

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
FILED
FEB - 5 2020
CLERK, U.S. DISTRICT COURT
By _____ Deputy

JIMMY MONSHUN STEELE,

§

§

Movant,

§

§

VS.

NO. 4:20-CV-093-A

§

(NO. 4:08-CR-087-A)

UNITED STATES OF AMERICA,

§

§

Respondent.

§

ORDER

Now pending is the motion of movant, Jimmy Monshum Steele, to reduce sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) and USSG § 1B1.13. Movant says that he is entitled to relief under the "extraordinary and compelling" reasons provision of the First Step Act.

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, No. 19-50741, 2020 WL 428933 (5th Cir. Jan. 28, 2020). Although the commentary also 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 defendant here. He is simply complaining that his sentence is too long.

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 made no attempt to show (outside of argument); and the court 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).¹ Further, weighing the factors of 18 U.S.C. § 3553(a), the court is not inclined to grant relief. Movant was tried and convicted of possession with intent to distribute a controlled substance, unlawfully possessing a firearm in

¹Defendant argues that he is in the same situation as the defendant in United States v. Cantu, No. 1:05-CR-458-a, 2019 WL 2498923 (S.D. Tex. June 17, 2019). Cantu, however, was an eligible elderly offender the parties agreed should be released to home confinement.

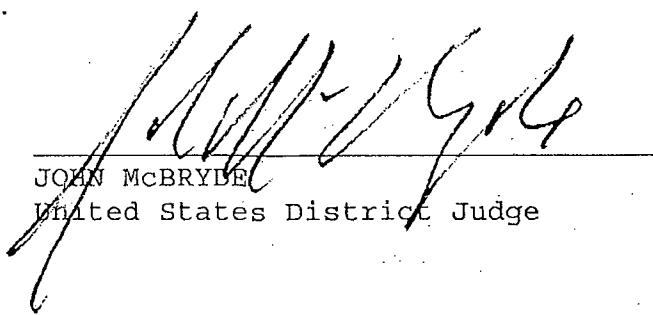
furtherance of a drug trafficking crime, and being a felon in possession of a firearm in commerce. The court found that movant obstructed justice by giving perjured testimony at his trial. CR Doc.² 112 at 4-5. Movant's total offense level was 37 and his criminal history category was VI. Id. at 5. He committed the offenses while under parole and less than two years after his release from imprisonment. He was an armed career criminal. CR Doc. 109 ¶¶ 36-40. The court sentenced movant at the bottom of the guideline range to terms of imprisonment of 300 months as to counts 1 and 3, to run concurrently, and a term of imprisonment of 60 months as to count 2, to run consecutive to the 300-month terms. The court was not and would not be inclined to reduce the sentence any further. Although movant makes light of his conduct, it was very serious and involved a firearm that was capable of accepting a high-capacity magazine. CR Doc. 109 ¶ 13. Firearms were also involved in two of movant's underlying offenses. Id. ¶¶ 33, 35. Further, movant was a member of the 4X3 Crips criminal street gang and had engaged in organized criminal activity involving a firearm. Id. ¶¶ 41, 42. Movant was not at all remorseful for his conduct, but rather claimed that he was railroaded and his constitutional rights violated. CR Doc. 112 at

²The "CR Doc. __" reference is to the number of the item on the docket in this case.

11. He asked that the court not "throw [his] life away behind these false accusations." Id. at 13. Immediate release of movant as he requests 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 to reduce sentence be, and is hereby, denied.

SIGNED February 5, 2020.


JOHN McBRYDE
United States District Judge

APPENDIX B

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
COURT
AS
FEB 26 2020
CLERK, U.S. DISTRICT COURT
By _____ Deputy

JIMMY MONSHUN STEELE,

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Movant,

VS.

§ NO. 4:20-CV-093-A
§ (NO. 4:08-CR-087-A)

UNITED STATES OF AMERICA,

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Respondent.

ORDER

Came on for consideration the motion of movant, Jimmy Monshun Steele, for reconsideration of the court's order and judgment of February 5, 2020. The court finds that the motion should be denied.

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

SIGNED February 26, 2020.

JOHN McBRYDE
United States District Judge

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APPENDIX C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 8, 2021

No. 20-10251
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JIMMY STEELE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-87-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:*

A jury found Jimmy Steele, federal prisoner # 36989-177, guilty of possession with the intent to distribute 500 grams or more of a substance containing cocaine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), possession of a firearm in furtherance of a drug trafficking offense in violation of 18

* 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.

U.S.C. § 924(c), and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). He was sentenced as a career offender to a total of 360 months of imprisonment and eight years of supervised release. He appeals the district court's denial of his motion for compassionate release or for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) and the denial of his motion for reconsideration.

We review a district court's decision denying a motion for compassionate release and a motion for reconsideration for an abuse of discretion. *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020); *United States v. Rabhan*, 540 F.3d 344, 346-47 (5th Cir. 2008). A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence. *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011).

While the district court discussed U.S.S.G. § 1B1.13 in its order, there is nothing in the record to indicate that it felt bound by this policy statement and its commentary. Instead, the record shows that the district court's denial of relief was also based on its balancing of the 18 U.S.C. § 3553(a) factors and that the district court did not abuse its discretion by denying the motion. See *United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021); *Chambliss*, 948 F.3d at 693. Steele's arguments amount to a disagreement with the district court's weighing of the § 3553(a) factors, which does not suffice to show error. See *Chambliss*, 948 F.3d at 694. Furthermore, Steele has not shown that the district court abused its discretion in denying his motion to reconsider. See *Rabhan*, 540 F.3d at 346-47.

Accordingly, the judgment is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

No. 20-10251

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JIMMY STEELE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-93

ON PETITION FOR REHEARING EN BANC

Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service having requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.