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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9/20/2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(c)

18 U.S.C. § 1111

18 U.S.C. § 3142(g)

18 U.S.C. § 3553(a)

18 U.S.C. § 3582(c)(1)(A)(i)

U.S.S.G. § 1B1.13

U.S.S.G. § 2A1.1

STATEMENT OF THE CASE

Petitioner was arrested in the year 2007 in the Southern District of Florida, for Title 8 U.S.C. § 1324(a)(1)(A)(i), 1324(a)(1)(A)(V)(I), 1324(a)(1)(A)(V)(II), and 1324(a)(1)(B)(iii).

Petitioner is presently incarcerated based on crimes that he is actually innocent of, according to Fifth and Sixth Amendment violations of his constitutional rights, and the fact that he suffers from medical lung problems and tuberculosis, for which he tested positive for in the past. Also, U.S. Senate Bill 756 of the First Step Act states if Petitioner were sentenced today, he would not receive the same sentence he has today.

REASONS FOR GRANTING THE PETITION

Extraordinary and compelling reasons exist in this case to allow the Petitioner relief, based on the following reasons:

Petitioner is over 55 years of age and suffers from lung problems and tuberculosis.

Petitioner's § 924(c) counts for Counts 28 and 29, for which he was stacked on both counts, one for 7 years and the other for 25 years, would be the same today based on the First Step Act of U.S. Senate Bill 756.

The First Step Act amended Title 18 U.S.C. § 924(c) in Petitioner's case in point to reduce his mandatory consecutive sentence regarding Counts 28 and 29, in which Petitioner was given 7 years for Count 28 and 25 years for Count 29. The First Step Act now states that such stacking is amended to reduce such mandatory consecutive sentences for firearm convictions, putting an end to practice known as § 924(c) "stacking." According to the U.S. Sentencing Commission, that practice discriminated against Black men. The U.S. Court of Appeals for the 11th and 10th circuits and various other circuits have concluded that the language in § 3582(c)(1)(A)(i), such as in Petitioner's case in point, does permit district courts to consider the First Step Act changes when considering sentence reductions. See United States v. Cantu, No. 1:05-CR-4581-1, 2019 WL 2498923, at *3 (S.D. Tex. June 17, 2019).

Congress did not limit "extraordinary and compelling reasons" to a specific enumerated set of circumstances. Congress did not define what could constitute an "extraordinary and compelling reason" warranting a reduction of a sentence under § 3582(c). Indeed, the legislative history confirms that it intended to grant federal sentencing courts broad discretion to make those determinations on a case-by-case basis, and to reduce fundamentally unfair sentences where such reasons exist, such as in Petitioner's case in point.

Extraordinary and compelling circumstances warrant a reduction in Petitioner's sentence, because the practice of "stacking" enhanced § 924(c) charges in a first offense was condemned for years, by the Sentencing Commission, the judicial conference of the United States, and others. Finally, in December of 2018, this

practice was eliminated entirely. The government can no longer invoke the dramatically enhanced mandatory consecutive sentences prescribed for "second or successive" § 924(c) convictions in the same case in which the first such conviction is obtained. From now on, those staggering sentences will be permissible only after a truly "subsequent" conviction. Notably, the fact that this amendment was titled a "clarification of § 924(c)" makes clear that § 924(c) was never intended by Congress to result in sentences like the one at issue here.

In addition, a motion for relief under 18 U.S.C. § 3582(c)(1)(A)(i) requires a court to consider other factors that may warrant relief, including the history and characteristics of the defendant, the defendant's rehabilitation, the sentencing disparities with his co-defendants, and other factors bearing on the Petitioner. See U.S.S.G. § 1B1.13 (requiring consideration of *inter alia*, the factors set forth in 18 U.S.C. § 3553(a); see also Cantu-Rivera, 2019 WL 2578272, at *2 (The court recognized rehabilitation and the "unwarranted [sentencing] disparities among defendants" in determining resentencing was appropriate). As set forth below, these factors further establish the sort of "extraordinary and compelling reasons" that warrant a reduction of Petitioner's multi life term sentence.

The relevant factors weigh strongly in favor of a sentence reduction. In deciding Petitioner's request for a sentence reduction, the court must determine whether, after considering the factors set forth in 18 U.S.C. § 3553(), a lower sentence would be appropriate, in addition to making a finding that Petitioner is no longer a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g). U.S.S.G. § 1B1.13(2).

The relevant § 3553(a) factors weigh strongly in favor of relief. All of the § 3553(a) factors weigh strongly in favor of relief in Petitioner's case. As an initial matter, there have been several changes in sentencing policies and the law that would lead to a much lower sentence, if Petitioner were before a court today. Since his sentencing, the Supreme Court has held both that the guidelines are advisory, and that sentencing judges may consider the impact of harsh, consecutive, mandatory minimums on a defendant's ultimate term of incarceration when determining the appropriate sentence on the § 924(c) counts, such as in Petitioner's counts, including Counts 28, 29, and the other counts concerning § 924(c) as well. See Deal v. United States, 137 S. Ct. 1170 (2017). A court today can impose a one day sentence on those other counts in light of the severity of the sentences required by

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Smith".

Date: 12/7/2022

APPENDIX A

U.S. DISTRICT COURT DENIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 07-80036-CR-DIMITROULEAS

Plaintiff,

vs.

RICKEY THOMPSON,

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant Thompson's *pro se* February 19, 2022 *pro se* Motion for Compassionate Release/Reduction of Sentence¹ [DE-248]. The Court has reviewed said motion, the Court file and Pre-Sentence Investigation Report (PSIR) and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the motion [DE-248] is Denied. The Court previously denied motions to vacate on June 6, 2013² [DE-22 in 11-21499CV] and on January 26, 2018. [DE-234]. The Eleventh Circuit affirmed on May 17, 2019. [DE-38 in 16-81071 CV]. *Thompson v. U.S.*, 924 F. 3d 1153 (11th Cir. 2019). On May 18, 2020, the U.S. Supreme Court denied certiorari. [DE-245] *Thompson v. U.S.*, 140 S. Ct. 2769 (2020).

¹ The Warden denied his request on March 1, 2022 [DE-248, p. 13], which is after Thompson signed the motion. So, the mailbox rule date is not reliable. Thompson certifies that he filed this motion one day after he filed his application with the Warden [DE-248, p. 14] but before the Warden's decision on March 1, 2022.

²² On April 9, 2015, the Eleventh Circuit affirmed [DE-33 in 11-21499CV]. *Thompson v. U.S.*, 608 Fed Appx 726 (11th Cir. 2015). The U.S. Supreme Court denied certiorari on October 5, 2015. [DE-35 in 11-21499cv]. *Thompson v. U.S.*, 136 S. Ct. 279 (2015).

Pursuant to 18 U.S.C. § 3582(c)(1)(A), the Court has considered the applicable factors in 18 U.S.C. § 3553(a) and the applicable Sentencing Guidelines Policy Statements. Defendant has alleged that the Warden has either denied his request or not acted on it for thirty (30) days.

Assuming the Court has jurisdiction, the Court does not find that extraordinary and compelling reasons have been shown to warrant the Court's granting the requested relief. The Defendant is 55 years old and has served about fifteen (15) years of a life sentence.

Thompson states that he suffers from lung problems and tuberculosis³. Nevertheless, the court does not find that the perceived seriousness of his medical conditions rises to the level of an extraordinary and compelling reason. The imposed sentence was fair and just and needed to promote respect for the law and act as a deterrent for this defendant. The Court exercises discretion to deny relief. Additionally, he again complains about the legality of his sentence on two counts: Counts 28 and 29; however, the life sentences on three counts of Alien Smuggling Resulting in Death would be unaffected by this perceived complaint. Finally, his complaint, that stacked mandatory minimum sentences are no longer proper under the First Step Act, is not cognizable under a § 3582 motion⁴. *U.S. v. Wooten*, 2022 WL 586625 *2 (11th Cir. 2022); *U.S. v. Smith*, 967 F. 3d 1196, 1210-13 (11th Cir. 2020).

The Court is not prepared to say that because of COVID 19 that everyone with perceived or actual medical problems should be released.

