

No. _____

In the Supreme Court of the United States

Rory Lee Zirkelbach,

Petitioner,

v.

United States of America,

Respondent.

**APPENDIX TO MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RORY LEE ZIRKELBACH,

Defendant.

No. 13-CR-1001-CJW

ORDER

This matter is before the Court on defendant Rory Lee Zirkelbach's pro se motion to reconsider his motion for compassionate release. (Doc. 53).

I. BACKGROUND

On June 4, 2013, the Court sentenced defendant to 235 months' in prison, on one count of manufacturing and attempting to manufacture a mixture or substance containing a detectable amount of methamphetamine within 1,000 feet of a protected location after having been previously convicted of a felony drug offense. (Doc. 33). On March 18, 2021, defendant filed the instant motion alleging that his underlying medical conditions coupled with the COVID-19 pandemic constitute an extraordinary and compelling reason warranting release under Title 18, United States Code, Section 3582(c)(1)(A). (Doc. 53). He is currently incarcerated at Forrest City Medium Security Federal Correctional Institution ("FCI"), in Forrest City, Arkansas, with a projected release day of October 4, 2029.¹

II. ANALYSIS

The term "compassionate release" refers to Title 18, United States Code, Section 3582(c)(1)(A), which allows a defendant to directly petition a district court for a sentence

¹ INMATE LOCATOR, BUREAU OF PRISONS. https://www.bop.gov/mobile/find_inmate.

reduction “after the defendant 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.” If a defendant fully exhausts administrative remedies, the court may reduce the defendant’s sentence, after considering the factors set forth in Title 18, United States Code, Section 3553(a) to the extent they are applicable, if the court finds that “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i).

With the instant motion, defendant, who is 51 years old, requests release because of the COVID-19 pandemic and because he has several preexisting health conditions—namely, diabetes, hypertension, high blood pressure, and obesity. (*See* Doc. 53, at 5). In his motion, defendant included documentation of his petition for release to the BOP in light of his medical conditions. (*Id.*, at 18). Unfortunately, defendant did not include documentation of his medical conditions. Thus, the Court at present cannot confirm defendant suffers from the health conditions he alleges.

Defendant has made a colorable case in support of his motion for compassionate release and the Court would benefit from more substantial briefing and documentation on the issue from both defendant and the government. Although defendant’s brief is well-written and well-researched, the Court finds justice will be served by appointing counsel to assist defendant in obtaining the necessary documentation and records and in preparing a thorough brief on this matter. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel.”); *see also United States v. Harris*, 568 F.3d 666, 669 (8th Cir. 2009) (per curiam) (there is no right to counsel under the Criminal Justice Act in proceedings brought under Title 18, United States Code, Section 3582(c)(2); appointment of counsel is at the discretion of the district judge).

III. CONCLUSION

For the reasons set out above:

1. The Clerk of Court is directed to appoint Alison Guernsey to represent defendant.
2. Defendant has fourteen (14) days from the date of this order to file, through counsel, an amended motion for compassionate release. The amended motion should address (1) whether extraordinary reasons are present in this case; and (2) the 18 U.S.C. § 3553(a) factors.² The Government will then have seven (7) days to file a response.
3. To the extent possible, the parties are encouraged to work together to secure any relevant medical records from the Bureau of Prisons (“BOP”).
4. United States Probation is authorized to disclose defendant’s Presentence Investigation Report (“PSIR”) to the Alison Guernsey and the United States Attorney for the purpose of evaluating his motion for compassionate release. In accordance with the policy of the BOP, no PSIR shall be provided to inmates.
5. The parties may file any document related to this issue under seal, with no further leave from the Court, if it contains medical or other sensitive personal information.

IT IS SO ORDERED this 23rd day of March, 2021.



C.J. Williams
United States District Judge
Northern District of Iowa

² Appointed counsel may file an *Anders* type brief, if warranted. *See Anders v. California*, 386 U.S. 738 (1967).

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

No: 21-2911

United States of America

Appellee

v.

Rory Lee Zirkelbach

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(2:13-cr-01001-CJW-1)

ORDER

The motion of Alison Klare Guernsey to appear as counsel nunc pro tunc for the purpose of filing a petition for certiorari is granted. Counsel is not appointed under the CJA and is not entitled to attorney fees thereunder.

November 15, 2021

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

/s/ Michael E. Gans