

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-3196

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM D. KING,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois.
No. 07-CR-20055 — **Harold A. Baker**, *Judge*.

SUBMITTED JULY 7, 2022* — DECIDED JULY 11, 2022

Before EASTERBROOK, WOOD, and KIRSCH, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. When deciding whether “extraordinary and compelling reasons”, 18 U.S.C. §3582(c)(1)(A)(i), justify a prisoner’s compassionate release, judges must not rely on non-retroactive statutory changes or new judicial decisions. That’s the holding of *United States v.*

* The court granted the parties’ joint motion to waive oral argument.

Thacker, 4 F.4th 569 (7th Cir. 2021), and *United States v. Brock*, No. 22-1148 (7th Cir. July 7, 2022). There’s nothing “extraordinary” about new statutes or caselaw, or a contention that the sentencing judge erred in applying the Guidelines; these are the ordinary business of the legal system, and their consequences should be addressed by direct appeal or collateral review under 28 U.S.C. §2255. See *United States v. Martin*, 21 F.4th 944 (7th Cir. 2021).

William King, who was sentenced to 216 months’ imprisonment following his guilty plea to three heroin charges, contends that *Concepcion v. United States*, No. 20–1650 (U.S. June 27, 2022), requires us to abandon these decisions and hold that anything at all—factual or legal, personal or systemic, routine or unique—may be treated as “extraordinary and compelling”. That would be hard to reconcile with the language of the statute. Routine is the opposite of extraordinary.

The statute also says that applications must be assessed according to policy statements issued by the Sentencing Commission. 18 U.S.C. §3582(c)(1)(A) [hanging paragraph]. The Sentencing Commission has not updated those statements since the First Step Act of 2018, which allows prisoners to file their own requests without the support of the Bureau of Prisons. But we explained in *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020), that the older policy statements remain useful to guide district judges’ discretion. Those statements, found at U.S.S.G. §1B1.13 and Application Note 1, contemplate the release of prisoners afflicted by severe medical conditions or risks, experiencing a family emergency, or otherwise in unusual personal circumstances. They do not hint that the sort of legal developments routinely addressed by direct or collateral review qualify a person for compassionate release.

No. 21-3196

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Concepcion does not alter that understanding. It held that, when substantive changes made by the First Step Act (principally reductions in the authorized ranges for crack-cocaine crimes) entitle a prisoner to be resentenced, the judge may consider everything that would have been pertinent at an original sentencing. We may assume that the same would be true if a district judge were to vacate a sentence on application for compassionate release and hold a full resentencing proceeding. But decisions such as *Thacker* concern the threshold question: whether the prisoner is entitled to a reduction under §3582(c)(1)(A). *Concepcion* mentioned the compassionate-release statute only to support the proposition that Congress knows how to limit which considerations may be used to reduce a sentence. Slip op. 10–11 & 13 n.5. That observation undermines rather than helps King’s position.

The Supreme Court has encountered other threshold issues under the First Step Act without hinting that everything is up in the air. For example, *Terry v. United States*, 141 S. Ct. 1858 (2021), holds that persons convicted of violating 21 U.S.C. §841(b)(1)(C) are not eligible for resentencing. It did this as a matter of law, rather than adopting an “everyone’s eligible for any reason” approach of the kind that King favors.

That the First Step Act did multiple things—lowering sentences for some cocaine crimes, enabling prisoners to seek compassionate release on their own motions, and more—does not mean that every decision about any aspect of the First Step Act applies to every potential question under that statute. The First Step Act did not create or modify the “extraordinary and compelling reasons” threshold for eligibility; it just added prisoners to the list of persons who may file motions. We take the Supreme Court at its word that *Concepcion* is about the

matters that district judges may consider when they resentence defendants. So understood, *Concepcion* is irrelevant to the threshold question whether any given prisoner has established an “extraordinary and compelling” reason for release.

This brings us to King’s situation. He contends that *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020), furnishes an “extraordinary and compelling” reason for compassionate release. The district court disagreed and denied King’s application.

Ruth holds that an unusual feature in one Illinois statute defining the word “cocaine” means that a conviction under that state law does not count as a prior cocaine conviction for the purpose of certain federal recidivist enhancements. King could have made such an argument on appeal after his own sentencing but did not, nor did he file a collateral attack based on the way Illinois defines cocaine. His effort to use *Ruth* as a door opener under the compassionate-release statute is foreclosed by *Brock*, which rejects the sort of argument that King advances. Because *Brock* is consistent with *Concepcion*, the district court’s judgment is

AFFIRMED.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-CR-20055
)	
WILLIAM D. KING,)	
)	
Defendant.)	

ORDER

Now before the court is Defendant William D. King's Second Amended Motion for Compassionate Release. ECF 44. Defendant previously moved for compassionate release and the court denied the motion. The court granted Defendant leave to renew the motion once he had exhausted his administrative remedies. *See* ECF 42. Defendant now renews his motion to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A). For the reasons that follow, the court DENIES the motion.

I. BACKGROUND

a. Offensive Conduct, Sentence, and Prison

In 2007, Defendant pleaded guilty to three counts of distributing heroin in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). ECF 18.

Defendant had prior convictions that resulted in Defendant being classified as a career offender. ECF 16 ¶¶ 24, 26-37. Defendant's criminal history included a cocaine-based Illinois drug crime that was used as a predicate offense for an enhancement utilizing a notice under 21 U.S.C. § 851. ECF 16 ¶¶ 24, 41-45; ECF 10.

In September of 2007, the court sentenced Defendant to three concurrent sentences of 216 months' imprisonment. ECF 18. The court imposed those sentences to run consecutively to Defendant's sentence of twenty-four months in *United States v. King*, No. 97-CR-20016.¹ ECF 18. The court also imposed three six-year terms of supervised release, each to run concurrently. *Id.*

Defendant is currently serving his sentence in the Bureau of Prisons ("BOP") at the Federal Correctional Institution ("FCI") Florence, in Florence, Colorado.² Defendant's projected release date is October 6, 2024.³

b. Prior Compassionate Release Order

¹ *United States v. King*, No. 97-CR-20016, ECF 36 (revoking Defendant's supervised release).

² FEDERAL BUREAU OF PRISONS, Find an Inmate. <https://www.bop.gov/inmateloc/> (last visited Nov. 23, 2021).

³ *Id.*

Previously, Defendant moved for compassionate release based on three separate grounds: 1) The COVID-19 pandemic and the number of COVID-19 cases at Defendant's prison, 2) Defendant's health conditions, and 3) changes in the law that would affect Defendant's sentence guidelines if he was sentenced today. ECF 36.

At that time, the court found that Defendant did not comply with the compassionate release exhaustion requirement regarding the second and third grounds when Defendant's request to the warden of Defendant's prison only stated: "I would like to be consider for compassionate release due to the break out of COVID 19 in USP Marion. Thx[.]"⁴ ECF 42; see ECF 35. As a result, the court found that only Defendant's first concern, about COVID-19 cases at his prison, was properly before the court. ECF 42. The court denied Defendant's motion because the single COVID-19 case at Defendant's facility was not an extraordinary and compelling reason for his release. *Id.* The court then granted Defendant leave to renew his motion if he exhausted all issues. ECF 42.

c. Present Proceedings

Since then, Defendant submitted a second request for compassionate release to the warden of FCI Florence, on March 30, 2021. ECF 43-1. Defendant requested to be released, stating: "My sentence would be different if I got sentenced today due to a law change in Illinois." *Id.* He also checked a box listing a medical category as "Medical Terminal (estimated life expectancy of 18 months or less)[.]" *Id.* Defendant did not elaborate further. The warden denied Defendant's request for failing to provide adequate information. *Id.*

On May 4, 2021, Defendant filed his second *pro se* motion for compassionate release. ECF 43. On May 19, 2021, Defendant filed his Second Amended Motion for Compassionate Release. ECF 44.

Defendant requests compassionate release due to 1) the pandemic and the number of COVID-19 cases at Defendant's prison ("case-numbers issue"), 2) Defendant's health conditions ("health-conditions issue") which include his age, obesity and sleep apnea, and 3) changes in the law⁵ that would affect Defendant's sentencing guideline range if he was sentenced today ("sentencing-guidelines issue"). ECF 44; ECF 36.

If released, Defendant proposes to live with his mother in Macon County, Illinois. ECF 36; ECF 37. Defendant's mother lives in Decatur, Illinois, with her husband. The United States Probation Office, in memoranda (ECF 32; ECF 37) addressing Defendant's request for compassionate release, concludes that the mother's home appears to be an acceptable living situation for Defendant.

On May 25, 2021, the Government filed its Response (ECF 45) arguing that Defendant's sentencing-guidelines issue is the only exhausted issue before the court and that Defendant failed to exhaust his case-numbers issue and

⁴ Defendant was previously housed at USP Marion but was transferred to FCI Florence by the time he moved for compassionate release.

⁵ See *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) (holding that a prior Illinois cocaine conviction is not a predicate offence for the purposes of a section 851 enhancement).

health-conditions issue. Further, the Government argues that Defendant's sentencing-guidelines issue does not establish extraordinary and compelling reasons for compassionate release and that the § 3553(a) factors weigh against a sentence reduction. *Id.*

Defendant replied to the Government. ECF 48.

d. Case-Numbers

The court notes that as of November 23, 2021, the BOP reports that FCI Florence has no active inmate cases and seven active staff cases of COVID-19.⁶ Since the beginning of the pandemic, 601 inmates and 59 staff members became infected and recovered at the facility, while two inmates died.⁷ FCI Florence has a total population of 1,339 inmates.⁸

The court notes that the BOP has received and administered more than 255,000 doses of the COVID-19 vaccines and reports fully vaccinating 1,824 inmates at the Florence Federal Correctional Complex.⁹ The complex consists of FCI Florence, USP Florence-High, and USP Florence ADMAX, and has a combined total population of 2,390 inmates.¹⁰ The vaccination rate within the complex is approximately seventy-six percent.¹¹

The court additionally notes that according to the Illinois Department of Public Health, fifty-eight percent of the population of Illinois is fully vaccinated.¹² Furthermore in Macon County, Illinois, the county where Defendant proposes to be released, the vaccination rate is forty-six percent.¹³

II. ANALYSIS

As a general matter, the court is statutorily prohibited from modifying a term of imprisonment once it has been imposed. *See* 18 U.S.C. § 3582(c). However, several statutory exceptions exist, one of which allows the court to grant compassionate release if certain requirements are met. Under 18 U.S.C. § 3582(c)(1)(A), the court is permitted to consider a prisoner's motion for compassionate release. The statute provides that:

⁶ FEDERAL BUREAU OF PRISONS, COVID-19 Information, COVID-19 cases <https://www.bop.gov/coronavirus/> (last visited Nov. 23, 2021).

⁷ *Id.*

⁸ FEDERAL BUREAU OF PRISONS, Locations, FCI Florence, <https://www.bop.gov/locations/institutions/flf/> (last visited Nov. 23, 2021).

⁹ FEDERAL BUREAU OF PRISONS, COVID-19 Cases, <https://www.bop.gov/coronavirus/> (last visited Nov. 23, 2021).

¹⁰ The prisoner populations of FCI Florence, USP Florence-High, and USP Florence ADMAX are 1,339, 718, and 333 respectively, totaling 2,390. FEDERAL BUREAU OF PRISONS, Locations, FCI Florence, <https://www.bop.gov/locations/institutions/flf/>; USP Florence-High <https://www.bop.gov/locations/institutions/flp/>; USP Florence ADMAX <https://www.bop.gov/locations/institutions/flm/> (all sites last visited Nov. 23, 2021).

¹¹ 1,824 fully vaccinated persons divided by 2,390 total population equals 76.3%.

¹² Illinois Department of Public Health, COVID-19 Home, Vaccine Information, Vaccine Data (Nov. 23, 2021), <https://dph.illinois.gov/covid19/vaccine/vaccine-data.html?county=Illinois> (last visited Nov. 23, 2021).

¹³ *Id.*

The court . . . 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—

- (i) extraordinary and compelling reasons warrant such a reduction . . .
- (ii) . . .
and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . [.]

18 U.S.C. § 3582(c)(1)(A).

In deciding motions for compassionate release, provided that a prisoner has met the exhaustion requirement (if the requirement is raised), the court conducts a two-step inquiry to determine one, did the prisoner present an extraordinary and compelling reason for release, and two, is release appropriate under § 3553(a). *United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021); *United States v. Sanford*, 986 F.3d 779, 782 (7th Cir. 2021). “[T]he movant bears the burden of establishing ‘extraordinary and compelling reasons’ that warrant a sentence reduction.” *United States v. Newton*, 996 F.3d 485, 488 (7th Cir. 2021).

a. Exhaustion Requirement

The Government raises the compassionate release exhaustion requirement and asserts that Defendant has only exhausted his sentencing-guidelines issue. ECF 45.

The court determines that Defendant exhausted his case-numbers issue but has not exhausted his health-conditions issue.

The compassionate release exhaustion requirement “*must* be enforced when properly invoked.” *Sanford*, 986 F.3d at 782 (emphasis original). In addition to § 3582(c)(1)(A)’s requirement that an inmate “fully exhaust” the BOP’s failure to bring a motion on the prisoner’s behalf or thirty days after the warden received an inmate’s request, proper exhaustion requires an inmate “to present the same or similar ground for compassionate release in a request to the [BOP] as in a motion to the court.” *United States v. Williams*, 987 F.3d 700, 703 (7th Cir. 2021). This means that an inmate must communicate the same or similar ground for compassionate release to their warden before filing their motion for compassionate release on that ground. *Id.* at 703–04.

Contrary to Defendant’s arguments regarding the compassionate release exhaustion requirement and issue exhaustion, *Williams* distinguishes the compassionate release exhaustion requirement from exhaustion in Social Security proceedings. See *Williams*, 987 F.3d at 703 (citing the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a) in contrast to *Sims v. Apfel*, 530 U.S. 103 (2000) and stating that § 3582(c)(1)(A)’s “exhaustion requirement more closely resembles the exhaustion requirement in the [PLRA] . . . than the Social Security regulations addressed in *Sims*”). Defendant’s cited authority in *Carr v.*

Saul, 141 S. Ct. 1352 (2021), a Social Security case, does not alter the effect of *Williams*, which still controls in this case.

In *United States v. Williams*, the court held that the defendant failed to exhaust because his motion to the court for compassionate release was not on the same or similar grounds as his request to his prison's warden. 987 F.3d at 704. The inmate requested compassionate release from the warden of his facility based on the judge's involvement in the inmate's plea negotiations. The inmate subsequently moved for compassionate release based on the COVID-19 pandemic and Defendant's risk of exposure instead. *Id.* at 702. On appeal, the Court held that because the inmate "never asked the [BOP] to move the district court for his release based on the presence of COVID-19 at his prison and his risk of infection, his counsel could not properly file a motion for compassionate release on that basis." *Id.* at 704.

This court previously applied *Williams* and determined that Defendant only exhausted his case-numbers issue regarding the number of COVID-19 cases at his prison. This is because Defendant's first request to the warden for compassionate release only referenced the COVID-19 outbreak at his facility and did not mention Defendant's health conditions. ECF 42. Defendant's health conditions were a separate issue which was not exhausted. Consistent with its prior finding, this court finds Defendant's case-number issue to be exhausted.

The court presently applies *Williams* and finds that Defendant has failed to exhaust his health-conditions issue. Defendant's second application for compassionate release to the warden of FCI Florence also does not exhaust Defendant's health-conditions issue. While Defendant wrote to the warden about his sentencing-guidelines issue, Defendant did not present any of his specific individualized health concerns or state general concerns about his health. Although Defendant did check the "terminal illness" box, the court finds he did so in error. Defendant gave the warden no further information and does not presently argue that he has a terminal illness.

As a result, Defendant's health-conditions issue, which has not been exhausted, is not properly before the court. Therefore, the court determines that only Defendant's case-numbers issue and sentencing-guidelines issue are properly before the court.

b. Extraordinary and Compelling Reason Determination

Defendant's case-numbers issue and sentencing-guidelines issue are evaluated under the first step of the two-step inquiry in *Ugbah*. The court inquires whether Defendant's issues are extraordinary and compelling reasons for compassionate release. *Ugbah*, 4 F.4th at 597.

As stated in *United States v. Gunn*, "[t]he statute itself sets the standard: only 'extraordinary and compelling reasons' justify the release of a prisoner" 980 F.3d 1178, 1180 (7th Cir. 2020). In other words, if there are no extraordinary and compelling reasons, then the court does not have discretionary authority under § 3582(c)(1)(A) to reduce Defendant's sentence. The court notes that "the movant bears the burden of establishing

‘extraordinary and compelling reasons’ that warrant a sentence reduction.” *Newton*, 996 F.3d 485, 488 (7th Cir. 2021).

1. Case-Numbers Issue

Defendant asserts that the number of cases of COVID-19 at FCI Florence presents an extraordinary and compelling reason for compassionate release.

Courts in this district have noted that the presence of COVID-19 cases alone in a specific prison cannot justify granting a motion for compassionate release. *See United States v. Cabrera*, No. 10-20016, 2020 WL 2549941, at *4 (C.D. Ill. May 19, 2020); *United States v. Melgarejo*, No. 12-20050, 2020 WL 2395982, at *3 (C.D. Ill. May 12, 2020). Currently, there are seven staff cases of COVID-19 reported at FCI Florence. The court does not find the number of cases at FCI Florence to be an extraordinary or compelling reason for release under *Cabrera*.

