

UNPUBLISHED

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

No. 22-6615

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARQUITA LEIGH MEREDITH, a/k/a Baby Girl,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Rebecca Beach Smith, Senior District Judge. (4:19-cr-00061-RBS-RJK-1)

Submitted: October 24, 2022

Decided: November 16, 2022

Before NIEMEYER, DIAZ, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Marquita Leigh Meredith, Appellant Pro Se. Brian James Samuels, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In March 2021, the district court denied Marquita Leigh Meredith's motion for compassionate release for failure to exhaust her administrative remedies. In light of our decision in *United States v. Muhammad*, 16 F.4th 126, 129-30 (4th Cir. 2021), we vacated that judgment and remanded for further proceedings, *see United States v. Meredith*, No. 21-6763, 2021 WL 5851066 (4th Cir. Dec. 9, 2021). On remand, the court ruled that Meredith failed to satisfy the "extraordinary and compelling reasons" standard under 18 U.S.C. § 3582(c)(1)(A)(i) and further found, in the alternative, that the 18 U.S.C. § 3553(a) factors did not weigh in favor of a sentence reduction. The court thus denied Meredith's motion for compassionate release. We review a district court's denial of a motion for compassionate release for abuse of discretion. *United States v. Kibble*, 992 F.3d 326, 329 (4th Cir.), *cert. denied*, 142 S. Ct. 383 (2021).

Upon review, we discern no abuse of discretion in the district court's alternate ruling that the totality of the circumstances in this case, evaluated in light of the pertinent 18 U.S.C. § 3553(a) sentencing factors, did not warrant the grant of compassionate release or a sentence reduction. *See United States v. High*, 997 F.3d 181, 187 (4th Cir. 2021). Accordingly, we affirm the district court's order. *United States v. Meredith*, No. 4:19-cr-00061-RBS-RJK-1 (E.D. Va. May 13, 2022). We grant Meredith's motion to supplement her informal brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA,

v.

CRIMINAL NO. 4:19cr61

MARQUITA LEIGH MEREDITH,

Defendant.

MEMORANDUM ORDER

This matter comes before the court on Defendant's pro se Motion for Compassionate Release ("Motion"). ECF Nos. 66, 89. For the reasons explained below, Defendant's Motion is **DENIED**.

I. Background

On June 10, 2019, Defendant was named in a nine (9) count criminal Indictment. ECF No. 1. On August 23, 2019, Defendant pleaded guilty to Counts One and Two of the Indictment. ECF No. 16. Count One charged Defendant with Possession with Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841(a)(1) and Count Two charged Defendant with Possession of a Firearm in Furtherance of Drug Trafficking, in violation of 18 U.S.C. § 924(c)(1)(A). On March 5, 2020, the court sentenced Defendant to ninety (90) months incarceration, specifically thirty (30) months on Count One and sixty (60) months consecutive on Count Two. ECF No. 51.

Defendant filed her Motion for Compassionate Release on January 25, 2021. ECF No. 66. On March 10, 2021, the court entered a Dismissal Order denying Defendant's Motion for Compassionate

Release, citing Defendant's failure to exhaust her administrative remedies as required by 18 U.S.C. § 3582(c)(1)(A). ECF No. 71 at 3-4. Defendant filed her First Motion for Reconsideration on March 22, 2021, ECF No. 72, which the court denied in an Order entered on March 29, 2021, ECF No. 75. Defendant filed her Second Motion for Reconsideration on April 19, 2021, ECF No. 77, which the court denied in an Order entered on April 23, 2021, ECF No. 78. On May 3, 2021, Defendant filed a Notice of Appeal as to the court's April 23, 2021, Order denying her Second Motion for Reconsideration. ECF No. 79.

On October 25, 2021, the United States Court of Appeals for the Fourth Circuit placed the appeal in abeyance pending a decision by the Fourth Circuit in United States v. Muhammad, No. 20-7520. ECF No. 82. In an Opinion dated December 9, 2021, ECF No. 84, the Fourth Circuit vacated the court's Dismissal Order denying Defendant's Motion for Compassionate Release, noting that it conflicted with an intervening published Fourth Circuit opinion. United States v. Meredith, No. 21-6763, 2021 WL 5851066, at *1 (4th Cir. Dec. 9, 2021) (discussing United States v. Muhammad, 16 F.4th 126 (4th Cir. 2021)). In its Judgment, the Fourth Circuit vacated the district court's order entered March 10, 2021, and remanded the case to the district court for further proceedings. ECF No. 85. On January 3, 2022, the Fourth Circuit issued its Mandate. ECF No. 86.

On January 28, 2022, Defendant filed a Motion for Supplemental Attachment for her Motion for Compassionate Release. ECF No. 89. On February 2, 2022, the court granted Defendant's Motion for Supplemental Attachment and will consider the supplementary material in addressing the pending Motion. ECF No. 90.

On March 18, 2022, the United States filed a Response in Opposition to the Motion, ECF No. 93, and filed Defendant's medical records under seal, ECF No. 95-1. On April 18, 2022, Defendant filed her Reply. ECF No. 98.¹ Having been fully briefed, the Motion is now ripe for judicial determination.

II. Exhaustion Requirement

Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), the court may modify a term of imprisonment if it finds that "extraordinary and compelling reasons warrant such a reduction." Id. Before the court may consider such a motion, the defendant must have "fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons [("BOP")] to bring a motion on the defendant's behalf," or there must have been a "lapse of 30 days from the receipt of such a request by the warden of the defendant's facility." Id. § 3582(c)(1)(A). Defendants may satisfy this exhaustion requirement by "wait[ing] 30 days from the date of their

¹ Defendant had previously filed a Motion for Extension on April 15, 2022, asking the court to grant her additional time to file her Reply. ECF No. 97. Since the court has received her Reply within the deadline, the Motion for Extension, ECF No. 97, is MOOT.

initial request to file a motion in the district court," even if the warden has already responded to their request. Muhammad, 16 F.4th at 131 (collecting cases). The exhaustion requirement is also "a non-jurisdictional claim-processing rule," and therefore "may be waived or forfeited." Id. at 130.

Defendant appears to have made two requests for compassionate release to the warden of her facility, one on November 10, 2020, and the other on June 12, 2021, both of which the warden denied. See ECF No. 93 at 9. Because more than thirty (30) days have passed since Defendant made her requests, she has satisfied the threshold exhaustion requirement of 18 U.S.C. § 3582(c)(1)(A).

III. Merits of Defendant's Motion

For a court to reduce a defendant's sentence under § 3582(c)(1)(A)(i), it must find that "extraordinary and compelling reasons" justify such a reduction. The defendant bears the burden of showing that this requirement is satisfied. See, e.g., United States v. Newton, 996 F.3d 485, 488 (7th Cir. 2021); United States v. Noel, No. 3:08-cr-186-03, 2021 WL 1602402, at *2 (E.D. Va. Apr. 23, 2021) (Payne, J.). Even if a defendant carries this burden, a court may only reduce the sentence "after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable." § 3582(c)(1)(A). Any such reduction must also be "consistent with applicable policy

statements issued by the Sentencing Commission." Id.; see United States v. McCoy, 981 F.3d 271, 275-76 (4th Cir. 2020).

In McCoy, the Fourth Circuit held that, in the context of prisoner-filed § 3582(c)(1)(A) motions, "there currently exists no applicable policy statement" because the Commission has not issued a policy statement since the passage of the First Step Act. 981 F.3d at 281-82 (alteration omitted). Therefore, until the Sentencing Commission issues an updated policy statement, "district courts are 'empowered to consider any extraordinary and compelling reason for release that a defendant might raise.'" Id. at 284 (alteration omitted) (quoting United States v. Brooker, 976 F.3d 228, 230 (2d Cir. 2020)); see United States v. Davis, No. 21-6960, 2022 WL 127900, at *1-2 (4th Cir. Jan. 13, 2022) (holding district court abused discretion in determining that certain claims "categorically" could never "establish a sufficient reason for release"). In particular, the Fourth Circuit held that courts "may consider, under the 'extraordinary and compelling reasons' inquiry, that defendants are serving sentences that Congress itself views as dramatically longer than necessary or fair." McCoy, 981 F.3d at 285-86.

Although the policy statement in United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") § 1B1.13 is no longer binding on this court in this case after the Fourth Circuit's decision in McCoy, the court finds certain of its provisions useful

in addressing the instant Motion. For example, the court will still consider "the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," U.S.S.G. § 1B1.13, and whether "[t]he defendant is . . . (a danger to the safety of any other person or to the community," id. § 1B1.13(2), because these considerations remain highly relevant to whether a reduction in sentence is warranted in this case.

A. Extraordinary and Compelling Reasons

Defendant claims two circumstances that constitute "extraordinary and compelling reasons" for a reduction in sentence pursuant to § 3582(c)(1)(A)(i). For the reasons explained below, the court finds that neither of these circumstances, individually or in combination, amount to an "extraordinary and compelling reason[]" for such a reduction. See Davis, 2022 WL 127900, at *2 (vacating and remanding denial of compassionate release where there was "no indication that the district court considered [the defendant's] circumstances, as a whole").

1. Risk from the Novel Coronavirus ("COVID-19")

Defendant submits that the ongoing COVID-19 pandemic warrants a reduction in sentence. ECF No. 98 at 1. Defendant argues that the pandemic justifies early release because the virus has put Defendant's health at risk. See id. at 9.

"Fear of COVID doesn't automatically entitle a prisoner to release." United States v. Thompson, 984 F.3d 431, 435 (5th Cir.

2021). Rather, “[i]n the context of the COVID-19 outbreak, [courts] have found extraordinary and compelling reasons for compassionate release when an inmate shows both a particularized susceptibility to the disease and a particularized risk of contracting the disease at his prison facility.” United States v. Feiling, 453 F. Supp. 3d 832, 841 (E.D. Va. 2020) (Novak, J.) (emphasis added).

i. Particularized Susceptibility

“To establish a particularized susceptibility to COVID-19, courts have required defendants to provide evidence that they suffer from a medical condition identified by the Centers for Disease Control and Prevention (“CDC”) as a COVID-19 risk factor.” United States v. Chandler, Crim. No. 3:15-mj-122, 2020 WL 6139945, at *5 (E.D. Va. Oct. 19, 2020) (Novak, J.) (first citing United States v. Beahm, No. 1:05-cr-249, 2020 WL 4514590, at *2 (E.D. Va. Aug. 5, 2020) (Hilton, J.); and then citing United States v. White, No. 3:18-cr-61, 2020 WL 3442171, at *5 (E.D. Va. June 23, 2020) (Hudson, J.)). To satisfy the “particularized susceptibility” requirement, a defendant must do more than merely point to a condition that constitutes a COVID-19 risk factor. See Chandler, 2020 WL 6139945, at *5 (finding requirement not satisfied where the defendant’s asthma was “mild and intermittent”). Defendants must provide evidence establishing why their condition is so severe that it warrants a sentence reduction. See id. (noting that the relevant medical records did not indicate that the defendant’s

asthma was severe enough to constitute "an extraordinary and compelling reason for his compassionate release").

Having reviewed Defendant's medical records, the court finds that Defendant's underlying conditions do not make Defendant particularly susceptible to a COVID-19 infection. Defendant asserts that her hypertension, asthma, PTSD, and obesity, make her more susceptible to severe symptoms from a COVID-19 infection. ECF No. 98 at 10-12.²

Defendant has not shown these conditions are severe enough to justify compassionate release. First, Defendant has consistently ignored treatment for her hypertension while incarcerated. see ECF No. 93 at 5-7 (discussing Defendant's repeated noncompliance with her medication regimen). Her disregard for her own health undermines her claim and perception that the condition is severe. Second, Defendant has not shown that her asthma is more than a mild condition. See Chandler, 2020 WL 6139945, at *5 (denying compassionate release where the defendant's asthma was "mild and intermittent"). Her medical records indicate that Defendant has asthma medication that sufficiently treats her condition and the BOP has been sufficiently monitoring her condition. See ECF No. 95

