

A P P E N D I X

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit,
United States v. Dario Pinson, 21-10721

(June 3, 2022) A-1

Judgment imposing sentence A-2

A-1

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10721

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARIO PINSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:15-cr-20184-CMA-1

Before JORDAN, NEWSOM, and MARCUS, Circuit Judges.

PER CURIAM:

Dario Pinson, represented by counsel, appeals the district court's denial of his *pro se* motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), as modified by § 603(b) of the First Step Act.¹ On appeal, Pinson argues that the district court did not provide a sufficient basis for its denial of his motion, show that it properly weighed the 18 U.S.C. § 3553(a) factors, or properly evaluate his health conditions. After thorough review, we affirm.

We review a district court's denial of a prisoner's § 3582(c)(1)(A) motion for abuse of discretion. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021). “To obtain reversal of a district court judgment that is based on multiple, independent grounds, [the appellant] must convince us that every stated ground for the judgment against him is incorrect.” *United States v. Maher*, 955 F.3d 880, 885 (11th Cir. 2020) (quotations omitted).

District courts lack the inherent authority to modify a term of imprisonment, but may do so within § 3582(c)'s provisions. 18 U.S.C. § 3582(c); *United States v. Jones*, 962 F.3d 1290, 1297 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 2635 (2021). As amended by § 603(b) of the First Step Act, § 3582(c) now provides, in relevant part, that:

¹ Pub. L. No. 115-391, 132 Stat. 5194 (2018).

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Opinion of the Court

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the court, upon motion of the Director of the Bureau of Prisons [(“BOP”)], or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] 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 . . . , 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.

18 U.S.C. § 3582(c)(1)(A).

To grant a reduction under § 3582(c)(1)(A), a district court must find that three necessary conditions are satisfied: “support in the § 3553(a) factors, extraordinary and compelling reasons, and adherence to § 1B1.13’s policy statement.” *United States v. Tinker*, 14 F.4th 1234, 1237–38 (11th Cir. 2021). District courts are not required to address these three conditions in a specific sequence, as the absence of even one forecloses a sentence reduction. *Id.* Thus, when a district court finds against the defendant on one factor and sufficiently explains its decision as to that factor, it need not address the remaining factors. *United States v. Giron*, 15 F.4th 1343, 1347, 1350 (11th Cir. 2021) (affirming the denial of compassionate release

when the district court only addressed extraordinary and compelling circumstances, and not the § 3553(a) factors).

Under § 3553(a), a district court's sentence must be sufficient, but not greater than necessary, to achieve the goals of sentencing, which are as follows: reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, deterring future criminal conduct, protecting the public, and providing the defendant with any needed training or treatment. 18 U.S.C. § 3553(a)(2)(A)-(D). Section 3553(a) also requires district courts to consider the nature and circumstances of the offense, the defendant's history and characteristics, the kinds of sentences available, the Sentencing Guidelines, any pertinent policy statement, the need to avoid disparate sentences between similarly-situated defendants, and the need to provide restitution to any victims. *Id.* § 3553(a)(1), (a)(3)-(7).

When considering the § 3553(a) factors, the district court is not required to discuss each of them, nor explicitly state that it considered each of them. *United States v. Kuhlman*, 711 F.3d 1321, 1326 (11th Cir. 2013). Nonetheless, a district court “must explain its sentencing decisions adequately enough to allow for meaningful appellate review” of its denial of compassionate release, and it “must indicate that [it] considered the [applicable] factors.” *United States v. Cook*, 998 F.3d 1180, 1183–84 (11th Cir. 2021) (quotations omitted, alteration adopted). However, it “need not exhaustively analyze every factor in its order” but merely must provide sufficient analysis for meaningful appellate review. *Id.* at 1184.

Here, the district court did not abuse its discretion in denying Pinson's motion for compassionate release based on its § 3553(a) analysis. *Harris*, 989 F.3d at 911. As the record reflects, the district court's analysis was more than sufficient. The district court specified that it had "carefully reviewed" the parties' filings and the record and had considered Pinson's "violent offense conduct," his age and health, the seriousness of the offense, and whether compassionate release would undermine respect for the law, deter criminal conduct, and protect the public. *Kuhlman*, 711 F.3d at 1326. The court also addressed Pinson's behavioral record while incarcerated, both good and bad, listing his behavioral violations and acknowledging in a footnote his records reflecting that, in 2020, he began improving his education, completed several BOP programs, and worked in the kitchen. Then, the district court cited several § 3553(a) factors -- including Pinson's offense conduct and criminal and disciplinary history -- in determining that he could endanger the community. After considering the arguments and the § 3553(a) factors it deemed most relevant, including whether Pinson posed a danger to the community, the district court determined, within its discretion, that the negative factors outweighed the positive one. *Cook*, 998 F.3d at 1183–84.

In short, the district court addressed a range of § 3553(a) factors, and, overall, its analysis reflected that it considered the parties' arguments and addressed specific, relevant factors as they applied to his case. *Id.* at 1184. Because the district court did not abuse its discretion in weighing the § 3553(a) factors, and because that

determination is dispositive of any relief, we need not address Pinson's arguments concerning the district court's evaluation of his medical conditions. Accordingly, we affirm.

AFFIRMED.

**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 03, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-10721-DD
Case Style: USA v. Dario Pinson
District Court Docket No: 1:15-cr-20184-CMA-1

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

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United States District Court
Southern District of Florida
MIAMI DIVISION

UNITED STATES OF AMERICA**JUDGMENT IN A CRIMINAL CASE****v.****Case Number - 1:15-20184-CR-ALTONAGA****DARIO PINSON**

USM Number: 07599-104

Counsel For Defendant: Stewart G. Abrams, AFPD
 Counsel For The United States: Ignacio J. Vazquez, Jr., AUSA
 Court Reporter: Stephanie McCarn

The defendant pled guilty to Counts 1,2,3,4,5, and 6 of the Indictment.
 The defendant is adjudicated guilty of the following offenses:


<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 USC §1951(a)	Conspiracy to Commit Hobbs Act Robberies	February 24, 2015	1
18 USC §§1951(a) and 2	Hobbs Act Robbery	February 24, 2015	2
18 USC §§924(c)(1)(A)(ii) and 2	Using and Brandishing a Firearm During a Crime of Violence	February 24, 2015	3
18 USC §§1951(a) and 2	Hobbs Act Robbery	February 24, 2015	4
18 USC §§924(c)(1)(A)(ii) and 2	Using and Brandishing a Firearm During a Crime of Violence	February 24, 2015	5
18 USC §1951(a)	Conspiracy to Commit Hobbs Act Robberies	February 24, 2015	6

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:
 September 9, 2015


CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

September 9, 2015

DEFENDANT: DARIO PINSON
CASE NUMBER: 1:15-20184-CR-ALTONAGA

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **424 months**. This term consists of 40 months as to each of counts 1, 2, 4, and 6; 84 months as to count 3; and 300 months as to count 5. Counts 1, 2, 4 and 6 shall be served concurrently with each other. Counts 3 and 5 shall be served consecutively to each other and to the terms imposed as to counts 1, 2, 4, and 6.

The Court makes the following recommendations to the Bureau of Prisons:

- (1) Participation in the 500-hour drug treatment program;
- (2) Designation at Coleman FCI.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

DEFENDANT: DARIO PINSON
CASE NUMBER: 1:15-20184-CR-ALTONAGA

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **8 years**, consisting of 3 years as to counts 1, 2, 4 and 6, and 5 years as to counts 3 and 5. Counts 1, 2, 4, and 6 shall be served concurrently with each other, and counts 3 and 5 shall be served concurrently with each other, but consecutively to the terms of supervised release imposed as to counts 1, 2, 4 and 6.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DARIO PINSON
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Employment Requirement - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

DEFENDANT: DARIO PINSON
CASE NUMBER: 1:15-20184-CR-ALTONAGA

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment

\$600.00

Total Fine

0

Total Restitution

To be determined

Restitution with Imprisonment -

It is further ordered that the defendant shall pay restitution in the amount to be determined. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order.

Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

The determination of restitution is deferred until a hearing which the Court sets for **December 4, 2015 at 9:00 a.m.** An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such a determination.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DARIO PINSON
CASE NUMBER: 1:15-20184-CR-ALTONAGA

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of **\$600.00** due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Forfeiture of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement of forfeiture. **The United States shall submit a proposed order of forfeiture within three days of this proceeding.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.