

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 29, 2021

No. 20-20490
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JULIA ANN POFF,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CR-669-1

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Julia Ann Poff pleaded guilty pursuant to a written agreement with the Government to transporting an explosive with the intent that the explosive be used to kill, injure, and intimidate, 18 U.S.C. § 844(d), based on her mailing an improvised explosive device to President Barack Obama. The

* Pursuant to 5TH CIRCUIT RULE-47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Appendix "C"

district court sentenced Poff to 120 months in prison, the statutory maximum and effective guidelines range, to be followed by a three-year term of supervised release. She appeals the district court's denial of her motion for compassionate release or for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) and the denial of her 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. Poff's arguments that amount to a disagreement with the district court's weighing of the § 3553(a) factors do not suffice to show error. *See Chambliss*, 948 F.3d at 694. Poff otherwise fails to establish that the district court's denial of her motion was based on a legal error or a clearly erroneous factual finding. *See Shkambi*, 993 F.3d at 393; *Chambliss*, 948 F.3d at 693; *Henderson*, 636 F.3d at 717. Finally, Poff has not shown that the district court abused its discretion in denying her motion to reconsider. *See Rabhan*, 540 F.3d at 346-47.

Accordingly, the judgment is AFFIRMED. Poff's motions to expedite her appeal and for immediate release are DENIED. Poff's motion

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to seal medical records attached as an exhibit to the memorandum in support of her motion to expedite her appeal is GRANTED. *See S.E.C. v. Van Waeyenbergh*, 990 F.2d 845, 848 (5th Cir. 1993).

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USDC No. 4:17-CR-669-1

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *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.

Appendix "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
ENTERED
September 29, 2020
David J. Bradley, Clerk

UNITED STATES OF AMERICA,

§
§
§
§
§
§
§
§

Plaintiff,

v.

CRIMINAL NO. 4:17-CR-00669

JULIA ANN POFF,

Defendant.

ORDER

Pending before the Court is Defendant Julia Ann Poff's ("Defendant's") Motion for Reconsideration, in which she asks the Court to release her from her term of imprisonment under 18 U.S.C. § 3582(c)(1)(A)(i), in light of the Defendant's medical condition and the increasing health risks that the current global pandemic of coronavirus (COVID-19) poses to incarcerated persons, particularly those over 65 years of age and those with certain underlying health conditions. (Instrument No. 130).

Defendant filed her Motion for Compassionate Release with this Court on August 20, 2020. (Instrument No. 127). On August 24, 2020 the Court denied Defendant's Motion without prejudice to allow for the exhaustion of her administrative remedies. (Instrument No. 129). On September 9, 2020, Defendant filed her Motion for Reconsideration. (Instrument No. 130).

18 U.S.C. § 3582 authorizes a reduction in sentence of imprisonment if "extraordinary and compelling reasons warrant such reduction" and "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). Under the United States Sentencing Guideline § 1B1.13, "extraordinary and compelling reasons" is defined as,

(A) Medical Condition of the Defendant.

Appendix "B"

- (i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.
- (ii) The defendant is—
 - (I) suffering from a serious physical or medical condition,
 - (II) suffering from a serious functional or cognitive impairment, or
 - (III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.

- (i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.
- (ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

See U.S.S.G. § 1B1.13(1)(A) Application Note 1.

Defendant states that she has now exhausted her administrative remedies under § 3582(c)(1)(A). (Instrument No. 130 at 2-3). The Defendant is 49 years old. In her Motion for Compassionate Release, Defendant lists the following medical issues, degenerative disc disease, rheumatoid arthritis, bursitis, obesity, fibromyalgia, pulmonary artery prominence and cardiomegaly, systematic lupus erythematosus, hypothyroidism, and secondary raynaud's disease. (Instrument No. 127 at 8-10). The Court finds that these medical conditions do not cause an increased risk for severe illness from COVID-19 and/or her medical records indicate that she has recovered from the medical condition. *People with Certain Medical Conditions, Coronavirus*

Disease 2019 (COVID-19), www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last updated Sept. 11, 2020); Instrument No. 127 at 41-43.

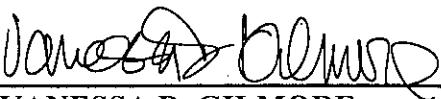
Even if the Court were to find that the Defendant's medical conditions did make her more susceptible to COVID-19, the Court must consider whether the sentence reduction would be consistent with the applicable § 3553(a) factors, which includes the nature of the offense, the need for the sentence to reflect the seriousness of the offense, deter criminal conduct, and provide effective medical treatment to the defendant. *See* 18 U.S.C. §§ 3582(c)(1)(A), 3553(a).

Here, Defendant plead guilty to the transportation of explosives with the intent to kill and injure. (Instrument No. 80 at 1). She has served 36 months out of a sentence of 120 months, which is about 30% of her sentence. Defendant's crime was a crime of violence, involving the mailing of destructive devices to the President of the United States, the Governor of Texas, and the acting Social Security Administrator in October 2016. (Instrument No. 80 at 7). The nature of Defendant's offense and the length of time of Defendant has served indicates that a reduction in sentencing would not reflect the seriousness of this crime, promote respect for the law, nor provide just punishment of the offense. Additionally, no evidence has been presented that indicates that the Defendant no longer poses a danger to the safety of any person or the community. Thus, the Court finds that a reduction in sentence would not be consistent with the applicable § 3553(a) factors and the Sentencing Guideline's policy. *See* USSG § 1B1.13.

For the foregoing reasons, Defendant's Motion for Reconsideration is **DENIED**.
(Instrument No. 130).

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 29th day of September, 2020, at Houston, Texas.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE