IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 12-00242-01-CR-W-BP
	)	
ANTONIO M. TAYLOR,	)	
	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION FOR A SENTENCE REDUCTION

On February 26, 2014, a jury found Defendant Antonio M. Taylor guilty of a variety of drug and firearm crimes. (Doc. 125, p. 1.) One of those crimes was violating 18 U.S.C. § 924(c), which forbids possessing a firearm in furtherance of a drug trafficking offense. (*Id*.) At the time Defendant was convicted, § 924(c) provided for a mandatory minimum prison term of 25 years for each count, to run consecutively; because Defendant was convicted of two counts of violating § 924(c), the Court sentenced him to 50 years in the custody of the Bureau of Prisons ("BOP"), plus an additional 10 years, which was the mandatory minimum for Defendant's other crimes. (Doc. 125, p. 3.) Defendant appealed his sentence to the Eighth Circuit, which affirmed on June 3, 2015. *United States v. Taylor*, 606 F.3d 315 (8th Cir.), *cert. denied*, 138 S.Ct. 436 (2015). Defendant is currently housed at the United States Penitentiary Victorville ("Victorville"). (Doc. 149.)

Several years after Defendant was sentenced, Congress passed the First Step Act ("FSA"), which implemented a variety of criminal justice reforms. One of those reforms amended § 924(c) by reducing the mandatory minimum sentence for individuals in Defendant's circumstances to 5 years rather than 25. Thus, if Defendant were sentenced today, his total mandatory minimum sentence would be 20 years rather than 60. But the amendment to § 924(c) was not retroactive.

Defendant has now filed a motion to reduce his sentence under 18 U.S.C. § 3582(c). (Doc. 149.) Defendant's motion does not ask the Court to reduce his sentence to time served; instead, Defendant requests that his sentence be reduced to 20 years, which would be the mandatory minimum if Defendant were sentenced today. (*See* Doc. 149, p. 14.) Section 3582(c)(1)(A) provides that the Court "may not modify a term of imprisonment once it has been imposed" on a defendant unless three things occur: first, either the BOP must submit a motion on the defendant's behalf, or the defendant must have exhausted his administrative remedies within the BOP; second, "extraordinary and compelling reasons" must exist to warrant a reduction; and third, reducing the defendant's sentence must be consistent with "the factors set forth in . . . [18 USCS § 3553(a)] to the extent that they are applicable." The Government opposes Defendant's motion. (Doc. 155.)

Defendant first argues that he has satisfied the exhaustion requirement by requesting compassionate release from the warden at Victorville, and provides evidence that the warden denied his request. (Doc. 149-2.) The Government does not dispute that Defendant exhausted his administrative remedy, (Doc. 155), so the Court assumes he has met this requirement.

The Court next turns to whether Defendant has presented "extraordinary and compelling reasons" to reduce his sentence. The main "extraordinary and compelling reason" Defendant cites is the large disparity between his current sentence and the mandatory minimum he would face if he were resentenced today—60 and 20 years, respectively. (Doc. 161, p. 6.) The Government contends that U.S.S.G. § 1B1.13 does not authorize the Court to grant compassionate release solely on the basis that a defendant's sentence is substantively unfair. (Doc. 155, pp. 12–13.) Defendant counters that § 1B1.13 predates the FSA, and thus is only binding on the BOP, not the courts; he also points to a variety of district and appellate court cases where an incarcerated defendant's sentence was reduced due to the sentence's seemingly unfair severity. (Doc. 161, pp. 7–9.)

The Court need not determine whether § 1B1.13 remains binding, nor decide that the substantive fairness of a defendant's sentence can *never* play a role in determining whether the defendant qualifies for compassionate release. Instead, the narrow question this case presents is whether "extraordinary and compelling reasons" under § 3582(c) can include circumstances where a non-retroactive change in the law renders a defendant's sentence significantly greater than the sentence he would receive today. Courts throughout the country are divided on this question. *United States v. Crandall*, 2020 WL 7080309, at *7 (N.D. Iowa Dec. 3, 2020); *compare United States v. Fox*, 2019 WL 3046086, at *3 (D. Me. July 11, 2019) ("[T]he compassionate release provision is not an end-run around . . . Congress's decision to reduce sentences for some crimes but not others . . . .") *with United States v. O'Bryan*, 2020 WL 869475, at *1 (D. Kan. Feb. 21, 2020) (finding that the decision not to make the § 924(c) amendment retroactive "simply establishes that a defendant sentenced before the FSA is not automatically entitled to resentencing," but does not mean that "the court may not [] consider the effect of a radically changed sentence for purposes of applying § 3582(c)(1)(A)").

The Court agrees with those cases holding that compassionate release is not an appropriate vehicle to circumvent Congress's decisions about the retroactivity of amendments to sentencing statutes. Clearly, "in enacting the FSA, Congress was cognizant of the difference between making statutory changes retroactive or prospective," because "Congress chose to make some changes retroactive," while "[o]ther provisions appl[y] only prospectively." *United States v. Gashe*, 2020 WL 6276140, at *3 (N.D. Iowa Oct. 26, 2020). When Congress changed the mandatory minimum sentence of § 924(c), it could have made the change retroactive, but it did not. The Court finds that expanding the meaning of "extraordinary and compelling reasons" to create *de facto* retroactive amendment to § 924(c) is inconsistent with Congress's purpose in passing the FSA.

Consequently, the disparity between the mandatory minimum sentence Defendant received and the minimum sentence for the same crimes today is not an extraordinary and compelling reason to reduce Defendant's sentence.

Defendant also argues that he has undertaken significant efforts to rehabilitate himself so that he can reenter society successfully. (Doc. 161, pp. 13–14.) The personal progress Defendant reports is laudable. But the Eighth Circuit has recognized that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason" for compassionate release. *United States v. Fine*, 982 F.3d 1117, 1119 (8th Cir. 2020) (quoting 28 U.S.C. § 994(t)). Thus, Defendant's self-improvement in prison does not qualify as an "extraordinary and compelling reason."

Because Defendant has not met his burden under § 3582(c), Defendant's motion, (Doc. 149), is **DENIED**. The Clerk of Court shall mail a copy of this order to:

Antonio M. Taylor
Reg. No. 24308-045
USP Victorville
P.O. Box 3900
Adelanto, CA 92301

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Date: March 3, 2021

to allege any factual details to support this claim in his original § 2255 motion (or at any time prior to the hearing) undermined his credibility. And the court expressed doubt about the value of Hanson's testimony at all. The district court considered Dressen's allegation that he instructed Walter to file a notice of appeal but found it to be a "bare assertion" without credible evidentiary support. See id. On this record, we find no clear error in the finding that Dressen did not instruct his attorney to file a notice of appeal within the deadline for doing so. See Green v. United States, 323 F.3d 1100, 1102–03 (8th Cir. 2003) (finding no clear error in district court's determination that defendant's testimony that he requested an appeal was not credible).

III.

The judgment of the district court is affirmed.

UNITED STATES of America, Plaintiff - Appellee,

v.

Antonio M. TAYLOR, Defendant - Appellant.

No. 21-1627

United States Court of Appeals, Eighth Circuit.

Submitted: January 14, 2022

Filed: March 18, 2022

Background: Defendant sentenced to total term of 60 years' imprisonment for, inter alia, three convictions for possession of firearm in furtherance of a drug-trafficking crime filed motion for reduction of sentence for extraordinary and compelling reasons, citing the repeal of mandatory consecutive sentences for multiple such convictions and defendant's alleged rehabilitative efforts. The United States District Court for the Western District of Missouri, 4:12-CR-00242-BP-1, Beth Phillips, Chief Judge, denied the motion. Defendant appealed.

Holdings: The Court of Appeals held that repeal of mandatory consecutive sentences was not extraordinary and compelling reason for reduction of defendant's sentence.

Affirmed.

Kelly, Circuit Judge, concurred with statement.

Sentencing and Punishment ⚿2262

First Step Act's repeal of mandatory consecutive sentences for multiple convictions for possessing a firearm in furtherance of a drug-trafficking crime, even in combination with defendant's alleged rehabilitation, did not constitute an extraordinary and compelling reason for reduction of defendant's consecutive sentences for such offenses, since the repeal was a nonretroactive change in the law. 18 U.S.C.A. §§ 924(c), 3582(c)(1)(A); Pub. L. No. 115-391, § 403, 132 Stat. 5194.

Appeal from United States District Court for the Western District of Missouri - Kansas City

Stephen C. Moss, Asst. Fed. Public Defender, Kansas City, MO, argued (Laine Cardarella, Fed. Public Defender), for defendant-appellant.

J. Benton Hurst, Asst. U.S. Atty., Kansas City, MO, argued (Teresa A. Moore,

Acting U.S. Atty., on the brief), for plaintiff-appellee.

Before COLLOTON, KELLY, and KOBES, Circuit Judges.

PER CURIAM.

Antonio Taylor appeals an order of the district court [1] denying his motion for reduction of sentence under 18 U.S.C. § 3582(c)(1)(A). We conclude that the court did not err in concluding that Taylor failed to present "extraordinary and compelling reasons" for a reduction. We therefore affirm the order.

