

IN THE UNITED STATES COURT OF APPEALS

APPENDIX A

FOR THE ELEVENTH CIRCUIT

No. 21-11797-GG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN MATTHEW GAYDEN, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: JILL PRYOR, LUCK, and LAGOA, Circuit Judges.

BY THE COURT:

John Gayden, Jr., is a federal prisoner serving a 235-month sentence for 7 counts of unlawful distribution of a controlled substance related to his prior medical practice. He appeals the district court's order denying his motion for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A). Mr. Gayden moves this Court for: (1) leave to proceed on appeal *in forma pauperis* ("IFP"); (2) for transcripts at the government's expense; (3) to recuse and discipline the district court judge, and to vacate his orders; and (4) for compassionate release and a booster shot.

As an initial matter, Mr. Gayden's affidavit of indigency indicates that he is indigent and unable to pay or give security for fees and costs. Accordingly, his motion for IFP status is GRANTED. However, because Mr. Gayden seeks leave to proceed IFP, his appeal is subject to a

frivolity determination. *See* 28 U.S.C. § 1915(e)(2). An action “is frivolous if it is without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

The district court did not err in denying Mr. Gayden’s motion for compassionate release.

First, to the extent that Gayden asserts that “Other Reasons” provided an extraordinary and compelling reason for release, this argument has been foreclosed. *See United States v. Bryant*, 996 F.3d 1243, 1254-62 (11th Cir. 2021). Second, Gayden’s medical documentation from 2018 did not indicate that he had advanced dementia that was terminal or was currently affecting his ability to implement self-care. *See U.S.S.G. § 1B1.13, comment. (n.1(A))*. Moreover, the district court found that even if extraordinary and compelling reasons existed, the 18 U.S.C. § 3553(a) factors did not warrant release. *See United States v. Tinker*, No. 20-14474, manuscript op. at 5, 9, 11 (11th Cir. Sept. 28, 2021). Accordingly, Mr. Gayden’s appeal is DISMISSED as frivolous and his motion for transcripts at the government’s expense is DENIED AS MOOT.

Additionally, Mr. Gayden’s motion to discipline and recuse, and vacate the orders of the district court judge is DENIED as he has failed to establish actual bias and the district court did not mischaracterize his prior convictions. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Moreover, to the extent that Gayden attempts to challenge Judge Mendoza’s rulings in his criminal case, this Court has already affirmed his convictions and sentences. *See United States v. Gayden*, 977 F.3d 1146 (11th Cir. 2020), *petition for cert. filed*, No. 20-7896 (U.S. Apr. 27, 2021).

Further, Mr. Gayden’s motion for a Pfizer booster shot is DENIED as booster shots were only recently approved and the BOP has indicated that it is committed to making the vaccine available to those who request it. *See Covid-19 Coronavirus*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Sept. 28, 2021). Lastly, Mr. Gayden’s motion for compassionate release from this Court is DENIED. *See* 18 U.S.C. § 3582(c)(1)(B).