

NOT RECOMMENDED FOR PUBLICATION

No. 21-3039

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Sep 15, 2021
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
) ON APPEAL FROM THE UNITED
 v.) STATES DISTRICT COURT FOR
) THE NORTHERN DISTRICT OF
 LUKE D. PATTERSON,) OHIO
)
 Defendant-Appellant.)

ORDER

Before: MOORE, WHITE, and THAPAR, Circuit Judges.

Luke D. Patterson, a federal prisoner proceeding pro se, appeals the district court's order denying his motion for a reduced sentence and for compassionate release under 18 U.S.C. § 3582(c)(1)(A). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

On April 8, 2015, Patterson pleaded guilty to being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g) and 924(e)(1). After a remand, the district court sentenced him as an armed career criminal to 180 months of imprisonment, to be followed by five years of supervised release. We affirmed. *United States v. Patterson*, 878 F.3d 215 (6th Cir. 2017). In 2018, Patterson filed a motion to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255, which the district court denied. We denied him a certificate of appealability. *Patterson v. United States*, No. 18-4085 (6th Cir. Mar. 28, 2019) (order).

On August 13, 2020, Patterson filed the pro se motion for compassionate release at issue in this appeal. He claimed that he is at increased risk for serious illness if he contracts COVID-19 while incarcerated due to a heart murmur and respiratory issues related to a birth defect,

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hyperglycemia, and a family history of heart disease, cancer, and diabetes. He further emphasized the risks of transmission of COVID-19 within prison facilities and asserted that he has participated in numerous remedial programs in the Bureau of Prisons (BOP) and that, if released, he would have a stable residence and employment opportunities. Patterson also claimed that he filed a request for compassionate release with the warden of his facility without receiving a response, thus exhausting his administrative remedies.

The district court denied the motion. It determined that Patterson had not shown that he had exhausted his administrative remedies within the BOP prior to filing his motion, that his medical records did not support his claims of suffering from serious medical conditions, and that the 18 U.S.C. § 3553(a) factors did not support his early release due to his history of multiple armed robberies prior to his current offense.

On appeal, Patterson argues that he exhausted his administrative remedies and that the government contacted the wrong BOP official to determine whether he made a request for compassionate release; that the district court relied on incomplete medical information because he had been diagnosed with a heart murmur in 1991 and BOP medical personnel misdiagnosed whether he suffered a mild heart attack in 2017; that the BOP has failed to contain COVID-19 outbreaks adequately; and that he is not a danger to the community in light of his lack of violent offenses since 2001, his good institutional record, and his participation in re-entry programs. The government responds that the district court did not err by concluding that Patterson had not exhausted his administrative remedies and did not abuse its discretion by not finding an extraordinary and compelling reason for his release or by determining that the § 3553(a) factors weighed against his release. In reply, Patterson reasserts his arguments and points to medical records documenting his medical complaints. And in a supplement, he claims that members of his family are suffering from health problems and need his assistance.

We review the district court's denial of compassionate release for an abuse of discretion. *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). An abuse of discretion occurs when the district court "relies on clearly erroneous findings of fact, uses an erroneous legal standard, or

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improperly applies the law.” *United States v. Flowers*, 963 F.3d 492, 497 (6th Cir. 2020) (quoting *United States v. White*, 492 F.3d 380, 408 (6th Cir. 2007)). We review de novo a defendant’s legal eligibility for a sentence reduction. *United States v. Desjardins-Racine*, 817 F. App’x 219, 220 (6th Cir. 2020) (citing *United States v. Boulding*, 960 F.3d 774, 778 (6th Cir. 2020)), *cert. denied*, 141 S. Ct. 1102 (2021). We review the district court’s underlying factual findings for clear error. See *United States v. Valentine*, 694 F.3d 665, 669 (6th Cir. 2012) (citing *United States v. Moore* 582 F.3d 641, 644 (6th Cir. 2009)).

The compassionate release statute allows the district court to reduce a defendant’s sentence if it finds that “extraordinary and compelling reasons” warrant a reduction; that the reduction is “consistent with applicable policy statements issued by the Sentencing Commission”; and that the § 3553(a) factors, to the extent that they apply, support the reduction. 18 U.S.C. § 3582(c)(1)(A); see *Ruffin*, 978 F.3d at 1004-05. When a prisoner moves for compassionate release on his own behalf, district courts have “full discretion” to determine whether extraordinary and compelling reasons exist, without reference to any policy statement in the Sentencing Guidelines. *United States v. Jones*, 980 F.3d 1098, 1111 (6th Cir. 2020).

A prisoner may move for compassionate release, however, only after he “has fully exhausted all administrative rights to appeal a failure of 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 exhaustion requirement is a mandatory claims-processing rule that must be enforced if raised by the government, which it was here. *United States v. Alam*, 960 F.3d 831, 833-34 (6th Cir. 2020).

In this case, Patterson claimed that he filed a request with the warden of his facility but did not receive a response. In determining that Patterson had not shown that he exhausted his administrative remedies, the district court noted that the request form attached to Patterson’s motion did not include a signature from a staff member indicating that it had been received and that the BOP did not have a record of the request. Patterson disputes this determination by asserting on appeal that he photocopied the request before submitting it to staff and that the BOP

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official cited by the government was not present at his facility and thus could not know whether he submitted the handwritten request.

Assuming that Patterson exhausted his administrative remedies, the district court did not abuse its discretion by concluding that he had not shown an extraordinary and compelling reason for his compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A). Patterson presented the district court with records showing that he had complained of chest pain, breathing issues, and arm weakness or numbness and had been placed on an EKG and a “holter monitor,” but the district court nonetheless concluded that those records did not show that he currently has a heart murmur, had a heart attack, had a respiratory condition, or was hyperglycemic. This determination was not clearly erroneous. And Patterson’s claim that he underwent heart-rate monitoring does not require a finding of extraordinary and compelling reasons for his compassionate release. Patterson claims that the district court relied on incomplete records, but he did not provide that court with a copy of his 1991 medical records concerning a heart murmur or present an affidavit from the unnamed registered nurse who he claimed could support his claim that he had a mild heart attack. And this court will not consider the new evidence presented for the first time in a reply brief on appeal. *See* Fed. R. App. P. 10(a); *United States v. Bonds*, 12 F.3d 540, 552 (6th Cir. 1993). In these circumstances, the district court did not abuse its discretion.

For these reasons, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk