](#); [Chambliss](#), 948 F.3d at 693–94. The district court enjoyed broad discretion in conducting this analysis. [Jones](#), 980 F.3d at 1112; [Brooker](#), 976 F.3d at 237–38; [Chambliss](#), 948 F.3d at 693.

The district court concluded that Mr. Kibble's health conditions, within the context of a high-spread facility like FCI Elkton, amounted to extraordinary and compelling circumstances, a finding that the Government does not challenge on appeal. The district court nonetheless denied Mr. Kibble's motion, holding that a sentence reduction would not be consistent with [USSG § 1B1.13](#), p.s. and that the [§ 3553\(a\)](#) factors counseled against a sentence reduction. Although the district court erred in applying [USSG § 1B1.13](#), p.s. to Mr. Kibble's motion, it did not abuse its discretion in applying the [§ 3553\(a\)](#) factors to Mr. Kibble's case.

A.

Section 3583(c)(1) requires that a sentence reduction be “consistent with applicable policy statements issued by the Sentencing Commission.” Here, the district court held that [USSG § 1B1.13](#) was “applicable” to Mr. Kibble's request. [USSG § 1B1.13](#) renders an incarcerated person ineligible for a sentence reduction if the district court determines that he is “a danger to the safety of any other person or to the community, as provided in [18 U.S.C. § 3142\(g\)](#).” The district court found that Mr. Kibble posed a danger to the public and concluded that he did not qualify for [§ 3582\(c\)\(1\)\(A\)](#) relief.

[2] But we have since held that [USSG § 1B1.13](#) only applies when a request for compassionate release is made “[u]pon motion *331 of the Director of the Bureau of Prisons.” [United States v. McCoy](#), 981 F.3d 271, 281–83 (4th Cir. 2020). The Sentencing Commission adopted [USSG § 1B1.13](#) before Congress enacted the First Step Act—at a time when “a motion [for compassionate release] could reach a reviewing court only by way of the BOP.” [Id. at 283](#). And, as we explained in [McCoy](#), the text of the policy statement indicates that it only applies to motions of that sort. [Id. at 281–82](#). The Commission “has not updated [[USSG § 1B1.13](#)] to account for the fact that the Act now allows defendants to file their own motions for compassionate release.” [Id. at 282](#). “[I]n other words, [§ 1B1.13](#) does not apply, and thus [§ 3582\(c\)\(1\)\(A\)](#)’s consistency requirement does not constrain the discretion of district courts.” [Id. at 281](#).

Mr. Kibble filed his motion for compassionate release directly with the district court; the Director of the BOP did not submit it on his behalf. Accordingly, [USSG § 1B1.13](#) did not apply to Mr. Kibble's request. The district court erred in holding otherwise. We therefore affirm on separate grounds.

B.

[3] Moreover, a district court may not grant a sentence reduction under [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) without “considering the factors set forth in [§ 3553\(a\)](#) to the extent that they are applicable.”³ Mr. Kibble contends that, rather than viewing these factors holistically, the district court made one consideration dispositive: the amount of time he had served on his sentence. Mr. Kibble also argues that the district court gave insufficient weight to his preexisting medical conditions and the conditions at FCI Elkton. We do not read the district court's order as Mr. Kibble does.

³

The text of [18 U.S.C. § 3582\(c\)\(1\)](#) does not specify what conclusion a district court must draw from the [§ 3553\(a\)](#) factors in order to grant a motion for compassionate release. In stark contrast to the portion of the statute that requires a sentence reduction to be “consistent with applicable policy statements,” [§ 3582\(c\)\(1\)](#) merely requires district courts to “consider[]” the relevant [§ 3553\(a\)](#) factors. We understand this language as providing district courts with procedural guardrails for exercising their discretion, not creating a substantive prerequisite to compassionate release.

The district court considered the relevant [§ 3553\(a\)](#) factors. It acknowledged that although Mr. Kibble lacked any criminal history, “his offense was violent,” and the seriousness of traveling across state lines to have sex with a 14-year-old girl counseled against a sentence reduction. [Kibble, 2020 WL 3470508, at *4](#). Notably, just a few months earlier the district court had imposed a sentence at the top of the guidelines range, emphasizing the “egregious,” “despicable,” and “inexcusable” nature of Mr. Kibble's offense conduct. J.A. 152. In evaluating the [§ 3553\(a\)](#) factors at the original sentencing, the court also had concluded that a significant sentence was necessary to deter others from similar misconduct. *Id.*

It is true that, in denying Mr. Kibble's compassionate release motion, the district court found it “very significant” that Mr. Kibble had served such a small portion of his sentence. [Kibble, 2020 WL 3470508, at *3](#). But, upon viewing this statement in context, we do not read “very significant” to mean “dispositive.” The district court was entitled to consider the amount of time Mr. Kibble already had served as one factor in the [§ 3553\(a\)](#) analysis. See [Chambliss, 948 F.3d at 694](#); [Pawlowski, 967 F.3d at 331](#). The district court also gave great weight to the nature of Mr. Kibble's offense, noting the “particular circumstances” of his conviction. Elsewhere in the [*332](#) opinion, the district court expressed concern that Mr. Kibble, “armed with condoms, crossed state lines for the express purpose of having sex with a fourteen-year-old girl.” *Id.*

The record also demonstrates that the district court reconsidered the  [§ 3553\(a\)](#) factors in view of the extraordinary and compelling circumstances present in Mr. Kibble's case. The court's decision reflects its understanding of Mr. Kibble's health conditions, the conditions at FCI Elkton, and the severe risks arising out of those circumstances. [Kibble, 2020 WL 3470508, at *2](#) (“Accordingly, [the] defendant—due to his preexisting medical conditions—is at a higher risk of health problems resulting from COVID-19.”); *id.* (explaining that FCI Elkton was “suffering from a significant outbreak of COVID-19” and that it “has been one of the hardest hit institutions in the country”).

The district court did not abuse its discretion by nonetheless denying Mr. Kibble's motion. To do so, a district court must “act[] arbitrarily or irrationally, fail[] to consider judicially recognized factors constraining its exercise of discretion, rel[y] on erroneous factual or legal premises, or commit[] an error of law.” [United States v. Trotman, 829 F. App'x at 608](#) (quoting [United States v. Dillard, 891 F.3d 151, 158 \(4th Cir. 2018\)](#) (internal quotation marks omitted)). And here, the district court did not.

IV.

The district court did not abuse its discretion by concluding that the  [§ 3553\(a\)](#) factors counseled against a sentence reduction in Mr. Kibble's case. Notwithstanding the district court's error in applying  [USSG § 1B1.13](#), we affirm.

AFFIRMED

[GREGORY](#), Chief Judge, concurring:

The district court had discretion in evaluating Mr. Kibble's request for compassionate release. And as our decision explains, the district court's decision to deny that request fell within the realm of its permissible discretion. I write separately to express my additional views on the district court's analysis and, more broadly, the range of permissible considerations for motions for compassionate release.

I.

The district court correctly held that “extraordinary and compelling” circumstances may exist when at-risk inmates are housed in a correctional facility where COVID-19 is present. [United States v. Kibble, No. 2:19-cv-00077, 2020 WL 3470508, at *2 \(S.D.W. Va. June 25, 2020\)](#). “At risk” and “present” are necessarily vague terms of art. Imagining an inmate's health conditions on

the X-axis, and the degree of spread (within the facility and surrounding community) on the Y-axis, courts must decide what combination of circumstances qualify as “extraordinary and compelling” with flexibility and common sense. Circumstances might not be “extraordinary and compelling” for an otherwise healthy 65-year-old gentleman at a facility with little spread; whereas, the same characteristics at a different facility might satisfy  § 3582(c)(1)’s threshold. This analysis, as the district court noted, “requires a fact-intensive inquiry.” *Id.* (quoting *United States v. Shakur*, No. 82 CR 312 (CSH), 2020 WL 1911224, at *1 (S.D.N.Y. Apr. 20, 2020)).

The analysis also requires appropriate consideration of the risks identified by public health experts. For example, the Center for Disease Control and Prevention advises that “[o]lder adults are at greater risk of requiring hospitalization or dying if they are diagnosed with COVID-19.” Older *333 Adults, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited March 25, 2021) (saved as ECF opinion attachment).¹ Although the risk is highest for people above the age of 65, disparity exists across the board. *Id.* People in their thirties are twice as likely to be hospitalized for COVID-19 as people in their twenties, and four times as likely to die from the disease. *Id.*

¹ In the proceedings below, both parties relied upon the expert, albeit evolving, guidance provided by the Center for Disease Control and Prevention. J.A. 170-71, 176-79, 231, 233. The district court followed suit. J.A. 365. Absent argument to the contrary, I too view the current CDC guidance as the relevant benchmark for evaluating the threats that COVID-19 presents.

The prevailing guidance also cautions that the risks associated with COVID-19 vary depending on people’s underlying health conditions. “[A]dults of any age ... are at increased risk of severe illness from the virus that causes COVID-19” if they suffer from one or more of several health conditions, such as [cancer](#), [coronary artery disease](#), or [chronic kidney disease](#). People with Certain Medical Conditions, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited March 25, 2021) (saved as ECF opinion attachment). And other medical conditions, such as [asthma](#), HIV, [hypertension](#), and [obesity](#) may place adults of any age at increased risk.² *Id.*

² The CDC acknowledges that it is learning more about COVID-19 every day. People with Certain Medical Conditions, CENTER FOR DISEASE CONTROL AND PREVENTION. It only recently discovered data linking [Down syndrome](#) with increased risk of severe illness from the virus that causes COVID-19. *Id.* The Center also added [sickle cell disease](#) and [chronic kidney disease](#) to its list of conditions that might increase the risk of severe illness among children. *Id.* As courts, we must adapt as readily as the guidance does.

But as public health experts recognize, we cannot view personal factors in isolation from social and demographic determinants of health. “Long-standing systemic health and social inequities [place] many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19.” Health Equity Considerations & Racial & Ethnic Minority Groups, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last visited March 25, 2021) (saved as ECF opinion attachment). Systemic inequities likewise place individuals from rural communities at increased risk of severe illness. Rural Communities, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/other-at-risk-populations/rural-communities.html> (last visited March 25, 2021) (saved as ECF opinion attachment). When raised and relevant, these considerations—among others—should all inform courts’ evaluations of incarcerated persons’ circumstances.

Here, Mr. Kibble identified three circumstances that, collectively, qualified as extraordinary and compelling: (1) the uncontrolled spread of COVID-19 at FCI Elkton, (2) his [tricuspid atresia](#), and (3) his non-alcohol related [cirrhosis of the liver](#). The district court agreed and so found. At the time of Mr. Kibble's motion, nearly 25% of Elkton's population had contracted COVID-19; nine inmates had died as a result. The ACLU of Ohio and the Ohio Justice & Policy Center had named FCI Elkton as a defendant in a class action suit *334 challenging the facility's conditions of confinement during the pandemic. And, at the time of Mr. Kibble's motion, Elkton was subject to a preliminary injunction aimed at correcting the facility's mismanagement. See [Wilson v. Williams](#), 455 F. Supp. 3d 467, (N.D. Ohio 2020), vacated by [Wilson v. Williams](#), 961 F.3d 829, 833 (6th Cir. 2020). This combination of factors rightly gave rise to the extraordinary and compelling circumstances animating this case.

II.

Upon concluding that the circumstances that Mr. Kibble faced were extraordinary and compelling, the district court considered the factors set forth in [18 U.S.C. § 3553\(a\)](#). The court correctly recognized that, under [§ 3582\(c\)\(1\)](#), its task was not to assess the correctness of the original sentence it imposed. Rather, its task was to determine whether the [§ 3553\(a\)](#) factors counseled against a sentence reduction in light of the new, extraordinary circumstances identified.

I begin by emphasizing what the text and logic of [§ 3582\(c\)\(1\)](#) make plain: a sentence reduction is not inconsistent with the [§ 3553\(a\)](#) factors solely because an incarcerated person has only served a small portion of his sentence. [Section 3582\(c\)\(1\)](#) permits a district court to reduce a sentence in “any case”—not just cases where a sentence has been substantially served; not just in

cases involving low-level or non-violent offenses. See [United States v. Gonzales](#), 520 U.S. 1, 5, 117 S.Ct. 1032, 137 L.Ed.2d 132 (“Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’”) (quoting Webster’s Third New International Dictionary 97 (1976)). When a statute provides for relief in “any case,” there is no basis for categorically limiting that relief to a certain subset of cases. See [id.](#) (holding that there was “no basis in the text” for understanding “any other term of imprisonment” to only refer to federal sentences); see also [Ali v. Federal Bureau of Prisons](#), 552 U.S. 214, 220, 128 S.Ct. 831, 169 L.Ed.2d 680 (2008) (finding that Congress’ use of the word “any” was most naturally understood as meaning “of whatever kind”); [Citizens’ Bank of La. v. Parker](#), 192 U.S. 73, 81, 24 S.Ct. 181, 48 L.Ed. 346 (1904) (“The word any excludes selection or distinction.”). The Supreme Court reminds us that courts must give effect to each word in a statute, [Setser v. United States](#), 566 U.S. 231, 239, 132 S.Ct. 1463, 182 L.Ed.2d 455 (2012), appreciating that “Congress says in a statute what it means and means in a statute what it says there.” [Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.](#), 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000). I recognize the breadth of [18 U.S.C. § 3582\(c\)\(1\)](#)’s text not to discount the seriousness of some criminal offenses, but to give effect to the policy choice that Congress made plain: when extraordinary and compelling circumstances exist, even the most serious offenders may be eligible for mercy.

Mr. Kibble contends that the district court disregarded this principle and made the length of his time in prison dispositive. If, upon reading the district court’s decision as a whole, I understood “very significant” to be a euphemism for “dispositive,” then I would be compelled to find legal error.³ The text of [§ 3553\(a\)](#) does not *335 make any factor, or combination of factors, dispositive. Indeed, as Mr. Kibble argues, some courts have already granted motions for compassionate release in cases like his, where a person convicted of a sex offense had only served a small portion of his sentence.⁴ Our decision does not cast doubt on those decisions. But nor can we hold that the district court abused its discretion by exercising that discretion differently. See [Gall v. United States](#), 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

³ As the per curiam opinion notes, the district court gave great weight to the nature of Mr. Kibble’s offense, noting the “particular circumstances” of his conviction. To be sure, the district court’s invocation of the “particular circumstances” of Mr. Kibble’s conviction leaves some to the imagination about which [§ 3553\(a\)](#) factors animated its ruling. See [United States v. Martin](#), 916 F.3d 389, 395–96 (4th Cir. 2019) (identifying circumstances in which a district court must provide a reasoned explanation for declining to reduce a sentence under [§ 3582\(c\)\(2\)](#)). The district court did not address the fact that, on three prior occasions, it had found Mr. Kibble was not a danger to the public. J.A. 46, 154. Nor did it discuss the role of Mr. Kibble’s commendable post-conviction conduct. On appeal, however, Mr. Kibble

insists that he does not challenge the adequacy of the district court's explanation. Reply Br. at 1–2. The per curiam opinion therefore did not address that issue.

⁴ See Opening Br. at 15–16 (citing [United States v. Locke](#), No. CR18-0132 RAJ, 2020 WL 3101016, at *1, 6 (W.D. Wash. June 11, 2020); [United States v. Brown](#), 2:18-cr-360 KOB-JEO (001), 2020 WL 5201224 (N.D. Ala. May 22, 2020); [United States v. Ben-Yhwh](#), 453 F. Supp. 3d 1324, 1326–27 (D. Haw. 2020); [United States v. Delgado](#), 457 F. Supp. 3d 85, 86–87 (D. Conn. 2020); [United States v. Winston](#), 1:13-cr-639-RDB (D. Md. 2020)).

Finally, I disagree with the Government's suggestion that a district court may fulfill its duty to reconsider the [§ 3553\(a\)](#) factors by merely recounting the considerations that supported the original sentence. Response Br. at 11. [Section 3582\(c\)\(1\)](#) necessarily envisions that the [§ 3553\(a\)](#) factors may balance differently upon a motion for compassionate release than they did at the initial sentencing. An individual requesting compassionate release will, in all cases, be serving a sentence that a district court once held was “sufficient but not greater than necessary.” If a district court's original [§ 3553\(a\)](#) analysis could always prove that a sentence reduction would intolerably undermine the [§ 3553\(a\)](#) factors, then [18 U.S.C. § 3582\(c\)\(1\)](#) would, in effect, be a nullity.

There is good reason to believe that, in some cases, a sentence that was “sufficient but not greater than necessary” before the coronavirus pandemic may no longer meet that criteria. A day in prison under the current conditions is a qualitatively different type of punishment than one day in prison used to be. In these times, drastically different. Some facilities house inmates who now serve their sentences knowing that they are not equipped to guard against a virus that may result in serious illness or death. Other facilities keep COVID-19 at bay by placing inmates in solitary confinement, ending prison programs, restricting visitation, and limiting access to nonessential medical care. See, e.g., [United States v. Colon](#), No. 09-cr-294, 2021 WL 389144, at *6 (D. Conn. Feb. 4, 2021); [United States v. Nuzzolilo](#), — F. Supp. 3d —, —, 2021 WL 372454, at *1 (D. Mass. Feb. 3, 2021); [United States v. Colburn](#), — F. Supp. 3d —, —, 2021 WL 257133, at *1 (D. Mass. Jan. 26, 2021); [United States v. Jones](#), No. 4:20-CR-00209, 2021 WL 120843, at *2 (M.D. Pa. Jan. 13, 2021); [United States v. Harrison](#), No. 12-cr-0088-01 (ESH), 2020 WL 5702106, at *2 (D.D.C. Sept. 24, 2020); [Turner v. United States](#), No. 2:18-cr-128, 2020 WL 4370124, at *2 (E.D. Va. July 30, 2020); [United States v. Riley](#), No. ELH-16-0402, 2020 WL 3034843, at *6–8 (D. Md. June 4, 2020); [United States v. Regas](#), No. 3:91-cr-00057-MMD-NA-1, 2020 WL 2926457, at *1 (D. Nev. June 3, 2020); [United States v. Cardenas-Garcia](#), No. 20-CR-00644-GPC, 2020 WL 2797529, at *2 (S.D. Cal. May 29, 2020); see also *BOP *336 Modified Operations*, BOP.GOV, available at https://www.bop.gov/coronavirus/covid19_status.jsp (last visited March 25, 2021) (saved as ECF opinion attachment). These conditions, not contemplated by the original sentencing court, undoubtedly increase a prison sentence's punitive effect.

That said, the record here demonstrates the district court's understanding of Mr. Kibble's health conditions, the conditions at FCI Elkton, and the severe risks arising out of those circumstances. [Kibble, 2020 WL 3470508, at *2](#) (“Accordingly, [the] defendant—due to his preexisting medical conditions—is at a higher risk of health problems resulting from COVID-19.”); [id.](#) (explaining that FCI Elkton was “suffering from a significant outbreak of COVID-19” and that it “has been one of the hardest hit institutions in the country”). Viewed as a whole, the district court's decision to deny Mr. Kibble's motion was not arbitrary, irrational, or incurably premised upon legal error. For these reasons, I join in the Court's decision to affirm.

[QUATTLEBAUM](#), Circuit Judge, concurring:

I write separately to briefly address one aspect of Chief Judge Gregory's concurring opinion. Relying primarily on data from the Centers for Disease Control, he outlines a framework to evaluate the threshold requirement for compassionate release—the presence of “extraordinary and compelling reasons.”  [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#). He then concludes that the district court properly made such a finding in this case. This opinion is not the opinion of our Court, and the issue of “extraordinary and compelling reasons” is not even before us.

The district court did find that Kibble's health conditions and the spread of COVID-19 at Elkton were “extraordinary and compelling reasons” sufficient to consider compassionate release. But the government did not challenge that finding as an alternative means for affirming the district court's judgment. So, no party briefed the issue. And without the benefits of adversarial testing on appeal, we have properly avoided suggesting a definitive answer to an evolving pandemic-centric question.

The pace of [vaccinations](#) for COVID-19—including in prisons—is accelerating. For that and other reasons, the COVID-19 pandemic continues to evolve, seemingly improving but surely changing. Even so, we may still have occasion to grapple with the meaning of “extraordinary and compelling reasons.” But in my view, we should wait until it is before us to comment on that important legal issue.

All Citations

992 F.3d 326

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

RYAN SCOTT KIBBLE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

APPENDIX B

TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:19-00077

RYAN SCOTT KIBBLE

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's "Emergency Motion for Compassionate Release". (ECF No. 73.) Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), defendant requests compassionate release due to his "pre-existing medical conditions which place him at 'high risk' of developing severe complications or death" should he contract the the COVID-19 virus. Id. Defendant's motion has been fully briefed and is ripe for decision.

I.

On August 12, 2019, Kibble pled guilty to one count of traveling in interstate commerce for the purpose of engaging in illicit sexual contact with another person, in violation of 18 U.S.C. §§ 2423(b) and (e). On January 14, 2020, Kibble was sentenced to a term of imprisonment of 57 months to be followed by a term of supervised release of fifteen years. On February 14, 2020, defendant reported to FCI Elkton in Lisbon, Ohio, to begin serving his sentence. He is currently housed at FCI Elkton

and, according to the Bureau of Prisons' website, his current projected release date is January 30, 2024.

Kibble is 34 years old and was born with a serious heart condition. Up until he was incarcerated, Kibble was seen by a cardiologist who has indicated that patients with "complex congenital heart disease carry an increased risk if exposed to the COVID-19 virus." Exhibit B to ECF No. 73. Kibble has also been diagnosed with non-alcohol related cirrhosis of the liver.

In mid-April of 2020, defendant submitted a written request for compassionate release to the attention of the Warden at FCI Elkton. On April 27, 2020, Kibble's request for compassionate release was denied. See Exhibit A to ECF No. 73.

