

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-1123

United States of America

Plaintiff - Appellee

v.

Gary Eye

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:05-cr-00344-SRB-1)

JUDGMENT

Before BENTON, ERICKSON, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

January 27, 2022

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

/s/ Michael E. Gans

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Appeal from U.S. District Court for the Western District of Missouri - Kansas City
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MANDATE

In accordance with the judgment of 01/27/2022, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 08, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit

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

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) Case No. 5-CR-00344-01-SRB
)
)
GARY EYE,)
)
Defendant.)

ORDER

Before the Court is Defendant Gary Eye's *pro se* Motion for Compassionate Release.

(Doc. #587.) For the reasons stated below, the motion is DENIED.

On May 8, 2008, Defendant Eye was found guilty at trial to the following Counts: (1) interfering with federally-protected activities in violation of 18 U.S.C. § 245(b)(2)(B); (2) using a firearm in relation to a crime of violence as set forth in Count One in violation of 18 U.S.C. § 924(c)(1)(A)(iii); (3) interfering with federally-protected activities with a death resulting in violation of 18 U.S.C. § 245(b)(2)(B); (4) using a firearm in relation to a crime of violence causing murder as set forth in Count Three in violation of 18 U.S.C. § 924(c)(1)(A)(iii); (5) tampering with a witness in violation of 18 U.S.C. § 1512(a)(2)(C) and (a)(3)(A); (6) using a firearm in relation to a crime of violence as set forth in Count Five in violation of 18 U.S.C. § 924(c)(1)(A)(iii) and (j)(1); (7) destroying records in a federal investigation in violation of 18 U.S.C. § 1519; (8) using fire to commit a felony as set forth in Count Seven in violation of 18 U.S.C. § 844(h)(1). (Docs. #450-464.) The Court subsequently sentenced Defendant Eye to 120 months of imprisonment on Count One, 120 months of imprisonment on Count Two, life imprisonment on Count Three, life imprisonment on Count Four, life imprisonment on Count

Five, life imprisonment on Count Six, 240 months of imprisonment on Count Seven, and 120 months of imprisonment on Count Eight, running consecutively such that Defendant shall serve two terms of life and an additional 120 months of imprisonment. (Doc. #506.)

Defendant Eye appealed his sentence and the Eighth Circuit unanimously affirmed.

United States v. Sandstrom, 594 F.3d 634 (8th Cir. 2010). Defendant Eye filed a 28 U.S.C. § 2255 motion, which was denied by the Court. *Eye v. United States*, No. 11-01130-CV-W-ODS (W.D. Mo. May 22, 2013). The Eighth Circuit denied a certificate of appealability. *Eye v. United States*, No. 12-192936 (8th Cir. 2013). The Eighth Circuit has subsequently denied three successive § 2255 petitions. Defendant Eye is currently incarcerated at the U.S. Penitentiary in Inez, Kentucky. On October 25, 2021, Defendant Eye filed the instant *pro se* motion, arguing that his sentence is now illegal under the current mandatory guidelines regime that was altered by the First Step Act, codified in 18 U.S.C. § 3582, after Defendant Eye was sentenced. The Government opposes the motion.

Generally, a court “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). However, a defendant with extraordinary and compelling reasons may be entitled to compassionate release under 18 U.S.C. § 3582(c). The First Step Act of 2018 modified compassionate release under 18 U.S.C. § 3582 to state:

[T]he 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 – (i) extraordinary and compelling reasons warrant such a reduction; or (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the

offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g); and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

§ 3582(c)(1)(A). The movant “bears the burden of proving both that he has satisfied the procedural prerequisites for judicial review and extraordinary and compelling reasons exist to support the motion [for sentence reduction].” *United States v. Dickerson*, No. 10-CR-17, 2020 WL 2841523, at *1 (E.D. Mo. June 1, 2020) (internal quotation marks omitted).

Upon review of the record, even assuming Defendant Eye has properly exhausted his administrative remedies, the Court finds that Defendant Eye has failed to show extraordinary and compelling reasons that warrant compassionate release. Defendant Eye claims that the First Step Act’s amendments to § 924(c), which changes the way § 924(c) convictions stack, apply retroactively to Defendant Eye’s sentences and render them illegal. “[A] district court has broad discretion in determining whether proffered circumstances warrant a reduction in sentence.”

United States v. Loggins, 966 F.3d 891, 893 (8th Cir. 2020). It is “reasonable exercise of that discretion” to find that “a non-retroactive change in law [does] not support a finding of extraordinary or compelling reasons for release.” *Id.* Here, the changes the First Step Act made to § 924(c) apply retroactively only if “a sentence for the offense has not been imposed as of [December 21, 2018].” Pub. L. No. 115-391, tit. IV § 403(b), 132 Stat. 5222 (2018) (codified at 18 U.S.C. § 924 (2018)). As Defendant Eye was sentenced in 2008, which is before December 21, 2018, the First Step Act does not retroactively apply to his sentence. Given the First Step Act’s amendments do not retroactively apply to Defendant Eye’s case, the Court finds no extraordinary or compelling reasons justifying a modification of his sentence. *Loggins*, 966 F.3d at 893.

The Court further finds that Defendant Robinson has not shown that the § 3553(a) factors support his release. Defendant Eye is currently serving life sentences for a violent crime with a total offense level of 48 and has not presented facts to indicate that he is not a danger to the community under 18 U.S.C. § 3142(g). Given the potential risk of danger his release would pose to the community and the nature and circumstances of the offense, the § 3553(a) factors weigh in favor of denying Defendant Eye's request for a reduction of his sentence. Because Defendant Eye has not satisfied his burden under 18 U.S.C. § 3582(c), his motion for compassionate release is denied.

Accordingly, it is hereby **ORDERED** that Defendant Eye's *pro se* Motion for Compassionate Release (Doc. #587) is DENIED.

IT IS SO ORDERED.

Dated: November 29, 2021

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 05-CR-00344-SRB-1
)
GARY EYE,)
)
Defendant.)

ORDER

Before the Court is Defendant Gary Eye's ("Defendant") *pro se* motion for documents. (Doc. #606.) Defendant requests a copy of the Court's previous denial of his compassionate release. Defendant also requests a copy of the "mandate issue," which the Court interprets as the Eighth Circuit's order denying Defendant's appeal of the denial of his compassionate release. (Doc. #606, p. 1.)

Upon review, the motion is GRANTED. The Clerk of Court is directed to mail Defendant at his last known address a copy of the Court's Order denying his motion for compassionate release (Doc. #590), the Eighth Circuit's judgment affirming the denial of Defendant's compassionate release (Doc. #596), and the Eighth Circuit's mandate (Doc. #598).

Accordingly, Defendant's motion for documents (Doc. #606) is GRANTED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: August 3, 2022