

App'x: A

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

No: 21-2475

United States of America

Plaintiff - Appellee

v.

Dennis Dean Smith

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:05-cr-00218-RP-1)

JUDGMENT

Before LOKEN, GRUENDER, and BENTON, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

July 09, 2021

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

/s/ Michael E. Gans

App'x: B

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

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	4:05-cr-00218
	*	
v.	*	
	*	
DENNIS DEAN SMITH JR.,	*	ORDER DENYING
Defendant.	*	MOTION FOR
	*	RECONSIDERATION
	*	

Before the Court is Defendant Dennis Dean Smith Jr.'s Pro Se Motion for Reconsideration, filed on April 30, 2021. ECF No. 89. The Government filed its Response on May 24, 2021. ECF No. 92. The matter is fully submitted.

This Court denied Defendant's Motion for Compassionate Release on April 15, 2021, in part because, "Defendant's Motion provide[d] scant evidence of rehabilitation or remorse, raising doubts as to whether he has been deterred from further criminal activity." ECF No. 87 at 5 (citing 18 U.S.C. § 3553(a)(2)(B)). Defendant's current Motion provides additional evidence of rehabilitation, including educational and vocational records; letters of support from a prison employee, family, and friends; and a heartfelt apology letter. ECF No. 89-1.

Finality is "essential to the operation of our criminal justice system." *Teague v. Lane*, 489 U.S. 288, 309 (1989). For this reason, "[i]n the civil context, [the Eighth Circuit] has been clear that a motion for reconsideration 'serve[s] the limited function of correcting manifest errors of law or fact or . . . present[ing] newly discovered evidence.'" *United States v. Luger*, 837 F.3d 870, 875 (8th Cir. 2016) (third and fourth alterations in original) (quoting *Bradley Timberland Res. v. Bradley Lumber Co.*, 712 F.3d 401, 407 (8th Cir. 2013)). While the Eighth Circuit has not decided the issue, "courts in other Circuits have held that this civil standard applies to

Northern District of Iowa

UNITED STATES OF AMERICA, Plaintiff, v. DENNIS DEAN SMITH JR., Defendant.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
2021 U.S. Dist. LEXIS 120290; F. Supp. 3d 4:05-cr-00218
June 16, 2021, Decided
June 16, 2021, Filed

Counsel {2021 U.S. Dist. LEXIS 1}For USA, Plaintiff: Andrew H. Kahl, Mallory Elizabeth Weiser, LEAD ATTORNEYS, UNITED STATES ATTORNEY'S OFFICE - DSM, DES MOINES, IA.

Judges: ROBERT W. PRATT, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: ROBERT W. PRATT

Opinion

ORDER DENYING MOTION FOR RECONSIDERATION

Before the Court is Defendant Dennis Dean Smith Jr.'s Pro Se Motion for Reconsideration, filed on April 30, 2021. ECF No. 89. The Government filed its Response on May 24, 2021. ECF No. 92. The matter is fully submitted.

This Court denied Defendant's Motion for Compassionate Release on April 15, 2021, in part because, "Defendant's Motion provide[d] scant evidence of rehabilitation or remorse, raising doubts as to whether he has been deterred from further criminal activity." ECF No. 87 at 5 (citing 18 U.S.C. § 3553(a)(2)(B)). Defendant's current Motion provides additional evidence of rehabilitation, including educational and vocational records; letters of support from a prison employee, family, and friends; and a heartfelt apology letter. ECF No. 89-1.

Finality is "essential to the operation of our criminal justice system." *Teague v. Lane*, 489 U.S. 288, 309, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). For this reason, "[i]n the civil context, [the Eighth Circuit] has been clear that a motion for reconsideration 'serve[s] the limited function of correcting manifest[2021 U.S. Dist. LEXIS 2] errors of law or fact or . . . present[ing] newly discovered evidence.'" *United States v. Luger*, 837 F.3d 870, 875 (8th Cir. 2016) (third and fourth alterations in original) (quoting *Bradley Timberland Res. v. Bradley Lumber Co.*, 712 F.3d 401, 407 (8th Cir. 2013)). While the Eighth Circuit has not decided the issue, "courts in other Circuits have held that this civil standard applies to motions for reconsideration raised in criminal cases outside of the suppression context." *Id.* (citing *United States v. Rollins*, 607 F.3d 500, 502 (7th Cir. 2010)). Therefore, "[a] motion for reconsideration should not be used as a vehicle to present evidence that