The First Step Act did not transform this court into a *de facto* parole board *but see, U.S. v. Brooker*, 976 F. 3d 228 (2d Cir. 2020). The decision to place someone on home confinement is

³ In the Warden's response, it was contended that the medical records only reflected that he suffered from shoulder pain, blepharitis, vision problems and low back pain. [DE-248, p. 13].

⁴ Since Thompson has filed two prior motions to vacate, he needs permission again from the appellate court to file a successive motion under 28 U.S.C. § 2255. However, it is unlikely that such a motion would be successful. *U.S. v. Smith*, 859 Fed Appx 359 (11th Cir. 2021).

normally one properly made by the Bureau of Prisons. *See U.S. v. Murchinson*, 865 F. 3d 23, 28 (1st Cir. 2017). The Court finds no constitutional violation. The requested relief would not promote respect for the law or act as a deterrent. Given Thompson's egregious criminal episode and his prior drug importation conviction [para 100 of PSIR], the imposed sentence was necessary to protect the public from further criminal activity. The Court has considered the 18 U.S.C. § 3142(g) factors. *See, U.S. v. Groover*, 844 Fed. Appx. 185 (11th Cir. 2021). The Court has also considered the piano, religion, and guitar programs that Thompson has completed.

The Court does not find that perceived deteriorating COVID 19 conditions at some prisons warrant any relief. *U.S. v. Raia*, 954 F. 3d 594, 596-97 (3d Cir. 2020).

This Court has, over the BOP's and government's objections, granted compassionate releases when there are truly extraordinary and compelling reasons shown and the 3553(a) factors supported release; this is not such a case. The fact that some judges have granted a lenient reduction to some defendants does not equate to other defendants getting a windfall.

The Clerk shall mail a copy of this order to Mr. Thompson.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 9th day of March, 2022.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record

Rickey Thompson, #53835-004
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APPENDIX B

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT - DENIAL

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-10965

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICKEY THOMPSON,
a.k.a. Sea Dog,
a.k.a. Trick Daddy,
a.k.a. Tricks,
a.k.a. Daddy,
a.k.a. Renewal,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:07-cr-80036-WPD-1

Before JORDAN, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Rickey Samuel Thompson, a Bahamian citizen and federal prisoner proceeding pro se, appeals the denial of his post-judgment motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). The government, in turn, moves for summary affirmance and to stay the briefing schedule. For the following reasons, we summarily affirm the district court and deny as moot the government's motion to stay the briefing schedule.

I.

In 2007, a grand jury charged Thompson with thirty felony counts. Among them included conspiracy to smuggle aliens, alien smuggling placing in jeopardy the lives of aliens, alien smuggling resulting in death, second degree murder, conspiracy to import controlled substances, importing controlled substances, brandishing a firearm in a crime of violence, and illegal reentry. Two of the thirty counts charged him with violating 18 U.S.C. § 924(c).

22-10965

Opinion of the Court

3

A jury found Thompson guilty of all charges after a 14-day trial. Evidence showed that, while helping to smuggle aliens and narcotics into the United States from the Bahamas on various vessels he owned, he dropped people off in rough, deep waters off the coast of Florida, sometimes at gunpoint, and three people died from drowning as a result.

The district court sentenced Thompson to life in prison. This included two custodial terms relating to his § 924(c) convictions that were set to run consecutive to each other. On direct appeal, we affirmed his convictions and sentences. *United States v. Thompson*, 363 F. App'x 737, 737 (11th Cir. 2010).

Thompson now moves, pro se, for compassionate release. He argues that he has two extraordinary and compelling reasons warranting relief: (i) the First Step Act¹ removed the “stacked” penalties for his § 924(c) offenses; and (ii) his lung issues and tuberculosis put him at increased risk of developing severe disease if he contracted COVID-19. He also argues that the 18 U.S.C. § 3553(a) factors weigh in favor of his release and that he would not be a danger to the community.

The district court denied his motion. The court found that his “stacked” mandatory minimum sentences argument was not cognizable under an 18 U.S.C. § 3582 motion. The court also found that his medical conditions do not rise to the level of an

¹ Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018).

extraordinary and compelling reason. For the sentencing factors and danger to the public, it found that his total sentence was both fair and necessary to promote respect for the law, and his criminal conduct and history did not weigh in favor of release.