The instant motion was filed on May 15, 2020. The government filed its opposition to defendant's motion on May 20, 2020, and Kibble filed a reply on May 27, 2020.

After briefing was complete, on June 15, 2020, defendant filed a supplemental memorandum in support of his motion for compassionate release. See ECF No. 76. Attached to that supplemental memorandum was a memorandum opinion and order, dated June 12, 2020, from another judge of this court granting the motion for compassionate release of Ralph White, another inmate at FCI Elkton. See Exhibit A to ECF No. 76. Kibble urges the

court to follow that decision and grant his motion for compassionate release. Kibble also noted "that he had been tested for COVID-19 and was subsequently moved to another unit where he was in quarantine status. Mr. Kibble has not been told that he has contracted the virus, but suspects that he did test positive and is asymptomatic." ECF No. 76 at 3. Kibble further noted staff at FCI Elkton were not wearing masks. See id.

In its response to the supplemental memorandum, the government confirmed that Kibble had been tested for COVID-19 on May 20, 2020, and the results were reported positive on May 24, 2020. According to the government, Kibble's motion for compassionate release sought release to avoid becoming infected with COVID-19 and, given that he has already contracted the virus, his motion should be denied as moot.

On June 18, 2020, Kibble filed a reply to the government's memorandum.¹ See ECF No. 78. He argues that his motion is not moot despite his May 24, 2020, positive test for COVID-19. See id. at 1. According to Kibble's filing, he only found out he was positive for COVID-19 on June 17, 2020, after a phone call from counsel. See id. Kibble noted "that he is still being housed in

¹ Both motions to seal, ECF Nos. 77 and 79, which seek to protect confidential medical information, are **GRANTED**. To the extent this Memorandum Opinion and Order discusses medical information, the court has only mentioned information that is otherwise available in the public filings.

the same unit where other inmates are visibly ill from the COVID-19 virus” but that he “continue[d] to be quarantined from the remainder of the inmate population at FCI Elkton.” Id. Kibble maintains that although he “has not yet developed a fever or a hacking cough, his prolonged presence from being housed in the same dormitory unit with other asymptomatic as well as bedridden inmates can still result in Mr. Kibble subsequently developing significant complications from the virus.” Id.

II.

Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), the court may reduce a term of imprisonment previously imposed if it finds that “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”

The First Step Act empowers criminal defendants to request that courts grant them compassionate release pursuant to 18 U.S.C. § 3582(c). But before they make such requests to the court, defendants must first ask BOP via the administrative process and give BOP thirty days to respond. See id. § 3582(c)(1)(A). Upon such a motion from BOP or from a defendant (after either BOP denies the request or thirty days has elapsed since the request was filed), a court “may reduce the term of imprisonment.” Id. §

3582(c)(1)(A)(i). Here, Kibble filed a written request for compassionate release with the BOP which was denied on April 27, 2020. See ECF No. 73 Ex. A. Thus, defendant has exhausted his remedies and the court may consider his motion on the merits.

Congress has restricted the power of courts to modify a term of imprisonment once it has been imposed except when "extraordinary and compelling reasons warrant such a reduction" and when "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). Thus, to warrant compassionate release, defendant must show that: (1) extraordinary and compelling reasons warrant a sentence reduction; (2) he is not a danger to the safety of others or the community; and (3) the reduction satisfies the sentencing factors in 18 U.S.C. § 3553(a). See id.; see also USSG §§1B1.13(1)(A), (2). It is worth emphasizing that compassionate release is "an extraordinary and rare event." United States v. Mangarella, 2020 WL 1291835, *2-3 (W.D.N.C. Mar. 16, 2020).

A. Extraordinary and Compelling Reasons

Other district courts, in considering whether extraordinary and compelling reasons for a sentence reduction exist in light of COVID-19, have considered the age of the prisoner, the severity

and documented history of the defendant's health conditions, and the proliferation and status of infections in the prison facility. United States v. Brady, 2020 WL 2512100, at *3 (S.D.N.Y. May 15, 2020) (citing and gathering cases). Thus, compassionate release motions amid the COVID-19 pandemic require a "fact-intensive" inquiry. See United States v. Shakur, 2020 WL 1911224, at *1 (S.D.N.Y. Apr. 20, 2020).

According to the Centers for Disease Control and Prevention ("CDC"), persons with "serious underlying medical conditions" have a significantly increased the risk of health complications from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited June 23, 2020). Both "serious heart conditions" and "liver disease" are listed as two conditions that make a person of any age at higher risk for serious illness from COVID-19. Id. Accordingly, defendant - due to his preexisting medical conditions - is at a higher risk of health problems resulting from COVID-19. Moreover, defendant can show a particularized risk of contracting the disease, as FCI Elkton is suffering from a significant outbreak of COVID-19. See United States v. Jackson, 2020 WL 3396901, *2 (N.D. Ind. June 19, 2020) ("FCI Elkton has been one of the hardest hit institutions in the

country. As of the date of the evidentiary hearing on this motion, out of approximately 2500 inmates at Elkton, 438 had tested positive for COVID-19. That's roughly 25% of the entire prison population."). Indeed, defendant has already contracted COVID-19 although he appears to have remained asymptomatic for more than 4 weeks. Nevertheless, the court finds there are "extraordinary and compelling reasons" within the meaning of 18 U.S.C. § 3582(c)(1)(A) to support a reduced sentence or early release.

B. Danger to the Safety of Others

The court cannot find that a sentence reduction for defendant would not result in danger to the safety of others or the community. In this case, defendant, armed with condoms, crossed state lines for the express purpose of having sex with a fourteen-year-old girl, in violation of 18 U.S.C. § 2423(b). This is a crime of violence. See 18 U.S.C. § 3156(a)(4)(C); see also United States v. Breeden, 2015 WL 13310427, *7 (D.D.C. Nov. 16, 2015) (noting that Congress designated a violation of § 2423(b) to be a crime of violence). The court recognizes that this was defendant's first offense and that a real minor was not involved. The court cannot, however, ignore the dangerous nature of defendant's conduct nor is it assured that defendant would not

present a danger to other minors if released from prison. See United States v. Schultz, 2020 WL 2764193, *8 (W.D.N.Y. May 28, 2020) (denying motion for compassionate release where, among other reasons, defendant “poses a danger to the community given his criminal conduct in soliciting, grooming, and arranging to meet a minor for sex”).

C. Section 3553(a) Sentencing Factors

Even if the court were to conclude that defendant is not a danger to the community or to the safety of other, the factors set forth in 18 U.S.C. § 3553(a) compel the denial of defendant’s motion. These factors include (i) “the nature and circumstances of the offense and the history and characteristics of the defendant”; (ii) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to adequately deter criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”; (iv) the sentencing guidelines; and (v) “the need to

provide restitution to any victims of the offense.” 18 U.S.C. § 3553(a).

Applying these factors to defendant, the court finds that granting defendant’s motion for compassionate release would be inconsistent with the sentencing factors set forth in § 3553(a). While defendant has no prior criminal record, his offense was violent. Based on the seriousness of defendant’s crime, and the need to promote respect for the law, to provide just punishment for the offense, to adequately deter criminal conduct, and to avoid unwanted sentencing disparities, the court sentenced defendant to 57 months of incarceration. Given these particular circumstances, the court finds it very significant that defendant has served less than a tenth of his sentence. Thus, the court finds that a sentence reduction of approximately 90 percent would be entirely inconsistent with the sentencing factors set forth in § 3553(a).

The vast majority of district courts have likewise declined to grant compassionate release motions where a defendant has served a small fraction of his or her sentence of incarceration. See United States v. Lonich, 2020 WL 2614874, at *3 (N.D. Cal. May 21, 2020) (denying motion despite COVID-19 outbreaks in the facility and defendant being 65 years old and having medical

conditions that make him particularly vulnerable, because “the Court finds it significant that defendant[] ha[s] served far less than half of [his] sentence[]”); United States v. Pawlowski, 2020 WL 2526523, *7 (E.D. Pa. May 18, 2020) (denying motion for compassionate release where defendant had “served only a small fraction of his sentence to date”); United States v. Brady, 2020 WL 2512100, at *4 (S.D.N.Y. May 15, 2020) (finding that despite defendant having serious medical conditions “[t]he deterrence objectives of 18 U.S.C. § 3553(a) would be undercut by a reduction here, where [defendant] has served . . . less than one quarter” of his sentence); United States v. Bogdanoff, 2020 WL 2307315, *6 (E.D. Pa. May 8, 2020) (noting that defendant who had served only seven years of 18-year sentence had a “much different” case for compassionate release than “others where defendants are at the end of their sentence”); United States v. Hylander, 2020 WL 1915950, at *2 (S.D. Fla. Apr. 20, 2020) (denying compassionate release where 66-year-old defendant had served one-third of sentence and suffered from a number of significant health conditions).²

²See also United States v. Arthur Williams, 2020 WL 3086049, at *1 (D. Mass. June 10, 2020) (denying in part because defendant had served less than half of his sentence); United States v. Brinkley, 2020 WL 3051574, at *1 (S.D. Fla. June 7, 2020) (“Although [chronic bronchitis] may put him at a higher risk of contracting the a severe case of Covid-19, Brinkley’s asthma is not at such an acute level as to warrant his release after

The court is very concerned about the spread of COVID-19 in the federal prison system, and especially about the outbreak at FCI Elkton. However, while defendant's medical conditions place him at higher risk of complications if infected with the virus, the court cannot ignore that defendant has already contracted the virus and has not suffered serious complications. See United States v. Reynolds, 2020 WL 3266532, *4 (W.D. Wash. June 17, 2020) ("The fact that Mr. Reynolds tested positive for COVID-19 with a 'resolved' diagnosis significantly alters the analysis of

serving less than 50% of his sentence"); United States v. Colonna, 2020 WL 2839172, at *4 (S.D. Fla. June 1, 2020) (holding that a modification of defendant's sentence is unwarranted in part because defendant had served less than 25% of the sentence); United States v. Linder, 2020 WL 2793089, at *4 (W.D. Pa. May 29, 2020) (same); United States v. Singui, 2020 WL 2523114, at *5 (C.D. Cal. May 18, 2020) (same); United States v. Alvarez, 2020 WL 2572519, at *5 (S.D. Fla. May 21, 2020) (assuming defendant had satisfied exhaustion requirement, court would still deny compassionate release on § 3553(a) grounds because defendant had served less than 25% of his sentence); United States v. Zamor, 2020 WL 2764282, at *2 (S.D. Fla. May 12, 2020) ("Crucially, [the defendant] has completed less than 40% of this sentence, and the applicable 18 U.S.C. § 3553(a) factors . . . do not warrant [his] release after serving less than half of his sentence"); United States v. Gamble, 2020 WL 1955338, at *4 (D. Conn. Apr. 23, 2020) (denying compassionate release where 47-year-old defendant had served five months of 92-month sentence and suffered from diabetes); United States v. Moskop, 2020 WL 1862636, at *1 (S.D. Ill. Apr. 14, 2020) (denying compassionate release where 72-year-old defendant had served less than half of 240-month sentence and suffered from various significant risk-increasing medical conditions); United States v. Haney, 2020 WL 1821988, at *7 (S.D.N.Y. Apr. 13, 2020) (denying compassionate release for a 61-year-old prisoner whose release would reduce a 42-month sentence to nine months).

his petition for compassionate release. His last medical report indicates that he is currently receiving medication for his other health concerns and is not suffering from any reported lingering symptoms from COVID-19. Consequently, his circumstances do not provide a basis to reduce his sentence or grant his request for compassionate release.”). The § 3553 factors are dispositive in this case-especially the very small amount of time that defendant has served for his crime. An approximate 90 percent reduction in sentence would not reflect the seriousness of the offense, provide just punishment, be a sufficient deterrent to others in the community, and would result in unwarranted sentencing disparities. See 18 U.S.C. § 3553(a); see also United States v. Oropeza Lopez, 2020 WL 1923194, at *2 (E.D. Cal. Apr. 21, 2020) (“Defendant has served less than half of his sentence [which] . . . would not appear to “reflect the seriousness of the offense” or “provide just punishment for the offense.”); United States v. Edington, 2020 WL 2744140, at *5 (D. Colo. May 27, 2020) (concluding that, even if the court were to find the defendant was not a danger to the community, a “sentence of less than half the court originally imposed is [not] sufficient to further the goals of sentencing”). A sentence of 57 months imprisonment was necessary to achieve those goals and a reduction of the magnitude

that defendant seeks runs counter to those objectives. Even converting defendant's sentence to one of home confinement, when he has served little more than 4 months of a 57-month term of incarceration, would disserve these important § 3553(a) factors.

III.

Having considered the entire record in this matter, including the parties' filings related to the instant motion, the court concludes that a sentence reduction would not serve the sentencing objectives of 18 U.S.C. § 3553(a). Therefore, the court **DENIES** Kibble's motion for compassionate release.

The Clerk is directed to send a copy of this Order to counsel of record, any unrepresented parties, and the Probation Office of this court.

It is SO ORDERED this 25th day of June, 2020.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge