APPENDIX A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-10483

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM MARION PATTERSON, III,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:16-cr-00097-TJC-JBT-1

Before ROSENBAUM, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

William Patterson III appeals the district court's denial of his motion for early release or a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i), better known as the "compassionate release" provision, which permits courts to reduce the sentences of defendants when warranted by "extraordinary and compelling reasons." After careful review, we affirm.

In June 2018, Patterson was sentenced to 84 months in prison after pleading guilty to child pornography offenses. The district court varied downward from the guideline range of 151 to 188 months. Then, in September 2020, Patterson requested early release or a sentence reduction, claiming that he suffered from a combination of medical conditions—including high blood pressure, high cholesterol, type 2 diabetes, asthma, and untreated nerve damage—that increased his risk of severe illness from COVID-19. He also contended that the Bureau of Prison's virus mitigation measures had increased the severity of his sentence, and that a reduction was warranted based on the 18 U.S.C. § 3553(a) sentencing factors, including his low risk of recidivism.

The district court denied Patterson's motion. Based on the government's concession, the court appears to have found that Patterson's type 2 diabetes qualified as an "extraordinary and compelling" ground for relief. Nevertheless, the court stated that

Patterson "does not appear to be at imminent risk of severe illness" and that his conditions were being managed well in prison. It further concluded that the § 3553(a) sentencing factors did not support a sentence reduction. The court noted that Patterson's offense conduct involved the receipt of 4,465 images and 687 videos of child sexual abuse, including the rape and abuse of prepubescent and toddler-aged children, that his original sentence was well below the guideline range, and that, at the time the court denied the motion in November 2020, Patterson had served just 35% of the total sentence. The court then denied Patterson's motion for reconsideration, and this appeal followed.

We review *de novo* a determination about a defendant's eligibility for a § 3582(c) sentence reduction. *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021). We review the denial of an eligible prisoner's § 3582(c)(1)(A) motion for an abuse of discretion. *Id.*; *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021).

Section 3582(c) grants the district courts limited authority to reduce the sentences of defendants for "extraordinary and compelling reasons." 18 U.S.C. § 3582(c)(1)(A)(i). Before granting a reduction under this provision, the court must find three things: (1) an extraordinary and compelling reason exists under U.S.S.G. § 1B1.13's policy statement; (2) the reduction is supported by the § 3553(a) factors; and (3) granting a reduction would not endanger others. *United States v. Giron*, 15 F.4th 1343, 1345–46 (11th Cir. 2021); *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021). "Because all three conditions . . . are necessary, the absence of even

one would foreclose a sentence reduction." *Tinker*, 14 F.4th at 1238. Thus, a court may exercise its discretion to deny a sentence reduction based on the § 3553(a) factors even if the defendant presents an extraordinary and compelling ground for relief. *Id.* at 1239.

The weight to give any particular § 3553(a) factor, whether great or slight, is committed to the district court's sound discretion. *Id.* at 1241. "Even so, [a] district court abuses its discretion when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors." *Id.* (quotation marks omitted).

An order granting or denying compassionate release under § 3582(c)(1)(A) generally must indicate that the district court has considered "all applicable § 3553(a) factors." *United States v. Cook*, 998 F.3d 1180, 1184–85 (11th Cir. 2021). But "a district court need not exhaustively analyze each § 3553(a) factor or articulate its findings in great detail," and an acknowledgement by the court that it has considered the § 3553(a) factors and the parties' arguments is ordinarily sufficient. *Tinker*, 14 F.4th at 1241 (quotation marks omitted). Nevertheless, the court "must provide enough analysis that meaningful appellate review of the factors' application can take place." *Id.* (quotation marks omitted).

Patterson contends that the district court abused its discretion by failing to adequately explain any of the § 3553(a) factors it relied on or "to link any particular fact with any of the § 3553(a)

factors at all." He asserts that the court's "boilerplate language" is insufficient to permit meaningful review.

Here, the district court did not abuse its discretion by concluding that a sentence reduction was not supported by the § 3553(a) factors. The court was not required to expressly discuss all of Patterson's mitigating evidence or every § 3553(a) factor. *See Tinker*, 14 F.4th at 1241. And it expressly referenced several § 3553(a) factors. It discussed the nature of the offense and the serious nature of Patterson's conduct. It considered Patterson's history and characteristics, including his medical conditions, their treatment, and effective measures to mitigate Covid-19 at Patterson's facility. It also referenced the original guideline range and the portion of the sentence he had served before seeking a sentence reduction. Considered as a whole, the court's explanation was far from "boilerplate" and is sufficient to show that it properly considered the § 3553(a) factors and had a reasoned basis for exercising its discretion to deny Patterson the extraordinary remedy of a sentence reduction. And we cannot say the court abused its discretion by concluding that a sentence reduction was not warranted on the facts of this case.

For these reasons, we affirm the denial of Patterson's § 3582(c)(1)(A) motion for a sentence reduction.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10483-JJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM MARION PATTERSON, III,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

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

BEFORE: ROSENBAUM, JILL PRYOR, and GRANT, 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 Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

APPENDIX C

UNITED STATES OF AMERICA v. WILLIAM MARION PATTERSON, III
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION
2020 U.S. Dist. LEXIS 212435
CASE NO: 3:16-cr-97-J-32JBT
November 13, 2020, Decided
November 13, 2020, Filed

Editorial Information: Subsequent History

Affirmed by United States v. Patterson, 2022 U.S. App. LEXIS 7298 (11th Cir. Fla., Mar. 21, 2022)

Counsel {2020 U.S. Dist. LEXIS 1}For USA, Plaintiff: David Rodney Brown, Mac D. Heavener, III, LEAD ATTORNEY, US Attorney's Office - FLM, Jacksonville, FL.

Judges: TIMOTHY J. CORRIGAN, United States District Judge.

Opinion

Opinion by: TIMOTHY J. CORRIGAN

Opinion

ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)

ORDER

Upon motion of the defendant the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,

IT IS ORDERED that the motion is:

DENIED after complete review of the motion on the merits.

FACTORS CONSIDERED

Defendant **William Marion Patterson** is a 51-year-old inmate incarcerated at Jesup FCI, serving an 84-month term of imprisonment for the receipt of child pornography. (Doc. 66, Judgment). According to the Bureau of Prisons (BOP), he is scheduled to be released from prison on May 31, 2024. Defendant seeks compassionate release because of the Covid-19 pandemic, because of his facility's allegedly deficient response to the pandemic, and because he claims to suffer from hypertension, diabetes, hyperlipidemia, asthma, and "untreated nerve damage." (Doc. 72, Motion).

A movant for compassionate release bears the{2020 U.S. Dist. LEXIS 2} burden of proving that a reduction in sentence is warranted. United States v. Heromin, No. 8:11-cr-550-T-33SPF, 2019 U.S. Dist. LEXIS 96520, 2019 WL 2411311, at *2 (M.D. Fla. Jun. 7, 2019); cf. United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013) (a movant under § 3582(c)(2) bears the burden of proving that a sentence reduction is appropriate). As the Third Circuit Court of Appeals has observed, the mere existence of Covid-19 cannot independently justify compassionate release, "especially considering BOP's statutory role, and its extensive and professional efforts to curtail the virus's spread." United

States v. Raia, 954 F.3d 594, 597 (3d Cir. 2020).

According to the Centers for Disease Control (CDC), one of Defendant's medical conditions - Type 2 diabetes - increases the risk of severe illness from Covid-19.1 Because Defendant is not expected to recover from this condition, the United States concedes that Type 2 diabetes qualifies as an extraordinary and compelling reason for compassionate release in the context of Covid-19. (Doc. 74, Response at 4-9). However, two of Defendant's other conditions - hypertension and asthma - are only classified by the CDC as conditions that might increase the risk of serious illness from Covid-19. Defendant's remaining conditions - hyperlipidemia and "untreated nerve damage" - are not recognized by the CDC as conditions that increase or might{2020 U.S. Dist. LEXIS 3} increase the risk of severe infection.2

Although Type 2 diabetes is an underlying condition that increases Defendant's risk of serious infection, Defendant does not appear to be at imminent risk of severe illness. Defendant is not elderly; his diabetes and hypertension are treated by Metformin and Lisinopril, respectively (see Doc. 57, Presentence Investigation Report [PSR] at ¶ 66); he is a Care Level 2 inmate, which means he is a stable outpatient whose conditions can be managed through routine appointments (Doc. 74 Response at 8); and Defendant's facility appears to have mitigated the impact of Covid-19. According to the BOP's latest data, Jesup FCI reports one inmate positive for coronavirus, 19 staff members positive, 238 inmates recovered, three staff members recovered, and only one inmate death (out of 1,346 total inmates).3

In any event, the sentencing factors under 18 U.S.C. § 3553(a) do not support a reduction in sentence. 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. Defendant was convicted of receiving child pornography. He collected 4,465 images and 687 videos of child sexual abuse, or the equivalent of 69,444 images. (Doc. 61 at ¶¶ 24, 39). The videos and images depicted the rape and abuse of prepubescent and toddler-aged children.{2020 U.S. Dist. LEXIS 4} (Id. at ¶¶ 15-24). Based on the offense conduct, Defendant received guidelines enhancements because the material involved prepubescent children, Defendant knowingly engaged in distribution, the material portrayed sadistic or masochistic conduct, Defendant used a computer to possess, transmit, receive, or distribute child pornography, and Defendant possessed the equivalent of 69,444 images. (Id. at ¶¶ 35-39).

Importantly, the sentencing guidelines recommended a range of 151 to 188 months' imprisonment. (Id. at ¶ 77). The Court varied well below the guidelines range when it sentenced Defendant to a term of 84 months in prison. Defendant, who was remanded into custody following sentencing on June 19, 2018 (Doc. 65, Minute Entry), has only served about 29 months of his prison term (around 35% of the total sentence, or 41% accounting for good-time credits).4 According to the BOP, Defendant has three and a half years remaining before he is released. In view of all the § 3553(a) factors, reducing Defendant's sentence is unwarranted at this time.

Accordingly, Defendant's Motion for Compassionate Release (Doc. 72) is **DENIED**.5 Defendant's request for the appointment of counsel is likewise **DENIED**. Defendant{2020 U.S. Dist. LEXIS 5} has proven capable of presenting his cause, but his Motion lacks merit.

DONE AND ORDERED at Jacksonville, Florida this 13th day of November, 2020.

/s/ Timothy J. Corrigan

TIMOTHY J. CORRIGAN

United States District Judge

Footnotes

1

https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html .

2

The Court recognizes that there is a split of authority over whether district courts are bound by the list of extraordinary and compelling reasons contained in U.S.S.G. § 1B1.13, cmt. 1(A)-(C). See United States v. Brooker, 976 F.3d 228 (2d Cir. 2020). The Court's decision does not depend on the resolution of that issue because the United States concedes that Type 2 diabetes qualifies as an extraordinary and compelling circumstance.

3

https://www.bop.gov/coronavirus/ . Last accessed on November 9, 2020.

4

Defendant briefly spent four days in pretrial custody, from July 15, 2016 to July 19, 2016, before being released on bond.

5

To the extent Defendant requests that the Court order home confinement, the Court cannot grant that request because the Attorney General has exclusive jurisdiction to decide which prisoners to place in the home confinement program. See United States v. Alvarez, No. 19-cr-20343-BLOOM, 2020 U.S. Dist. LEXIS 90444, 2020 WL 2572519, at *2 (S.D. Fla. May 21, 2020); United States v. Calderon, 801 F. App'x 730, 731-32 (11th Cir. 2020) (a district court lacks jurisdiction to grant a request for home confinement under the Second Chance Act).