Though Defendant disputes the accuracy of the BOP’s published infection case numbers and infection rates (ECF 44), the court finds the BOP’s published case numbers at FCI Florence to be credible in light of the BOP’s vaccination rates. The Florence Correctional Complex, which includes FCI Florence, has an overall inmate vaccination rate of approximately seventy-six percent. The CDC reports that “COVID-19 vaccines are effective and can reduce the risk of getting and spreading [COVID-19],” and are “highly effective at preventing hospitalization and death” even against the Delta variant of COVID-19.¹⁴

Even assuming, *arguendo*, that the BOP’s COVID-19 case numbers are underreported, the widespread availability of the vaccination and the vaccination rates may influence the court’s assessment of whether a defendant states an extraordinary and compelling reason for compassionate release. *Cf. United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021) (concluding that “for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an “extraordinary and compelling” reason for immediate release”).¹⁵ In contrast to the vaccination rate at the Florence Complex, according to the Illinois Department of Public Health, the vaccination rate in Macon County, Illinois, is forty-six percent, while fifty-eight percent of Illinois’ population is fully vaccinated.¹⁶ Comparing the vaccination rate at the Florence Correctional Complex and the vaccination rate in Macon County, Defendant is relatively safer at FCI Florence even if inmate cases at FCI Florence are greater than reported.

¹⁴ CENTERS FOR DISEASE CONTROL AND PREVENTION, Coronavirus Disease 2019 (COVID-19), Benefits of Getting a COVID-19 Vaccine (Nov. 18, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html> (last visited Nov. 23, 2021).

¹⁵ Defendant does not argue that he has been unable to receive or been denied a COVID-19 vaccine, nor does he state that he has been vaccinated. ECF 44.

¹⁶ Illinois Department of Public Health, COVID-19 Home, Vaccine Information, Vaccine Data (Nov. 23, 2021), <https://dph.illinois.gov/covid19/vaccine/vaccine-data.html?county=Illinois> (last visited Nov. 23, 2021).

In summation, the court finds the BOP's published COVID-19 case numbers at FCI Florence to be credible for the purposes of this motion, in light of the high vaccination rates there. The court determines that while the possibility of infection still exists at FCI Florence, due to the low number of staff cases and relatively high vaccination rate, Defendant fails his burden show that his reason is an extraordinary and compelling one. Therefore, the court does not find the number of COVID-19 cases at FCI Florence to be an extraordinary and compelling reason for compassionate release.

2. Sentencing-Guidelines Issue

Defendant additionally asserts that his sentencing-guidelines issue is an extraordinary and compelling reason for compassionate release.

The court disagrees and finds that it lacks the discretion to find extraordinary and compelling reasons regarding Defendant's sentencing-guidelines issue.

While the court may consider whether a reason is an extraordinary and compelling reason (*Gunn*, 980 F.3d at 1180), the Seventh Circuit Court held that the discretion to reduce a sentence under § 3582(c)(1)(A) upon finding "extraordinary and compelling reasons" is not unlimited. *United States v. Thacker*, 4 F.4th 569, 571 (7th Cir. 2021). The discretionary authority cannot go so far as to contradict Congress. *Id.* at 574.

Challenging the length and validity of a sentence is improper under § 3582(c)(1)(A). *United States v. Landfried*, No. 09-CR-40034, 2021 WL 5014783, at *2 (C.D. Ill. Oct. 28, 2021); This is because the compassionate release statute, if allowed to, may create "tension with the principal path and conditions Congress established for federal prisoners to challenge their sentences" through 28 U.S.C. § 2255. *Thacker*, 4 F.4th at 574; *United States v. Carraway*, 478 F.3d 845, 848 (7th Cir. 2007) (stating that motion's label does not matter; "any post-judgment motion in a criminal proceeding that fits the description of a motion to vacate, set aside, or correct a sentence set forth in the first paragraph of section 2255 should be treated as a section 2255 motion").

Furthermore, this court considers that if any sentencing issue were a stand-alone, 'extraordinary and compelling reason' for compassionate release, the compassionate release statute would become an exception that swallows up and contradict the general rule that a court is statutorily prohibited from modifying a term of imprisonment once it has been imposed. See 18 U.S.C. § 3582(c); *cf.*, *Thacker* at 574-575 (holding that a prospective change to the law affecting a sentence could not be an extraordinary and compelling reason to authorize a compassionate release "whether considered alone or in connection with other facts and circumstances" and stating that "the discretion conferred by § 3582(c)(1)(A) does not include authority to reduce a mandatory minimum sentence on the basis that the length of the sentence itself constitutes an extraordinary and compelling circumstance warranting a sentencing reduction").

In light of these considerations, the court determines that Defendant's sentencing-guidelines issue creates tension with the principal path for prisoners

to challenge their sentences and is unable to constitute an extraordinary and compelling reason for a sentence reduction under the compassionate release statute.

c. Conclusion

The court concludes that Defendant has not shown that his case-numbers issue and sentencing-guidelines issue are extraordinary and compelling reasons for compassionate release. As a result, the court does not proceed to the second step in the inquiry under *Ugbah* to evaluate whether release is appropriate under § 3553(a). Additionally, because there are no extraordinary and compelling reasons for compassionate release, the court does not have discretionary authority under § 3582(c)(1)(A) to reduce Defendant's sentence. See *Thacker* at 576.

In summation, the court, taking all the facts and circumstances properly before it, finds that Defendant has not established extraordinary and compelling reasons for compassionate release and, therefore, the court may not modify Defendant's term of imprisonment under the compassionate release statute at this time.

III. CONCLUSION

For the above reasons, Defendant's Second Amended Motion for Compassionate Release (ECF 44) and Defendant's second *pro se* Motion for Compassionate Release (ECF 43) are DENIED.

ENTERED: November 24, 2021

s/Harold A. Baker

JUDGE HAROLD A. BAKER
United States District Judge



FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF ILLINOIS

July 1, 2022

Mr. Christopher G. Conway, Clerk
United States Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

RE: United States of America v. William King
Central District of Illinois, Case No. 07-cr-20055
Seventh Circuit Court of Appeals, Case No. 21-3196

Dear Mr. Conway:

Under Federal Rule of Appellate Procedure 28(j), Mr. King brings to the Court's attention the June 27, 2022, decision by the Supreme Court in *Concepcion v. United States*, 597 U.S. ___, No. 20-1650 (2022). *Concepcion* confirmed Mr. King's precise argument in relation to the plain language of 18 U.S.C. § 3582(c)(1)(A): the only restrictions on relief are found in the statute itself.

Concepcion held that the only restrictions on what a district court can consider in deciding a First Step Act motion are found in § 404(c) of the Act. *Concepcion*, No. 20-1650, slip op. at 12. Congress is not shy about placing express limits where it deems them appropriate. *Id.* at 10. Indeed, it did so here. *See* 18 U.S.C. § 994(t). But, "[b]y its terms, § 404(c) does not prohibit district courts from considering **any** arguments in favor of, or against, sentence modification." *Concepcion*, slip op. at 12 (emphasis added). Similarly, § 3582(c)(1)(A), by its terms, does not prohibit district courts from considering Mr. King's argument in determining what is extraordinary and compelling. 18 U.S.C. § 3582(c)(1)(A).

Mr. King extensively argued that the plain language of § 3582(c)(1)(A) does not support the district court's decision. *See* Def. Br. at 14-16; *see also* Def. Reply at 15-22. After *Concepcion* Mr. King's position is unquestionably correct – the text of § 3582(c)(1)(A) "does not so much as hint" that district courts are prohibited from considering *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020) an extraordinary and compelling basis for relief. *Concepcion*, No. 20-1650, slip op. at 12.

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Appendix C

Concepcion calls into question *Thacker*, *Martin*, *Watts*, and every decision where this Court has held that certain arguments are prohibited from consideration under § 3582(c)(1)(A). Although all the Court's cases imposing restrictions not found in the text of § 3582(c)(1)(A) must now be vacated, that step is not necessary here because there is no precedential case directly on point. Instead, the Court must remand this case to the district court because § 3582(c)(1)(A) does not state that *Ruth* cannot be considered extraordinary and compelling. No other result is consistent with *Concepcion*.

Sincerely,

/s/ Thomas A. Drysdale
Thomas A. Drysdale
Assistant Federal Public Defender

CERTIFICATION

This letter complies with FED. R. APP. P. 28(j) and this Court's Practitioner's Handbook for Appeals, § XXIV, because the body of the letter contains 349 words.

/s/ Thomas A. Drysdale
Thomas A. Drysdale, AFPD

cc: AUSA Katherine V. Boyle (via ECF electronic copy)