

APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12499

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL DALE TALLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:10-cr-00015-LSC-GMB-1

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

In 2010, Michael Talley pled guilty to several child pornography offenses. The district court sentenced him to 210 months in prison, and he did not appeal.

Mr. Talley, proceeding *pro se*, now appeals the district court's denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), as amended by § 603(b) of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018) ("First Step Act"). He argues that the law-of-the-case doctrine barred a finding that he was a danger to others, that the district court's failure to address changes in the law that lowered his guideline range precludes meaningful appellate review, and that his obesity and high blood pressure, coupled with the risk of COVID-19, warrant relief. He also asserts that the district court changed the wording of U.S.S.G. § 1B1.13 and waited ten months to deny his motion without opposition from the government, and he requests that we reassign his case on remand.

We review a ruling on a defendant's eligibility for an § 3582(c)(1)(A) sentence reduction is reviewed *de novo*. *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir.), *cert. denied*, 142 S. Ct. 583 (2021). But we review a district court's denial of a § 3582(c)(1)(A) motion for abuse of discretion. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021).

21-12499

Opinion of the Court

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A district court “must explain its sentencing decisions adequately enough to allow for meaningful appellate review.” *United States v. Cook*, 998 F.3d 1180, 1183 (11th Cir. 2021) (quotation marks omitted). We can conduct meaningful appellate review because the district court’s discussion showed a reasoned rejection of Mr. Talley’s motion, cited proper legal authority, and provided multiple grounds for the decision.

To grant a reduction under § 3582(c)(1)(A), a district court must find that three necessary conditions are satisfied. These are re “support in the § 3553(a) factors, extraordinary and compelling reasons, and adherence to [U.S.S.G.] § 1B1.13’s policy statement,” and the absence of even one forecloses a sentence reduction. *United States v. Tinker*, 14 F.4th 1234, 1237-38 (11th Cir. 2021).

Among other things, the district court concluded that Mr. Talley had not shown extraordinary and compelling circumstances. In its view, Mr. Talley’s comorbidities of obesity and high blood pressure, combined with the risk of COVID-19, did not meet § 1B1.13’s criteria. We find no abuse of discretion in this regard, as Mr. Talley failed to assert that he suffered from a terminal illness or that he could not care for himself. As we have explained, “the confluence of [a defendant’s] medical conditions and COVID-19” does not constitute an extraordinary and compelling reason warranting compassionate release if the defendant’s medical conditions do not meet the criteria of § 1B1.13, comment. (n.1(A)). *United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021).

We do not find any merit in Mr. Talley's contention that the district court changed the wording of § 1B1.13 to deny his motion, as the court properly adhered to a correct understanding of § 1B1.13. *See Bryant*, 996 F.3d at 1262-65. And given our decision in *Bryant* the court did not err in failing to address Mr. Talley's argument under the catch-all provision of § 1B1.13. Finally, although it might have been better practice to wait for the government to file a response, Mr. Talley cites no authority requiring the district court to do so. Because we affirm the district court's order on the ground that Mr. Talley did not demonstrate extraordinary and compelling circumstances, we need not address the court's finding with respect to danger.

We affirm the district court's denial of Mr. Talley's motion for compassionate release, and deny Mr. Talley's request for reassignment as moot.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12499-JJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL DALE TALLEY,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 02, 2022

Clerk - Northern District of Alabama
U.S. District Court
Hugo L. Black United States Courthouse
1729 5TH AVE N
BIRMINGHAM, AL 35203

Appeal Number: 21-12499-JJ
Case Style: USA v. Michael Talley
District Court Docket No: 1:10-cr-00015-LSC-GMB-1

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12499

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL DALE TALLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:10-cr-00015-LSC-GMB-1

JUDGMENT

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21-12499

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: March 10, 2022

For the Court: DAVID J. SMITH, Clerk of Court

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
)
vs.)
)
MICHAEL DALE TALLEY,)
)
)
)
Defendant)

1:10-CR-00015-LSC-GMB-1

ORDER DENYING MOTION FOR COMPASSIONATE

Before the Court is Defendant Michael Dale Talley's ("Talley's") motion for compassionate release and appointed counsel. (Doc. 24.) For the following reasons, Talley's motion is due to be denied.

I. Background

In 2010 Talley pleaded guilty to two counts of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), and one count of receipt of material that contained child pornography in violation of 18 USC § 2252A(a)(2)(B). (Doc. 21) The Court sentenced Talley to a term of imprisonment of 210 months.

(Doc. 23.) Talley is currently serving his sentence at the Federal Correction Institution in Jesup, GA (“FCI Jesup”).¹

II. Legal Standard

Pursuant to 18 U.S.C. § 3582(b), a judgment of conviction that includes a sentence of imprisonment “constitutes a final judgment and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (internal quotations omitted). The exception in 18 U.S.C. § 3582(c)(1)(A) provides that when a defendant has exhausted his administrative remedies, the Court may exercise its discretion to reduce the term of imprisonment after considering the factors set forth in 18 U.S.C. § 3553(a) if 1) extraordinary and compelling reasons warrant such a reduction and 2) such a reduction is consistent with applicable policy statements. *United States v. Smith*, 8:17-CR-412-T-36AAS, 2020 WL 2512883, at *2 (M.D. Fla. May 15, 2020). *See also United States v. Bryant*, 2021 LEXIS 13663 at *3 (11th Cir. May 7, 2021). “The defendant generally bears the burden of establishing that compassionate release is warranted.” *United States v. Smith*, 8:17-CR-412-T-36AAS, 2020 WL 2512883, at *2 (M.D. Fla. May 15, 2020) (citing *United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013)).