In 2014, a jury convicted Antonio Taylor of nine offenses. Three convictions were for possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c). For those three violations, the law required consecutive terms of imprisonment of five years, twenty-five years, and twenty-five years, respectively. The district court sentenced Taylor to a total term of sixty years' imprisonment.

In 2020, Taylor moved for reduction of sentence under 18 U.S.C. § 3582(c)(1)(A). This statute permits a district court to reduce a prisoner's sentence if, after considering the factors in 18 U.S.C. § 3553(a), "it finds that ... 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). This form of relief is sometimes described as "compassionate release."

As an "extraordinary and compelling reason" for reduction, Taylor cited a provision of the First Step Act of 2018 that repealed the mandatory consecutive sentences for multiple convictions under § 924(c). *See* Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221-22 (2018). Although Congress did not make the change in law retroactive, Taylor argued that if he had been sentenced under current law, his mandatory minimum sentence would have been significantly shorter. Taylor also relied on what he described as "significant" rehabilitative efforts, and argued that his rehabilitation should be considered in conjunction with the change in sentencing law.

The district court denied Taylor's motion. The court concluded that a non-retroactive change in law could not constitute an extraordinary and compelling reason for a reduction in sentence. The court reasoned that compassionate release under § 3582(c) was "not an appropriate vehicle to circumvent Congress's decisions about the retroactivity of amendments to sentencing statutes." The court also concluded that Taylor's proffered rehabilitation was not by itself an extraordinary and compelling reason. *See* 28 U.S.C. § 994(t).

On appeal, Taylor argues that the district court erred by deciding that the non-retroactive change to sentencing provisions under § 924(c), together with his rehabilitation, could not constitute an extraordinary and compelling reason for a sentence reduction. This court recently held, however, "that a non-retroactive change in law, whether offered alone or in combination with other factors, cannot contribute to a finding of 'extraordinary and compelling reasons' for a reduction in sentence under § 3582(c)(1)(A)." *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022). Taylor's appeal is foreclosed by *Crandall*, and the

1. The Honorable Beth Phillips, Chief Judge, United States District Court for the Western District of Missouri.

district court did not err in denying his motion for reduction in sentence.

The order of the district court is affirmed.

KELLY, Circuit Judge, concurring.

After this case was briefed and argued, the court issued its decision in *Crandall*. Had this case been decided first, I would have voted to reverse and remand. In my view, sentence disparities such as those created by amendments to § 924(c) are properly considered as part of an individualized assessment of whether extraordinary and compelling reasons for a sentence reduction exist under the First Step Act. See, e.g., United States v. McCoy, 981 F.3d 271, 285-88 (4th Cir. 2020) (holding that "district courts permissibly treat[ ] as 'extraordinary and compelling reasons' for compassionate release the severity of the defendants' § 924(c) sentences and the extent of the disparity between the defendants' sentences and those provided for under the First Step Act," where such "judgments [are] the product of individualized assessments of each defendant's sentence"); United States v. Maumau, 993 F.3d 821, 837 (10th Cir. 2021) (affirming district court finding of extraordinary and compelling reasons for a sentence reduction "based on its individualized review of all the circumstances," including "the incredible length of [the defendant's] stacked mandatory sentences under § 924(c); the First Step Act's elimination of sentence-stacking under § 924(c); and the fact that [the defendant], if sentenced today, would not be subject to such a long term of imprisonment." (cleaned up) (quotations omitted)).

Because Crandall has squarely resolved the question presented by Taylor on appeal, I concur. See Mader v. United States, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) ("It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel." (quoting Owsley v. Luebbers, 281 F.3d 687, 690 (8th Cir. 2002))).

UNITED STATES of America, Plaintiff - Appellee

v.

Dustin Red LEGS, Defendant - Appellant

No. 20-3506

United States Court of Appeals, Eighth Circuit.

Submitted: October 22, 2021

Filed: March 21, 2022

Background: Defendant was convicted in the United States District Court for the District of South Dakota, Roberto Lange, Chief Judge, of sexual exploitation of a child and possession of child pornography. Defendant appealed.

Holdings: The Court of Appeals, Shepherd, Circuit Judge, held that any error in admitting forensic examiner's testimony regarding comparison analysis he conducted of explicit photos of children, which depicted unidentified fingers and knuckles, and concluded they belonged to defendant was harmless.

Affirmed.

1. Criminal Law ⚿1153.1, 1168(1)

Court of Appeals reviews evidentiary issues for clear abuse of discretion and will reverse the district court's judgment only when an improper evidentiary ruling affected the defendant's substantial rights or

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-1627

United States of America

Appellee

v.

Antonio M. Taylor

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:12-cr-00242-BP-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 22, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans