

APPENDIX

APPENDIX-C

NOT RECOMMENDED FOR PUBLICATION

No. 21-5499

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED

Nov 24, 2021

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LORENZO SUTTLES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE

ORDER

Before: SILER, CLAY, and McKEAGUE, Circuit Judges.

Lorenzo Suttles, a federal prisoner proceeding pro se, appeals the order of the district court denying compassionate release and a modification of his sentence based on the First Step Act. 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).

A jury convicted Suttles of conspiracy to commit robbery, in violation of 18 U.S.C. § 371; Hobbs Act robbery, in violation of 18 U.S.C. § 1951; brandishing a firearm during a Hobbs Act robbery, in violation of 18 U.S.C. § 924(c); armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d); and brandishing a firearm during the bank robbery, in violation of § 924(c). The charges stemmed from a series of armed robberies in 2001 around Chattanooga, Tennessee, that Suttles carried out with others. Under the United States Sentencing Guidelines, which were mandatory at the time, Suttles faced a guidelines range of 492 to 519 months of imprisonment. The law at the time also imposed a mandatory minimum term of seven years for the first § 924(c) conviction and twenty-five years for the second § 924(c) conviction. The district court sentenced

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Suttles to 492 months, at the bottom of the guidelines range. We affirmed the convictions and sentence. *United States v. Douglas*, 100 F. App'x 449 (6th Cir. 2004).

The Supreme Court vacated the sentence in light of *United States v. Booker*, 543 U.S. 220 (2005), which rendered the sentencing guidelines advisory rather than mandatory. *Suttles v. United States*, 543 U.S. 1106 (2005) (mem.); *United States v. Suttles*, Nos. 02-6482/6483 (6th Cir. June 23, 2005). On remand, the district court imposed the same sentence of 492 months of imprisonment, which we affirmed on direct appeal. *United States v. Suttles*, Nos. 06-5461/5462 (6th Cir. Mar. 14, 2008). The Supreme Court denied Suttles's petition for a writ of certiorari. *Suttles v. United States*, 555 U.S. 853 (2008) (mem.).

In January 2020, Suttles filed a motion for compassionate release seeking a reduction of his sentence based on the First Step Act's changes to 18 U.S.C. § 924(c)(1)(C). The First Step Act made the 25-year mandatory minimum sentence for a second § 924(c) conviction applicable only if the defendant's prior § 924(c) conviction became final before the defendant committed the second § 924(c) offense. *See* First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221-22. Suttles also cited his exemplary conduct as a prisoner and his "extensive amount of post-conviction rehabilitation." The district court denied the motion, concluding that Suttles's "stacked § 924(c) penalties are [not] an extraordinary and compelling reason for the purposes of compassionate release." Suttles filed a timely notice of appeal.

We review the district court's decision not to grant compassionate release for an abuse of discretion. *United States v. Jones*, 980 F.3d 1098, 1112 (6th Cir. 2020). A court abuses its discretion when it applies an incorrect legal standard, misapplies the correct legal standard, or relies upon clearly erroneous findings of fact. *United States v. Pugh*, 405 F.3d 390, 397 (6th Cir. 2005). We review de novo related questions of statutory interpretation. *United States v. Flowers*, 963 F.3d 492, 497 (6th Cir. 2020). After a sentence has been imposed on a defendant, a court does not have authority to change or modify that sentence unless authorized to do so by statute. *United States v. Thompson*, 714 F.3d 946, 948 (6th Cir. 2013). Such authority exists in 18 U.S.C. § 3582(c)(1)(A)(i), which permits a defendant to petition the district court for a reduced sentence

after making a request to the Bureau of Prisons and either exhausting administrative remedies or waiting thirty days.

In order for a court to reduce the defendant's sentence and grant compassionate release, the court must (1) find that "extraordinary and compelling reasons warrant such a reduction" in the defendant's sentence; (2) find that "such a reduction is consistent with applicable policy statements issued by the [United States] Sentencing Commission," if such statements exist; and (3) take into account the sentencing factors in 18 U.S.C. § 3553(a) "to the extent that they are applicable." *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). 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. *Jones*, 980 F.3d at 1111.

Suttles argues that the First Step Act's modification of § 924(c) penalties establishes an extraordinary and compelling reason for compassionate release. Although Suttles also highlights his record of rehabilitation while serving his sentence, he primarily focuses on the effect that his two § 924(c) convictions have had on his sentence. To be sure, had Suttles been convicted and sentenced under the laws that exist today, he would not have been subject to the 25-year mandatory minimum sentence for a second § 924(c) conviction. But, in enacting the First Step Act, Congress did not make the change to § 924(c) retroactive. 132 Stat. at 5222. "The district court declined to circumvent Congress's expressed intent and found no extraordinary and compelling reasons to warrant a sentence reduction." *United States v. Wills*, 997 F.3d 685, 687 (6th Cir. 2021). We must likewise concur because the non-retroactivity of the First Step Act's change to § 924(c) renders it impermissible to serve as an extraordinary and compelling reason, whether by itself or with other factors, for a sentence reduction. *United States v. Jarvis*, 999 F.3d 442, 445 (6th Cir. 2021). Suttles cites *United States v. Owens*, 996 F.3d 755 (6th Cir. 2021), in support of his argument, but *Jarvis* affirmed a holding that we first reached in *United States v. Tomes*, 990 F.3d 500 (6th Cir. 2021), and we issued *Tomes* before *Owens*. Therefore, the holdings in *Tomes* and *Jarvis* must control in this appeal. *Jarvis*, 999 F.3d at 445; see also *United States v. Hunter*, 12 F.4th 555, ___, No 21-

1275, 2021 WL 3855665, at *5 n.4 (6th Cir. Aug. 30, 2021). The district court did not abuse its discretion in denying the motion for compassionate release.

Accordingly, we **AFFIRM** the order of the district court.

CLAY, Circuit Judge, dissenting. The majority's argument would bar district courts from considering, as a factor supporting compassionate release, the vast sentencing disparities that defendants face in the wake of the First Step Act. The majority recognizes that Suttles' 25-year mandatory minimum would not apply if he were sentenced today under the First Step Act's amendments. Even so, relying on *United States v. Jarvis*, 999 F.3d 442 (6th Cir. 2021), the majority concludes that "the non-retroactivity of the First Step Act's change to § 924(c) renders it impermissible to serve as an extraordinary and compelling reason, whether by itself or with other factors, for a sentence reduction." As explained in my dissent in *Jarvis*, this conclusion contradicts earlier binding precedent from this Court. *Jarvis*, 999 F.3d at 448–49 (Clay, J., dissenting).

Over the span of just three months, this Court, in three published opinions, considered whether non-retroactive sentencing amendments can establish extraordinary and compelling reasons for compassionate release. First was *United States v. Tomes*, 990 F.3d 500 (6th Cir. 2021). There, after upholding the district court's denial of compassionate release on other grounds, the Court, in a single paragraph, rejected Tomes' argument that the First Step Act's sentencing amendment created extraordinary and compelling circumstances warranting relief. In doing so, the Court noted that compassionate release based on a non-retroactive sentencing amendment *alone* would be an "end run" around the First Step Act. *Id.* at 505.

Next came *United States v. Owens*, 996 F.3d 755 (6th Cir. 2021). In *Owens*, the defendant presented multiple factors that allegedly showed his compelling and extraordinary circumstances. Because the district court refused to consider the sentencing amendment at all, we reversed and remanded the decision. *Owens* held that "in making an individualized determination about whether extraordinary and compelling reasons merit compassionate release, a district court may include, *along with other factors*, the disparity between a defendant's actual sentence and the sentence that he would receive if the First Step Act applied." *Id.* at 760 (emphasis added). We

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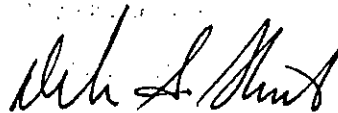
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distinguished *Tomes* because the defendant there relied *solely* on the First Step Act's amendments. *Owens*, 996 F.3d at 760–761.

Finally, the Court decided *United States v. Jarvis*, 999 F.3d at 443. There, the Court attempted to circumvent the holding in *Owens* by stating that *Tomes* clearly held that non-retroactive sentencing amendments should not be considered when determining whether extraordinary and compelling reasons support compassionate release, even if considered in combination with other circumstances. *Jarvis*, 999 F.3d at 445–46. As I explained in dissent in *Jarvis*, to the extent that *Tomes* discussed the weight of the First Step Act's non-retroactive sentencing amendments in compassionate release cases, that discussion was an afterthought and merely amounts to dicta. *Jarvis*, 999 F.3d at 449 (Clay, J. dissenting). Moreover, *Tomes* and *Owens* can exist harmoniously. While *Tomes* rejected a defendant's attempt to rely *solely* on a non-retroactive sentencing amendment, the defendant in *Owens* relied on a combination of multiple factors that, when combined, could have amounted to extraordinary and compelling circumstances. *Owens*, 996 F.3d at 760–61. Thus, the majority in *Jarvis* was mistaken, and this Court's decision in *Owens* is binding in cases like the one presently before us.

Here, Suttles seeks compassionate release based on the First Step Act amendment, his "extensive amount of post-conviction rehabilitation," and a "host of support from . . . members of the community, . . . family[,] and friends." (Mot. for Compassionate Release, R. 278, Page ID #1719.) Because the district court refused to consider Suttles' First Step Act argument in combination with these other circumstances, as required under *Owens*, I would reverse and remand this case for further proceedings.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX-D

Case No. 21-5499

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ORDER

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LORENZO SUTTLES

Defendant - Appellant

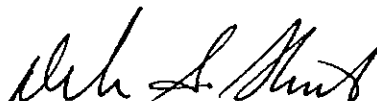
BEFORE: SILER, CLAY, and MCKEAGUE, Circuit Judges.

Upon consideration of the appellant's motion to stay the mandate,

It is therefore **ORDERED** that the motion be and hereby is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk



Issued: January 10, 2022

APPENDIX-E

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No: 21-5499

Filed: January 19, 2022

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LORENZO SUTTLES

Defendant - Appellant

MANDATE

Pursuant to the court's disposition that was filed 11/24/2021 the mandate for this case hereby issues today.

COSTS: None

APPENDIX-A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)	
)	Case No. 1:01-cr-188
v.)	
)	Judge Travis R. McDonough
LORENZO SUTTLES)	
)	Magistrate Judge Christopher H. Steger
)	

ORDER

Before the Court is Defendant's motion for compassionate release brought pursuant to 18 U.S.C. § 3582(c)(1)(A) (Doc. 278.) Defendant seeks compassionate release based on the First Step Act's change in the rules concerning stacking of 18 U.S.C. § 924(c) sentences. (*See id.*) Also before the Court is Defendant's motion to supplement his motion with additional case law (Doc. 297), which is hereby **GRANTED**. Nevertheless, for the reasons set forth below, the motion for compassionate release (Doc. 278) will be **DENIED**.

A sentencing court may "modify a term of imprisonment once it has been imposed," after considering the applicable factors set forth in 18 U.S.C. § 3553(a), if "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i); *see also United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020) (holding that "federal judges" have "full discretion to define 'extraordinary and compelling'" without reference to U.S. Sentencing Commission policy statement § 1B1.13). Before seeking a sentence reduction from the court, the defendant must exhaust administrative remedies by fully pursuing "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)(i); *see also United States v. Alam*, 960 F.3d 831, 832 (6th Cir. 2020) (holding that “this exhaustion requirement . . . is mandatory (there is no exception)”). The Court has authority to consider Defendant’s motion because he has presented evidence that he exhausted his administrative remedies. (*See* Doc. 278, at 13.) However, the Court will deny his motion for lack of extraordinary and compelling reasons.

The Sixth Circuit “ha[s] not . . . considered yet whether any disparity between pre-First Step Act stacked sentences for § 924(c) convictions and post-First Step Act sentences for § 924(c) convictions is an extraordinary circumstance for compassionate release purposes.” *United States v. Henry*, 983 F.3d 214, 228 n.8 (6th Cir. 2020). District courts have discretion to determine what qualifies as an extraordinary and compelling reason warranting release under § 3582(c)(1)(A), *see United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020), and district courts in this Circuit have ruled both ways on the issue. *See Henry*, 983 F.3d at 228 n.8 (collecting cases). At least one panel of the Sixth Circuit has affirmed a district court’s denial of a compassionate-release motion based on the stacking of § 924(c) sentences. *United States v. Robinson*, No. 20-5929, 2021 WL 71545, at *2 (6th Cir. Jan. 6, 2021).

More recently, the Sixth Circuit has held that, “[w]hat the Supreme Court views as . . . ‘ordinary practice’ cannot also be an ‘extraordinary and compelling reason’ to deviate from that practice.” *United States v. Wills*, 991 F.3d 720 (6th Cir. 2021). And, “[i]n federal sentencing[,] the ordinary practice is to apply new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced.” *Id.* (quoting *Dorsey v. United States*, 567 U.S. 260, 280 (2012)). Although the harshness of this reality on many criminal defendants’ lives is notable, our criminal-justice system has outlined only a few paths by which sentences may be corrected or reduced. Generally, a federal sentence believed to be in violation

of statutory or constitutional law is challenged by a motion filed pursuant to 28 U.S.C. § 2255. And sometimes, when a provision of the law has been changed, Congress makes a particular provision retroactive and offers a means for defendants to have their sentences adjusted accordingly. Other times, though, Congress or the courts determine that a particular change to criminal-sentencing law is not retroactive, and defendants are left with their original sentences.

Despite the severity of the sentences imposed when the practice of “stacking” multiple § 924(c) sentences was considered lawful, Congress did not extend the change in law to sentences that became final prior to December 20, 2018. *See Henry*, 983 F.3d at 218–19. The Court will not employ compassionate release to circumvent the express intent of Congress as to who should benefit from a change in criminal-sentencing law. Accordingly, the Court does not find that Defendant’s stacked § 924(c) penalties are an extraordinary and compelling reason for the purposes of compassionate release. Consequently, the Court **DENIES** Defendant’s motion for compassionate release (Doc. 278).

SO ORDERED.

/s/Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

APPENDIX-B

IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

LORENZO SUTTLES
DEFENDANT

V.

UNITED STATES OF AMERICA
RESPONDENT

Case No. 1:01-cr-188

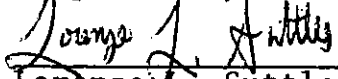
Judge Travis R. McDonough

NOTICE OF APPEAL

Comes now the defendant, Lorenzo L. Suttles, pro se, and files this 14-day Notice of Appeal to the United States Court of Appeals for the Sixth Circuit. Defendant appeals this court's ORDER dated April 28th, 2021, (Doc. 308) denying defendant's motion for compassionate release pursuant to 18 U.S.C. §3582(c)(1)(A)(i). (Doc. 278).

Dated and placed into the institutional legal mail of FCC Yazoo City (Low), this 6th day of May, 2021.

Respectfully submitted,


Lorenzo L. Suttles
Reg. No: 18231-074
FCC Yazoo City (Low)
P.O. Box 5000
Yazoo City, MS 39194

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

Deborah S. Hunt
Clerk

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Filed: January 10, 2022

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Mr. Lorenzo Suttles
F.C.I. Yazoo City - Low
P.O. Box 5000
Yazoo City, MS 39194

Re: Case No. 21-5499, *USA v. Lorenzo Suttles*
Originating Case No. : 1:01-cr-00188-2

Dear Counsel and Mr. Suttles,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Maria Welker
Case Manager
Direct Dial No. 513-564-7025

cc: Ms. LeAnna Wilson

Enclosure

Case No. 21-5499

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

ORDER

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LORENZO SUTTLES

Defendant - Appellant

BEFORE: SILER, CLAY, and MCKEAGUE, Circuit Judges.

Upon consideration of the appellant's motion to stay the mandate,

It is therefore **ORDERED** that the motion be and hereby is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk



Issued: January 10, 2022