Thompson appeals, still pro se, and reiterates the arguments he made below. Rather than responding, the government moves for summary affirmance, arguing that neither of Thompson's reasons qualify as extraordinary and compelling, that the § 3553(a) factors do not weigh in favor of release, and that he still is a danger to the community.

II.

We review a district court's denial of a prisoner's § 3582(c)(1) motion for abuse of discretion. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021). A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings that are clearly erroneous. *United States v. Barrington*, 648 F.3d 1178, 1194 (11th Cir. 2011).

Summary disposition is appropriate where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

III.

Under the compassionate-release statute and its policy statement, a district court may reduce a movant's term of imprisonment if: (1) there are "extraordinary and compelling reasons" for the defendant's early release, as defined in U.S.S.G. § 1B1.13; (2) the defendant's release would not endanger any person or the community; and (3) the factors listed in 18 U.S.C. § 3553(a) favor doing so. *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021). Because each condition is necessary, the failure to satisfy one condition warrants denial of a motion for a sentence reduction. *See id.* at 1237–38.

The district court did not abuse its discretion when it found that Thompson did not present extraordinary and compelling reasons for relief. Our decision in *Bryant* forecloses his argument that his "stacked" § 924(c) sentences constituted an extraordinary and compelling reason warranting relief. *Bryant* holds that relief under § 3582(c)(1)(A) is limited to the extraordinary and compelling reasons identified in the § 1B1.13 policy statement. *United States v. Bryant*, 996 F.3d 1243, 1248 (11th Cir. 2021). As Thompson's argument does not match any of the § 1B1.13 policy statement reasons, relief is unavailable. *See* U.S. Sentencing Guidelines § 1B1.13 cmt. n.1 (Nov. 2021). *Bryant* is our prior precedent, and because it has not been overruled or abrogated by the Supreme Court or us sitting en banc, we are bound to apply it. *United States v. Steele*, 147 F.3d 1316, 1317–18 (11th Cir. 1998) (en banc).

His claimed medical condition fares no better. Thompson bears the burden to show his medical circumstances constituted an extraordinary and compelling reason warranting relief. *See* 18 U.S.C. § 3582(c)(1)(A)(i); *United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021); *cf. United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014) (discussing the defendant's burden under § 3582(c)(2)). But he did not attach medical documents showing his condition; nor did he show why he was unable to care for his conditions in a prison environment. U.S.S.G. § 1B1.13 n.1(A). The only evidence Thompson presented of his medical condition actually undermines his claim of "lung problems and tuberculosis" by showing that he only suffers from "shoulder, blepharitis, low vision, and low back pain." Thompson thus does not establish an extraordinary and compelling reason warranting relief. As this is a necessary condition, we could grant the government's motion on this ground alone. *Tinker*, 14 F.4th at 1237.

We add that the district court did not abuse its discretion when it found that the § 3553(a) factors did not merit relief. We have recognized that (where consideration of the factors is necessary) an "acknowledgment by the district court that it considered the § 3553(a) factors and the parties' arguments is sufficient." *Id.* at 1241. Once considered, the "weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court." *Id.* (quotation omitted). The district court stated that it considered the applicable factors, including the piano, religion, and guitar programs Thompson participated in during his

imprisonment. The court found Thompson's evidence insufficient, and concluded that the requested relief would not promote respect for the rule of law or act as a deterrent. The court also explained that, given Thompson's egregious criminal episode and prior convictions, the imposed sentence was necessary to protect the public from further criminal activity. In case there were any doubt of the soundness of the district court's decision, we noted that in his briefing to this court, Thompson denies responsibility for his murders and blames his victims for their deaths. We easily conclude that the district court acted within its discretion in finding that the § 3553(a) factors do not merit relief.

Finally, the district court did not abuse its discretion when it found that Thompson was a danger to the community. It considered the offense conduct and his past criminal history and it expressly stated that it considered the § 3142(g) factors. *See* 18 U.S.C. § 3142(g)(1), (3)(A).

Accordingly, because the government's position is clearly correct as a matter of law, we GRANT the government's motion for summary affirmance. *Groendyke Transp., Inc.*, 406 F.2d at 1162. The government's motion to stay the briefing schedule is DENIED as moot.

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