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was available when the matter was initially adjudicated." *Id.*

While Defendant's rehabilitation is commendable, all of his evidence was available when his Motion for Compassionate Release was initially adjudicated.¹ Out of "respect for the finality of criminal judgments," the Court declines to reconsider compassionate release on this basis. *Calderon v. Thompson*, 523 U.S. 538, 558, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998). Further, Defendant does not challenge the Court's conclusion that compassionate release was not justified by an "unwarranted sentencing disparity" or the sentence he would have received under current law. ECF No. 87 at 4-5 (citing *United States v. Brown*, 457 F. Supp. 3d 691, 704-05 (S.D. Iowa 2020) (quoting § 3553(a)(6))), *appeal dismissed following government request*, No. 20-2053 (8th Cir. June 16, 2020). Thus, the Court must deny Defendant's Motion for Reconsideration.

Nonetheless, {2021 U.S. Dist. LEXIS 3} Defendant's heartfelt apology letter warrants additional discussion. Defendant's newfound understanding of the "qualities of empathy and compassion to others" recalls the widespread debates about the role of empathy in the judiciary during Justice Elena Kagan's appointment. ECF No. 89-1 at 19; *Articles about the Role of Empathy in the Supreme Court and to Justice*, Center for Building a Culture of Empathy (June 15, 2021), <http://cultureofempathy.com/references/Articles-Conservatives-Empathy.htm#7>. Nowhere, however, is the role of empathy in law less debatable than in these motions for what is commonly termed "compassionate" release. Throughout Defendant's compassionate release proceedings, the Court has endeavored to adhere to Justice Brennan's admonition that a mere "product of formal reason" does not "comport with due process . . . because it lack[s] that dimension of passion, of empathy, necessary for the full understanding of the human beings affected by these procedures." William J. Brennan, Jr., *Reason, Compassion, and "The Progress of the Law"*, 10 Cardozo L. Rev. 3, 21 (1988).

As Judge Arnold of the Eighth Circuit aptly stated, "I'm simply suggesting that [criminal defendants] are human beings, people with {2021 U.S. Dist. LEXIS 4} families and friends, and that though their conduct has been at fault, we ought to be as unabrasive as possible in pronouncing the judgment of the law." Richard S. Arnold, *Remarks Before the Judicial Conference of the Eighth Circuit: The Art of Judging* (Aug. 8, 2002). In this spirit, the Court notes Defendant's request that "[i]f nothing else, at the very least I would ask of your forgiveness." ECF No. 89-1 at 32. This the Court readily grants.

The Court commands Defendant on the rehabilitation and remorse he has demonstrated while incarcerated and encourages him in his commitment "to strive daily to be a better man, a better person, a better father." ECF No. 89-1 at 18. Unfortunately, "rehabilitation of the defendant alone" cannot justify compassionate release. 28 U.S.C. § 994(t). Because the § 3553(a) factors still preclude release in this case, Defendant's additional evidence of rehabilitation is insufficient to reconsider the prior denial of compassionate release, ECF No. 87.

For the reasons stated herein, Defendant's Motion for Reconsideration (ECF No. 89) is DENIED.

IT IS SO ORDERED.

Dated this 16th day of June, 2021.

/s/ Robert W. Pratt

ROBERT W. PRATT, Judge

U.S. DISTRICT COURT

Footnotes

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The Court has construed Defendant's pro se filings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). Pursuant to Court Order, the Government provided over 900 pages of evidence regarding Defendant's educational and vocational training, disciplinary history, and health conditions. ECF Nos. 77, 85. Further, the Court considered Defendant's late-filed Reply in denying his Motion. See ECF Nos. 86, 87. Thus, Defendant had every opportunity to timely file his rehabilitation evidence in support of his initial Motion for Compassionate Release.

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