

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-6912

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC DEAN SMITH, a/k/a Big E,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Terry L. Wooten, Senior District Judge. (3:14-cr-00736-TLW-1)

Submitted: November 23, 2021

Decided: November 30, 2021

Before KING, AGEE, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Eric Dean Smith, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Dean Smith appeals from the district court's order denying his motion for compassionate release. Upon our review of the record, we affirm.

The district court may reduce a term of imprisonment under 18 U.S.C. § 3582(c)(1)(A)(i), if "extraordinary and compelling reasons warrant such a reduction," upon a motion by the Bureau of Prisons' (BOP) Director or by the defendant after he has exhausted his administrative remedies with the BOP. 18 U.S.C. § 3582(c)(1)(A)(i). When deciding whether to reduce a defendant's sentence under § 3582(c)(1)(A), a district court generally proceeds in three steps. *See United States v. High*, 997 F.3d 181, 185-86 (4th Cir. 2021). First, the court determines whether "extraordinary and compelling reasons" support a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i); *High*, 997 F.3d at 186. "In the context of the COVID-19 outbreak, courts have found extraordinary and compelling reasons for compassionate release when an inmate shows both a particularized susceptibility to the disease and a particularized risk of contracting the disease at his prison facility." *United States v. Feiling*, 453 F. Supp. 3d 832, 841 (E.D. Va. 2020) (citing cases). Next, the court considers whether "a [sentence] reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(ii); *High*, 997 F.3d at 186. Finally, if the court finds that extraordinary and compelling reasons warrant relief, the court must consider the 18 U.S.C. § 3553(a) sentencing factors "in deciding whether to exercise its discretion to reduce the defendant's term of imprisonment." *High*, 997 F.3d at 186; 18 U.S.C. § 3582(c)(1)(A).

We review a district court's denial of a motion for compassionate release for abuse of discretion. *United States v. Kibble*, 992 F.3d 326, 329 (4th Cir. 2021) (per curiam). A court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law. *Id.* at 332. When considering a defendant's motion for compassionate release, a court must “set forth enough to satisfy [our] court that [it] has *considered* the parties' arguments and has *a reasoned basis* for exercising [its] own legal decisionmaking authority,’ so as to ‘allow for meaningful appellate review.’” *High*, 997 F.3d at 190 (quoting *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1965 (2018)). We conclude that the district court did not abuse its discretion when it determined that, despite Smith's medical issues, the § 3553(a) sentencing factors—specifically the seriousness of Smith's offense and criminal history—weighed against granting compassionate release.

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

*Appendix-B*IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

Crim. No. 3:14-cr-736-TLW

v.

Order

Eric Dean Smith

This matter is before the Court on Defendant Eric Dean Smith's pro se motion for a sentence reduction under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 565. For the reasons set forth below, Defendant's motion is denied.

BACKGROUND

On April 7, 2015, Defendant pled guilty to 1) conspiracy to possess with intent to distribute and to distribute 5 kilograms or more of cocaine and 280 grams or more of crack cocaine, and 2) buying, possessing, transporting and receiving animals in interstate commerce for participating in an animal fighting venture. ECF Nos. 184, 185. He was originally sentenced to 360 months of imprisonment followed by a 10-year term of supervised release. ECF No. 314. The sentence was subsequently reduced to 228 months based on the Government's motion. ECF No. 566. BOP records reflect that his projected release date is April 10, 2031.

APPLICABLE LAW

Absent certain exceptions, a court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). One of those exceptions is the compassionate release statute. That statute provides, in relevant part, as follows:

[T]he court, . . . upon motion of the defendant . . . , may reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) . . . , if it finds that—(i) extraordinary and compelling reasons warrant such a reduction; . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission

18 U.S.C. § 3582(c)(1)(A). “A defendant who seeks compassionate release under § 3582(c)(1)(A)(i) has the burden of establishing that such relief is warranted.” *United States v. Edwards*, 451 F. Supp. 3d 562, 565 (W.D. Va. 2020).

The Sentencing Commission has issued a policy statement addressing compassionate release motions—§ 1B1.13. But prior to the passage of the First Step Act, compassionate release motions could only be filed by the BOP, so § 1B1.13 by its terms only applies to BOP motions. See *United States v. McCoy*, 981 F.3d 271, 275–76 (4th Cir. 2020) (explaining the First Step Act’s changes to the compassionate release statute). There is no corresponding policy statement addressing compassionate release motions filed by inmates. Thus, in *McCoy*, the Fourth Circuit held that, when considering an inmate’s compassionate release motion, § 1B1.13 is not an “applicable policy statement[.]” *Id.* at 284. But while § 1B1.13 may not directly apply to an inmate’s motion, “it remains helpful guidance.” *Id.* at 282 n. 7.

While § 1B1.13 may provide guidance, it is not an “applicable policy statement[.]” so “district courts are ‘empowered . . . to consider any extraordinary and compelling reason for release that a defendant might raise.’” *McCoy*, 981 F.3d at 284 (quoting *United States v. Zullo*, 976 F.3d 228, 230 (2d. Cir. 2020)) (emphasis in original); see also *United States v. Kibble*, 2021 WL 1216543 (4th Cir. 2021). Ultimately, the determination of whether a case presents extraordinary and

compelling reasons warranting a sentence reduction is a question reserved to the sound discretion of the district court.

DISCUSSION

Defendant's motion states that a sentence reduction is appropriate due to the impact of COVID-19 at the facility where he is imprisoned and because his medical conditions make him vulnerable to becoming seriously ill from COVID-19. ECF No. 565 at 2. Defendant recently supplemented his motion with additional documents stating that he tested positive for COVID-19 and is experiencing related medical complications. ECF No. 601. He also argues that he would not be a danger to the community if released, and that the § 3553(a) factors weigh in favor of release. ECF No. 565 at 2-3.

The Government opposes his motion, arguing that 1) Defendant has not established extraordinary and compelling reasons that warrant a sentence reduction¹ and 2) the § 3553(a) factors weigh against release. ECF No. 600 at 11-13. The Government cites the seriousness of Defendant's federal offense (the instant offense), his criminal history, and his disciplinary record within the BOP in support of its argument. *Id.* at 13.

In considering whether to reduce Defendant's sentence, the Court has carefully reviewed the Presentence Investigation Report (PSR) and has considered the statutory penalties, the Guidelines range, applicable caselaw and statutory law, all

¹ At the time the Government responded and made this argument, Defendant had not submitted the updated filing stating that he has tested positive for COVID-19 and is experiencing medical complications.

of the § 3553(a) factors and the balancing of those factors, and his post-sentencing conduct.² In light of those considerations, the Court concludes that while Defendant has demonstrated an “extraordinary and compelling reason,” his motion should be denied based on the § 3553(a) factors. The Court’s reasons for reaching this conclusion include (1) the seriousness of the instant offense, (2) his criminal history that involves additional significant conduct, and (3) his disciplinary issues while incarcerated.

As to the “extraordinary and compelling reason” standard, the Court has considered all of the circumstances and arguments raised by Defendant and concludes that his recent contraction of COVID-19 and the resulting medical complications demonstrate “extraordinary and compelling” circumstances. Defendant originally submitted medical records with his initial motion reflecting that he had been diagnosed with hypertension, diabetes, hyperlipidemia, obesity, heart failure, and atrial fibrillation. ECF No. 565-1. The medical records also reflected that Defendant had seen medical personnel on numerous occasions and that he was proscribed medications to treat his conditions. *Id.* This demonstrated to the Court that his conditions were being treated, monitored, and controlled.³ However,

² The Court has considered in its analysis each of the issues raised in Defendant’s filings, including (1) his medical conditions in light of COVID-19; (2) the way that the BOP is managing the pandemic at its facilities; (3) his rehabilitation efforts while incarcerated; and (4) his release plan including familial support and employment opportunities.

³ The Court also notes, as stated in the Government’s brief, that the BOP began administering COVID-19 vaccines to inmates and staff in January 2021. According to BOP records, approximately 179,796 doses have been administered as of May 21, 2021. Specifically, Thomson USP (Defendant’s facility) has fully inoculated 210 staff members and 450 inmates.

Defendant subsequently supplemented his motion with updated records stating that he tested positive for COVID-19 and was experiencing related medical complications. ECF No. 601. Defendant stated that his diagnosed conditions were exacerbated by his contraction of COVID-19. *Id.* In light of the updated filing, the Court concludes that Defendant satisfies the “extraordinary and compelling” reason standard.

However, the Court concludes that Defendant’s motion should be denied based on its analysis and balancing of the § 3553(a) factors. The Court has balanced all of the factors in light of the compassionate release issues not in play at the original sentencing. *Kibble* at *7 (Gregory, C.J., concurring). In conjunction with the § 3553(a) factors, it is appropriate to highlight Defendant’s criminal history and the facts of the instant offense. Prior to Defendant’s federal conviction for conspiring to distribute crack and powder cocaine, he was convicted of several significant drug and firearm offenses: (i) possession with intent to distribute crack cocaine (20 years) and carrying a pistol unlawfully (1 year) (1992); (ii) possession with intent to distribute crack cocaine (20 years) (1992); (iii) distribution of crack (20 years) and unlawful carrying of weapon (.357 caliber handgun) (1 year) (1992); (iv) two convictions for distribution of crack cocaine (20 years on each count) (1992); (v) trafficking cocaine (10 years) (1992); (vi) possession with intent to distribute crack cocaine near school and possession with intent to distribute crack cocaine (3 years on each count) (1998); (vii) possession with intent to distribute cocaine (15 years), possession with intent to distribute crack cocaine (15 years) and possession with intent to distribute marijuana (5 years) (2004). PSR ¶¶ 86-93. The details of those numerous convictions and

resulting sentences are set forth in the Presentence Report. The Court further notes that Defendant's parole was revoked for failure to comply with the conditions of supervision. PSR ¶¶ 86-89, 91. The Court concludes that Defendant's criminal history weighs against release.

After serving his sentences for those crimes, and while under a criminal justice sentence for several drug and firearm offenses, he committed the instant offenses—another significant drug crime and participation in a dog fighting venture. During the drug conspiracy, Defendant functioned as an organizer or leader who directed and supplied cocaine and crack cocaine to drug traffickers. PSR ¶ 21. He was ultimately held accountable for 48.5 kilograms of cocaine and 3.7 kilograms of crack cocaine. PSR ¶ 78. During the investigation, a search of Defendant's home revealed drugs, scales, five fully loaded firearms, dogfighting paraphernalia, and 66 pit-bull type dogs. PSR ¶ 52-55. Defendant received enhancements for possession of a dangerous weapon, PSR ¶ 106, and his leadership role in the conspiracy, PSR ¶ 109. The Court concludes that the facts surrounding the instant offense weigh against release.

The Court further notes that Defendant faced a Guidelines range of 360 months to life imprisonment, PSR ¶ 143, and the Court sentenced him to 360 months—the bottom of the Guidelines range. The Court has since reduced Defendant's sentence to 228 months pursuant to Rule 35(b). ECF Nos. 563, 566. He has served approximately 81 months of that sentence. Significantly, while serving his sentence, he has incurred six disciplinary infractions for various misconduct (use of drugs/alcohol, fighting, refusing work, destroying property, disruptive conduct, and

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mail abuse/disrupt monitoring). The Court concludes that these considerations also weigh against release.

In light of the seriousness of the instant offense, Defendant's significant criminal history, and his disciplinary issues while incarcerated, the Court finds that the § 3553(a) factors weigh against release. Accordingly, his compassionate release motion, ECF No. 565, is **DENIED**.⁴ ⁵

IT IS SO ORDERED.

s/ Terry L. Wooten

Terry L. Wooten
Senior United States District Judge

May 21, 2021
Columbia, South Carolina

⁴ To the extent he seeks an order directing the BOP to grant him an early release to home confinement pursuant to the CARES Act, Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (2020), the Court does not have discretion to issue such an order. *See, e.g., United States v. Hendrix*, No. 1:10-cr-00067-MR-WCM-2, 2020 WL 2319698, at *1 (W.D.N.C. May 11, 2020) (“The discretion to release a prisoner to home confinement lies solely with the Attorney General. The legislation recently passed by Congress to address the COVID-19 pandemic does not alter this.” (citations omitted)).

⁵ The Court has given careful and full consideration to the Fourth Circuit’s recent per curiam opinion in *United States v. Kibble*, 992 F.3d 326 (4th Cir. 2021), including the concurring opinions, and has applied those standards in considering this motion. It has also reviewed the Fourth Circuit’s recent decision in *United States v. High*, 2021 WL 1823280 (4th Cir. May 7, 2021) and has similarly applied those standards.

Appendix - C

FILED: December 28, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6912
(3:14-cr-00736-TLW-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ERIC DEAN SMITH, a/k/a Big E

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Judge Wynn.

For the Court

/s/ Patricia S. Connor, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**