¹ The Federal Bureau of Prison’s website provides information about an inmate’s projected release date. Here is a link to the inmate locator section of the website: <https://www.bop.gov/inmateloc/>.

III. Analysis

Compassionate-release motions arise under 18 U.S.C. § 3582(c)(1)(A)(i), which states:

The court may not modify a term of imprisonment once it has been imposed except that . . . the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted 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, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if 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[.]

A. Administrative Exhaustion Requirement

Talley has satisfied 18 U.S.C. § 3582's Administrative Exhaustion Requirements. Talley submitted a written request for Compassionate Release to his warden on August 13, 2020. (Doc. 24.) The Warden denied his request on September 29, 2020. (Doc. 24.) Because 30 days have lapsed between the defendant's request and the warden's denial, the court has the authority to adjudicate his claim.

B. Section 3553(a) Factors & Extraordinary and Compelling Reasons

Although Talley has met § 3582's administrative exhaustion requirements, the question remains whether "considering the factors set forth in [§] 3553(a)," "extraordinary and compelling reasons warrant" a reduction in Talley's sentence is "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i).

United States Sentencing Guideline § 1B1.13 is the applicable policy statement related to compassionate release. That section—which was adopted before Congress authorized defendants to seek relief under § 3582(c) on their own behalves—essentially reiterates the requirements of § 3582(c)(1)(A), with the additional requirement that a defendant "not be a danger to the safety of any other person or to the community." U.S.S.G. § 1B1.13(2). The application notes to § 1B1.13 provide examples of extraordinary and compelling reasons to grant a compassionate release.

Application Note 1 states, in part:

Provided the defendant [is not a danger to the safety of any other person or to the community], extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant --

(i) The defendant is suffering from a terminal illness[.]

(ii) The defendant is [suffering from a health condition] 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.

U.S.S.G. § 1B1.13, Application Note 1. As noted, the basis for compassionate release must be “consistent with” this policy statement. 18 U.S.C. § 3582(c)(1)(A)(i).

Talley fails on both §1B1.13 Application Note (A)(i) and A(ii). Talley claims his obesity and high blood pressure puts him at risk due to the spread of COVID-19 and constitutes an extraordinary and compelling reason to request compassionate release. However, his concern of contracting COVID-19 does not warrant an early release from his sentence. The BOP has taken appropriate precautions to decrease the spread of COVID-19. As of June 2021, according to the BOP, FCI Jesup has 0 active COVID-19 cases, and has had 475 inmates recover from the virus. FCI Jesup has also fully vaccinated 875 of its inmates.² Accordingly, Talley has not demonstrated a “terminal” or “serious” health condition that would limit his ability to self-care in prison.

² See BOP: COVID-19 Updates See COVID-19, Bureau of Prisons, BOP.gov/coronavirus for vaccination figures updated daily.

The petitioner also fails in Application Note (B), because he is 39 years old according to BOP's records as stated above. This is well short of the 65-year age requirement needed to assert compassionate release under this guideline.

But even if extraordinary and compelling reasons did exist, guideline § 1B1.13 and the § 3553(a) factors weigh against compassionate release in Talley's case. Section 3553(a) instructs this Court to impose a sentence that "reflect[s] the seriousness of the offense" and creates "adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a). Moreover, § 1B1.13(2)—which § 3582(c) incorporates—states that a sentence may be reduced only when "[t]he defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." One factor in determining whether a person is a "danger to the safety of any other person or the community" is whether the defendant's offense involved a minor victim. 18 U.S.C. § 3142(g).

Talley fails his burden to demonstrate that he is no longer a danger to the community because his crimes involved minor victims. Talley's Pre-Sentence Investigation Report provides detailed sampling of videos of pornographic material found on Talley's computer, all of which exploit and victimize minors and young children. (Doc. 21.) Talley poses a threat to the community and his crimes "victimize society as a whole to some extent." (Doc. 21.) Reducing his sentence

would undermine the goals of his original sentence—among them, the need to dispense adequate punishment for his conduct. Releasing Talley early from his sentence would not “reflect the seriousness of the offense.”

Because he has not demonstrated “extraordinary and compelling” justifications for his release, and because he is still a danger to the community, Talley is not entitled to release under 18 U.S.C. § 3582.

IV. Appointment of Counsel

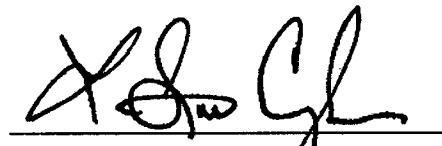
An indigent defendant has a right to appointed counsel during his criminal trial and any subsequent appeal. *Douglas v. California*, 372 U.S. 353, 357 (1963). This right does not extend beyond appeal to post-conviction relief. *Murray v. Giarratano*, 492 U.S. 1, 2 (1989). However, the Court may appoint counsel if the interests of justice or due process so require. 18 U.S.C. § 3006A.

Talley’s motion is for post-conviction relief. Therefore, he has no sixth amendment right to appointed counsel. See *Pennsylvania v Finley*, 481 U.S. 551 (1987); *United States v. Webb*, 565 F.3d 789 (11th Cir. 2009). Because his claims are without merit and are due to be dismissed without a hearing, the interests of justice do not require appointment of counsel. Accordingly, his motion to appoint counsel is due to be denied.

V. Conclusion

The Court has considered all arguments. Those not addressed would not have changed the outcome. For the foregoing reasons, Talley's Motion for Compassionate Release due to COVID-19 (doc. 24) is hereby DENIED.

DONE and ORDERED on July 16, 2021.



L. Scott Coogler
United States District Judge

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