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SIXTH CIRCUIT OPINION

ENTERED ON March 19,2022

No. 21-2917

DEBORAH S. HUNT, Clerk

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

In 2005, Beigali arranged to buy cocaine from a confidential informant in the Eastern District of Michigan. A federal jury convicted Beigali of attempted possession of five or more kilograms of cocaine with intent to distribute, in violation of 21 U.S.C. § 846, and one count of possessing a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). At the time of his conviction on those counts, Beigali was on supervised release in the Middle District of Florida following unrelated convictions for bank robbery, in violation of 18 U.S.C. § 2113(a), and possessing a firearm during a crime of violence, in violation of 18 U.S.C.

§ 924(c)(1)(A). Accordingly, the district court sentenced Beigali to the mandatory minimum term of 120 months of imprisonment on the § 846 conviction, and because this was Beigali's second § 924(c) conviction, it imposed the mandatory consecutive sentence of 25 years of imprisonment on the firearms conviction, *see* 18 U.S.C. § 924(c)(1)(C)(i), for a total sentence of 420 months of imprisonment. We affirmed. *See United States v. Beigali*, 405 F. App'x 7 (6th Cir. 2010) (*per curiam*).

In April 2021, Beigali moved the district court for compassionate release under § 3582(c)(1)(A). Beigali did not rely on the COVID-19 pandemic and his exacerbating medical conditions as grounds for release, however. Instead, he cited his youth at the time he committed the offenses, his post-sentencing rehabilitation, and his "good character." But Beigali's principal argument was that the First Step Act of 2018's elimination of § 924(c)(1)(C)'s "stacking" provision, *see* Pub. L. No. 115-391, § 403(a), 132 Stat. 5194, 5221-22, showed that the 25-year sentence on his § 924(c)(1)(A) conviction was unduly lengthy. According to Beigali, because he was on supervised release in Florida on his prior § 924(c) conviction, he was still serving his sentence on the prior § 924(c) conviction when he was convicted in this case. He thus contended that the 25-year consecutive sentence he received in this case would not apply to him under the First Step Act, and instead he would have received only a mandatory consecutive sentence of five years of imprisonment. Further, Beigali argued that the 18 U.S.C. § 3553(a) sentencing factors supported his motion in view of his maturity, rehabilitation, and reentry plan, which included living with the mother of his child and working at a car wash or as a painter.

The district court denied Beigali's motion. Although Beigali's motion was not based on the COVID-19 pandemic, the court ruled that he was not eligible for compassionate release on that ground because medical records provided by the government showed that Beigali had been offered and had at that time refused the Pfizer vaccine. And citing our opinion in *United States v. Jarvis*, 999 F.3d 442 (6th Cir. 2021), *cert. denied*, ___ S. Ct. ___, No. 21-568, 2022 WL 89314 (U.S. Jan. 10, 2022), the district court concluded that it could not consider the First Step Act's elimination of § 924(c)(1)(C)'s stacking provision in determining whether Beigali had

demonstrated “extraordinary and compelling” reasons for compassionate release. The court therefore denied Beigali’s motion to reduce his sentence.

On appeal, Beigali argues that the district court erred in concluding that *Jarvis* prohibited it from considering amendments to § 924(c)(1)(C) in deciding whether he was eligible for compassionate release. Specifically, he contends that the district court’s decision was contrary to *United States v. Jones*, 980 F.3d 1098 (6th Cir. 2020), *United States v. Owens*, 996 F.3d 755 (6th Cir. 2021), and *United States v. McCall*, 20 F.4th 1108 (6th Cir. 2021). Additionally, he argues that the district court erred by not considering the combination of factors he cited (i.e., the First Step Act amendments, his youth when he committed the offense, and his maturity and extraordinary rehabilitation) in concluding that he was ineligible for compassionate release. Beigali also argues that the district court abused its discretion in failing to engage in an analysis of the § 3553(a) factors and to consider his post-conviction rehabilitation in that analysis. The government responds that even if the district court erred in concluding that it was foreclosed from considering the First Step Act’s amendments to § 924(c) in deciding whether Beigali was eligible for compassionate release, the error was harmless. The government argues that Beigali would have received the same sentence under the amended statute because his prior § 924(c) conviction was final before he committed the offense in this case.

Beigali also moves to stay his appeal pending the Supreme Court’s decision whether to grant certiorari in the *Bryant* case, in which the question presented was whether “Section 1B1.13 of the United States Sentencing Guidelines is an ‘applicable’ policy statement that binds a district court in considering a defendant-filed motion for compassionate release under 18 U.S.C. [§] 3582(c)(1)(A), as amended by the First Step Act of 2018.” The Supreme Court recently denied that petition, however. *See Bryant v. United States*, 142 S. Ct. 583 (2021).

Finally, Beigali moves to supplement the district court record with a copy of his Bureau of Prisons (BOP) vaccination record, which shows that he received a second shot of the Pfizer COVID-19 vaccine in August 2021.

We review a district court’s denial of compassionate release for an abuse of discretion. *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). An abuse of discretion occurs when

the district court “relies on clearly erroneous findings of fact, applies the law improperly, or uses an erroneous legal standard.” *Jones*, 980 F.3d at 1112 (quoting *United States v. Pembroke*, 609 F.3d 381, 383 (6th Cir. 2010)).

The compassionate release statute allows the district court to reduce a defendant’s sentence if it finds that: (1) “extraordinary and compelling reasons” warrant a reduction, (2) a reduction is “consistent with applicable policy statements issued by the Sentencing Commission,” and (3) the § 3553(a) factors, to the extent they apply, support a reduction. 18 U.S.C. § 3582(c)(1)(A); *Ruffin*, 978 F.3d at 1004 (identifying “three substantive requirements for granting relief”). But no policy statement applies to defendant-filed motions for compassionate release. Consequently, the second requirement plays no role in this case. *Jones*, 980 F.3d at 1110 (holding that, under the First Step Act of 2018, the relevant policy statement, USSG § 1B1.13, applies only to motions filed by the BOP).

First, although it does not appear that Beigali actually moved for a reduction in his sentence because of the dangers presented by the COVID-19 pandemic, the availability of the vaccine (and his subsequent vaccination) make compassionate release unavailable to him on that ground. *See United States v. Traylor*, 16 F.4th 485, 487 (6th Cir. 2021); *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021). Consequently, the district court did not abuse its discretion when it ruled that Beigali was ineligible for compassionate release because he had (at the time) refused the vaccine.

Second, we recognize that we have issued conflicting decisions concerning whether and the extent to which a district court may consider a nonretroactive change in sentencing law when deciding whether a defendant has demonstrated extraordinary and compelling reasons for compassionate release. *Compare McCall*, 12 F.4th at 1116 (“Under our precedents, a court may consider a nonretroactive change in the law as one of several factors forming extraordinary and compelling circumstances qualifying for sentence reduction under 18 U.S.C. § 3582(c)(1)(A).”), *with Jarvis*, 999 F.3d at 443 (“[A] . . . non-retroactive statutory change in the First Step Act could not serve as an ‘extraordinary and compelling reason’ under § 3582(c)(1)(A)(i).” (citing *United States v. Tomes*, 990 F.3d 500, 505 (6th Cir. 2021))); *see also Jarvis*, 999 F.3d at 449 (Clay, J., dissenting) (“[A] district court can consider a non-retroactive First Step Act amendment that

creates a sentencing disparity in combination with other factors as the basis for an extraordinary and compelling reason for compassionate release.”). But in this case, we do not need to reconcile our various opinions or decide which case is controlling because the First Step Act did not create a disparity between the sentence that Beigali actually received for his § 924(c) conviction and the one that he would have received under the statute as amended.

Prior to the enactment of the First Step Act, § 924(c)(1)(C)(i) required a district court to impose a mandatory and consecutive term of 25 years of imprisonment on second and subsequent § 924(c) convictions if the defendant sustained two or more § 924(c) convictions in the same case. *See Deal v. United States*, 508 U.S. 129, 133-34 (1993); *United States v. Gatewood*, 807 F. App’x 459, 461 (6th Cir. 2020) (“[Section 924] carried a mandatory twenty-five year consecutive prison term, even if the second § 924(c) violation was part of the same indictment as the first.”). This “stacking” provision led to extraordinarily lengthy sentences. For instance, in *Deal*, the defendant sustained six § 924(c) convictions, each one related to a separate bank robbery, in the same case and received 105 years of consecutive sentences alone. *See Deal*, 508 U.S. at 130-31. The First Step Act eliminated that stacking provision so that now a defendant is subject to a mandatory consecutive term of 25 years of imprisonment only if “a violation of this subsection . . . occurs after a prior conviction under this subsection has become final.” 18 U.S.C. § 924(c)(1)(A)(i); *see also United States v. Burton*, 802 F. App’x 896, 911-12 (6th Cir.) (“Section 403(a) of the Act amends the statute to eliminate the 25-year mandatory minimum in § 924(c)(1)(C) unless the defendant had a prior § 924(c) conviction that became final before he committed his second § 924(c) violation.”), *cert. denied*, 140 S. Ct. 2839 (2020). A prior § 924(c) conviction is “final” if “a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” *United States v. Richardson*, 948 F.3d 733, 751 (6th Cir.) (quoting *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987)), *cert. denied*, 141 S. Ct. 344 (2020).

Here, Beigali’s prior § 924(c) conviction was final when he committed the § 924(c) violation in this case, despite the fact that he was still on supervised release for the prior conviction, because the Florida district court entered a judgment of conviction in that case in 1997, and he did

not appeal. Consequently, Beigali would have received the same 25-year consecutive sentence under the amended § 924(c)(1)(C)(i). Beigali therefore failed to identify a sentencing disparity that would have justified a sentence reduction under § 3582(c)(1)(A). As a result, even if the district court erred in concluding that *Jarvis* foreclosed relief, the error was harmless.

Beigali is correct that the district court did not consider whether the combination of factors he cited were sufficiently compelling to reduce his sentence. *See McCall*, 20 F.4th at 1113. But Beigali did not cite a combination of factors that made him eligible for compassionate release. As just stated, Beigali failed to identify a sentencing disparity created by a subsequent change in the law. Beigali's youth when he committed the offense was a fact that existed at the time of his original sentencing and therefore is not an "extraordinary and compelling" reason to grant compassionate release. *See Hunter*, 12 F.4th at 570-71. That leaves Beigali's rehabilitative accomplishments, which alone are insufficient to warrant compassionate release. *See id.* at 572.

Because the district court did not abuse its discretion in concluding that Beigali was ineligible for compassionate release, it did not need to consider whether the § 3553(a) sentencing factors supported his motion. *See United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021) ("[D]istrict courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others.").

For these reasons, we **AFFIRM** the district court's order denying Beigali's motion for a reduction in his sentence. We **GRANT** Beigali's motion to supplement the record and **DENY** his motion to stay as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

A P P E N D I X B

SIXTH CIRCUIT MANDATE ISSUED ON APRIL 1,2022

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

No: 21-2917

Filed: April 01, 2022

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

AMIR KARIM BEIGALI

Defendant - Appellant

MANDATE

Pursuant to the court's disposition that was filed 03/09/2022 the mandate for this case hereby issues today.

COSTS: None

A P P E N D I X C

DISTRICT COURT OPINION

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

v.

Criminal Case No. 07-20490

Amir Karim Beigali,

Sean F. Cox

United States District Court Judge

Defendant.
_____ /

OPINION & ORDER
DENYING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

In this criminal action, Defendant Amir Karim Beigali ("Defendant") was convicted of drug and firearm offenses. He is currently serving his sentence of imprisonment. The matter is before the Court on Defendant's *pro se* Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A). The Court concludes that a hearing is not warranted and orders that the motion will be decided based upon the briefs. As explained below, the Court shall DENY the motion.

BACKGROUND

In this criminal case, Defendant was charged with 1) attempt to possess with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. § 841(a)(1) and 846 (Count I); and 2) use of a firearm during and in relation to a drug offense, in violation of 18 U.S.C. § 924(c) (Count Two). The matter was assigned to the Honorable Lawrence P. Zatkoff.

Defendant proceeded to a jury trial and the jury convicted Defendant on both counts. Judge Zatkoff sentenced Defendant to the statutory minimum of 120 months on Count I, and 25 years on Count II, to run consecutively.

Defendant filed a direct appeal. The United States Court of Appeals for the Sixth Circuit

affirmed in an unpublished decision issued on December 10, 2010. (ECF No. 63).

Defendant later filed a motion seeking to vacate his conviction under 28 U.S.C. § 2255, and subsequent requests to file second or successive applications for habeas relief, but did not obtain relief from any of those efforts. (*See* ECF No. 102).

On April 26, 2021, Defendant filed a *pro se* Motion for Compassionate Release. (ECF No. 103). Attached to Defendant's motion is a written response from Defendant's warden, stating that his request for a reduction in sentence "based on concerns about COVID-19" is denied. (ECF No. 103 at PageID.1487).

But Defendant's motion is not focused upon concerns about the ongoing novel coronavirus pandemic ("COVID-19") that have prompted numerous motions by Defendants over the past year and a half. Rather, the primary focus of Defendant's motion is his claim that "the circumstances surrounding his sentence which consists of two consecutively 'stacked' counts under 18 U.S.C. § 924(a) – constitute extraordinary and compelling reasons for his early release." (*Id.* at 1; *see also* page 7, setting forth circumstances that Defendant asks the Court to consider).

Defendant is now forty-four years old. He is currently housed at FCI Coleman – Low. Defendant's motion does not appear to claim that Defendant has any medical conditions that would place him at risk for serious symptoms of the virus, if he were to contract it

The Government opposes Defendant's motion, noting that Defendant has been offered the COVID-19 vaccine and has refused it, despite having no medical contraindications. It also states that, as of the date of its brief, "there are zero inmates positive for Covid 19 at FCI Coleman - Low." (Govt.'s Br. at 7). As such, it opposes the motion on its merits, asserting that

Defendant cannot establish extraordinary and compelling circumstances.

The Government also asserts that, to the extent that Defendant's motion focuses on challenging his lengthy sentence, that argument is foreclosed by *United States v. Jarvis*, 999 F.3d 442 (6th Cir. June 3, 2021).

ANALYSIS

"The 'compassionate release' provision of 18 U.S.C. § 3582 allows district courts to reduce the sentences of incarcerated persons in 'extraordinary and compelling' circumstances. 18 U.S.C. § 3582(c)(1)(A)." *United States v. Michael Jones*, 980 F.3d 1098, 1100 (6th Cir. Nov. 20, 2020).

"The passage of the First Step Act in 2018 expanded access to compassionate release by allowing inmates to bring compassionate-release motions on their own behalf." *United States v. Elias*, 984 F.3d 516, 518 (6th Cir. 2021).

The United States Court of Appeals for the Sixth Circuit has held that sentence-modification decisions pursuant to § 3582(c)(1)(A) embody a three-step inquiry:

Before granting a compassionate-release motion, a district court must engage in a "three-step inquiry:" the court must "find" that "extraordinary and compelling reasons warrant [a sentence] reduction," ensure "that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," and "consider[] all relevant sentencing factors listed in 18 U.S.C. §3553(a)." *United States v. Jones*, 980 F.3d 1098, 1101 (6th Cir. 2020) (citing 18 U.S.C. §3582(c)(1)(A)). If each of those requirements are met, the district court "may reduce the term of imprisonment," but need not do so. 18 U.S.C. §3582(c)(1)(A).

Elias, 984 F.3d at 518.

At step one, a court must find whether "extraordinary and compelling reasons" warrant a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(I).

“At step two, a court must ‘find[]’ whether ‘such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.’” *Jones, supra*, at 1108. (quoting 3582(c)(1)(A)) (emphasis added). But the Sixth Circuit has held “that § 1B1.13 is not an applicable policy statement for compassionate-release motions brought directly by inmates, and so district courts need not consider it when ruling on those motions.” *Elias, supra*, at 519. “And, in the absence of an applicable policy statement for inmate-filed compassionate-release motions, district courts have discretion to define ‘extraordinary and compelling’ on their own initiative.” *Id.* That means that, “[u]ntil the Sentencing Commission updates § 1B.13 to reflect the First Step Act, district courts have full discretion in the interim to determine whether an ‘extraordinary and compelling’ reason justifies compassionate release when an imprisoned person files a § 3582(c)(1)(A) motion.” *Jones, supra*, at 1109. Because Defendant’s compassionate release motion was filed by an incarcerated person, this Court “may skip step two of the § 3582(c)(1)(A) inquiry and ha[s] full discretion to define ‘extraordinary and compelling’ without consulting the policy statement in § 1B1.13.” *Id.*

“At step three, ‘§ 3582(c)[(1)(A)] instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case.’” *Jones, supra*, at 1109.

The Sixth Circuit has explained that, “in *granting* a compassionate-release motion, district courts must address all three steps.” *Elias, supra*, at 519 (emphasis added). But it has also clarified that “district courts may *deny* compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others.” *Id.*

(emphasis added).

A. To The Extent That Defendant Seeks Compassionate Release Based Upon Concerns About COVID-19, The Motion Is Denied For Lack Of Merit.

Again, Defendant's motion seeking compassionate release does not focus on concerns about COVID-19. But Defendant's briefs do make references to the virus and the ongoing pandemic. (*See, eg.*, ECF No 115 at PageID.1678). To the extent that Defendant seeks compassionate release based upon concerns about COVID-19, the Court denies the motion for lack of merit.

This Court agrees with other courts that have concluded that the COVID-19 pandemic alone does not justify compassionate release. *See, e.g., United States v. Shah*, No. 16-20457, 2020 WL 1934930, at *2 (E.D. Mich. April 22, 2020) (“[S]peculation as to whether COVID-19 will spread through Defendant’s detention facility ..., whether Defendant will contract COVID-19, and whether he will develop serious complications, does not justify the extreme remedy of compassionate release.”); *see also United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (“[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release[.]”).

And notably, Defendant was offered the COVID-19 vaccination but declined it, despite having no known medical contraindications for the vaccine. (*See* ECF No. 114-2). In denying a request for compassionate release in a case with these same circumstances, the Honorable Robert H. Cleland explained:

Defendant cannot establish that his conditions are exceptional and demand immediate release when he intentionally prevents the BOP from mitigating dangers to his health and safety. 18 U.S.C. § 3582(c)(1)(A). A prisoner cannot on the one hand point to the risk of severe illness, while on the other hand refuse to participate in basic precautionary measures such as vaccination. Allowing federal

prisoners to qualify for compassionate release by declining to receive a COVID-19 vaccine, without justification, would discourage prisoners from becoming vaccinated. The court is exceedingly hesitant to provide prisoners an incentive to increase their risk of contracting COVID-19 and developing severe symptoms. Such a result would be profoundly counter-productive and would militate against the ameliorative purposes of compassionate release. Denial of Defendant's request for release is warranted on this basis alone.

United States v. Austin, 2021 WL 1137987 at *2 (E.D. Mich. March 25, 2021). This Court agrees and concludes that Defendant's request should be denied on this basis.

B. To The Extent That Defendant's Motion Challenges The Length Of His Sentence, That Argument Is Foreclosed By *United States v. Jarvis*.

Again, the primary focus of Defendant's motion is his claim that "the circumstances surrounding his sentence which consists of two consecutively 'stacked' counts under 18 U.S.C. § 924(a) – constitute extraordinary and compelling reasons for his early release." (Def.'s Motion at 1).

The Government persuasively argues that Defendant's argument is foreclosed by *United States v. Jarvis*:

Beigali does not present the typical compassionate release arguments. He alleges that Covid-19 is generally dangerous to him, but his primary focus is on challenging his lengthy sentence, which he claims constitutes an extraordinary and compelling reason in favor of release. A recent Sixth Circuit holding forecloses this argument. *United States v. Jarvis*, ---F.3d --- (6th Cir. June 3, 2021), 2021 WL 2253235. In *Jarvis*, the court relies on *United States v. Tomes* and holds that §3582(c)(1)(A) does not give district courts authority to "end run around Congress's careful effort to limit the retroactivity of the First Step Act's reforms." *Jarvis*, at *2 (quoting *Tomes*, 990 F.3d 500, 505 (6th Cir. 2021)). Per the statute in 2009, Beigali's conviction of 18 U.S.C. §924(c) following a prior violent felony and previous §924(c) offense required a 300-month sentence, consecutive to the 120-month sentence for the drug trafficking offense. The First Step Act's subsequent change to §924(c)'s "stacking" provision was not retroactive, and §3582(c)(1)(A) does not permit the Court to treat such a non-retroactive amendment, "whether by themselves or together with other factors," as extraordinary and compelling justifications for a sentencing reduction. *Jarvis*, at *3.

(Govt.'s Br. at 2-3).

The Court agrees that Defendant's stacking argument is foreclosed by *United States v. Jarvis*. Defendant argues that if he were sentenced for the same offenses today, he would receive a lower sentence. As the Sixth Circuit noted in *United States v. Jarvis*, "[i]f every defendant who received a longer sentence than the one he would receive today became eligible for compassionate release, the balance Congress struck would come to naught." *United States v. Jarvis*, 999 F.3d at 444.

CONCLUSION & ORDER

For the reasons set forth above, **IT IS ORDERED** that Defendant's Motion for Compassionate Release is **DENIED**.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 12, 2021