² The court notes that Defendant previously contracted COVID-19 in December of 2021. ECF No. 89 at 1; ECF No. 93 at 7. While Defendant developed pneumonia, she recovered. See ECF No. 93 at 7-8. However, Defendant claims to still have lingering symptoms from the infection, including shortness of breath and coughs. See ECF No. 98 at 12.

at 18. Third, courts have found that obesity alone does not justify compassionate release. See, e.g., United States v. Johnson, No. 1:02-cr-296-1, 2020 U.S. Dist. LEXIS 205027, at *16-17 ("Obesity is not by itself a chronic condition, one 'from which [the Defendant] is not expected to recover.'"). While Defendant's weight might expose her to greater risk, there is no indication that any weight issues cannot be managed within the BOP. Fourth, the CDC does not list individuals with PTSD as having an increased risk for severe illness from COVID-19.³ Moreover, Defendant's general complaints of PTSD, without further documentation, fails to demonstrate an extraordinary and compelling reason for compassionate release.

An analysis of Defendant's susceptibility to COVID-19 also requires a discussion of her vaccination status. Defendant refused the COVID-19 vaccination on two occasions: January 20, 2021, and February 3, 2022. ECF No. 93 at 8. In her Reply, Defendant contends that she refused the vaccine because of her religion and moral beliefs, without any details of these reasons. See ECF No. 98 at 13.⁴ However, vaccinated or not, the evidence before the court

³ See CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/people-with-medical-conditions.html> (last visited on April 26, 2022).

⁴ Defendant simply states, without more, that "Defendant (sic) religion and moral beliefs exempt her from vaccinations." ECF No. 98 at 13.

fails to establish that Defendant's conditions are serious enough to constitute a "particularized susceptibility" to COVID-19. Defendant's conditions are relatively mild, the BOP has taken steps to mitigate and control these conditions, and Defendant has refused care on multiple occasions.

The court concludes that Defendant has failed to satisfy the "particularized susceptibility" prong. Instead, Defendant's ailments are apparently, at worst, "chronic conditions that can be managed in prison [and thus] are not a sufficient basis for compassionate release." United States v. Ferguson, No. 3:04-cr-13-01, 2021 WL 1701918, at *3 (E.D. Va. Apr. 29, 2021) (Payne, J.).

ii. Particularized Risk of Contracting COVID-19

Even if Defendant has some increased susceptibility to the virus, she has not shown that she faces a particularized risk of contracting COVID-19 at her facility, FPC Alderson. ECF No. 66 at 2. A large number of inmates and staff at this facility have been inoculated against COVID-19 with vaccines shown to be highly effective against serious COVID-19 illness.⁵ This vaccination effort has apparently succeeded in staving off major outbreaks of the disease: as of May 12, 2022, FPC Alderson had one (1) active

⁵ As of May 12, 2022, 77 staff members and 631 prisoners at FPC Alderson were fully vaccinated against COVID-19. See Fed. Bureau of Prisons, COVID-19 Vaccine Implementation, <https://www.bop.gov/coronavirus/>.

case of COVID-19 among inmates and zero (0) among staff members.⁶ The court finds that the low prevalence of COVID-19 at Defendant's facility, particularly in light of the BOP's ongoing mitigation efforts, does not subject Defendant to a particularized risk of contracting the virus. See United States v. Spencer, 521 F. Supp. 3d 606, 612 (E.D. Va. 2021) (Smith, J.) (denying motion where the defendant's facility had few active COVID-19 cases among inmates).

In sum, Defendant has not demonstrated a particularized susceptibility to COVID-19, or that she faces a particularized risk of contracting the virus at FPC Alderson, and therefore has not shown extraordinary or compelling reasons justifying a sentence reduction on this basis.

2. Family Circumstances

Defendant also argues that the court should reduce her sentence so she can serve as caregiver to her mother, her grandmother, and her children. See ECF No. 66 at 4-5.

Under Application Note 1(C) to U.S.S.G. § 1B1.13, extraordinary and compelling reasons for a reduction in sentence exist only upon "[t]he death or incapacitation of the caregiver of the defendant's minor child or minor children" or "[t]he incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the

⁶ See Fed. Bureau of Prisons, COVID-19 Cases, <https://www.bop.gov/coronavirus/>.

spouse or registered partner." Id. After McCoy, however, the court finds that, as a general matter, a defendant's need to reunite with family for reasons other than those outlined in § 1B1.13 could constitute an extraordinary and compelling reason for release. See United States v. Kibble, 992 F.3d 326, 331 (4th Cir. 2021) (noting that § 1B1.13 does not apply to prisoner-filed motions for compassionate release); United States v. Hankins, No. 2:12cr182, slip op. at 4-5 (E.D. Va. March 16, 2021) (Smith, J.). That said, the Application Note offers the court relevant guidance as to this case.

The court finds that Defendant's family concerns are not extraordinary or compelling. Defendant is not the sole available caregiver for her children or her mother. At the time of Defendant's arrest, none of her children were in her custody. ECF No. 93 at 34.⁷ Her children are currently in the custody of Defendant's grandmother and other family members. See id. at 35. Defendant's three adult sisters, all of whom live locally (the Tidewater/Hampton Roads area of Virginia, have also in the past helped take care of Defendant's children. See id. at 35-36. Defendant claims that her grandmother's poor health has left her unable to handle the responsibilities of taking care of the

⁷ A protective order "against abuse and neglect for one of [Defendant's] children [is in effect] until 2033, when her child turns 18." ECF No. 93 at 34.

children. See ECF No. 98 at 4. Defendant also claims that her sisters are no longer able to help watch Defendant's children. See id. at 13.⁸ However, the family medical records Defendant provided to the court do not show that her grandmother is so completely incapacitated as to be unfit to care for the children. ECF No. 98-4. An emergency room report from January 26, 2022, notes that E.C., Defendant's grandmother, suffered from generalized weakness and nausea and self-reported that she was recovering well from a previous stroke. See id. at 2. This limited medical evidence does not present a picture of an incapacitated caregiver. The court reiterates that, at the time of Defendant's arrest, Defendant was not the primary caregiver for her children. ECF No. 93 at 34. Considering E.C.'s apparent capacity to take care of herself and Defendant's children, the court finds that Defendant is not the sole available caregiver for her children.

The court also finds that Defendant is not the sole available caregiver for her mother. While Defendant's mother is handicapped, her mother has been in the care of Defendant's sisters throughout

⁸ Two of Defendant's sisters signed a letter included in Defendant's Reply, in which they attest that they can no longer help support or watch over Defendant's children who are in the custody of Defendant's grandmother. See ECF No. 98-4 at 1. Otherwise Defendant offers few, if any, details of the claims she makes in regard to the care of her children, and she has offered no other evidence to refute the detailed information about Defendant's neglectful parenting in the United States' Response. ECF No. 93 at 33-36.

Defendant's incarceration. See ECF No. 88 at ¶ 50. Defendant did not present the court with sufficient evidence as to the worsening condition of her mother or the incapacity of her sisters as caregivers.

Defendant has not shown that she is the only individual capable of serving as the caregiver to her mother, minor children, or grandmother. In fact, all indications are to the contrary. The court finds that her family concerns are not extraordinary and compelling reasons for a reduced sentence.

B. Section 3553(a) Factors

A court may only reduce a defendant's sentence under § 3582(c)(1)(A) "after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable." 18 U.S.C. § 3582(c)(1)(A). That said, "[s]ection 3582(c)(1) permits a district court to reduce a sentence in 'any case' - not just cases where a sentence has been substantially served; not just in cases involving low-level or non-violent offenses." United States v. Kibble, 992 F.3d 326, 334 (4th Cir. 2021) (Gregory, C.J., concurring) (citing United States v. Gonzales, 520 U.S. 1, 5 (1997)).

Even if Defendant had presented "extraordinary and compelling reasons," the court finds that a reduction in sentence would not be proper in this case, as the § 3553(a) factors weigh against Defendant's release. See Kibble, 992 F.3d at 330, 332 (majority

opinion affirming denial of a motion for compassionate release where the defendant's "health conditions . . . amounted to extraordinary and compelling circumstances," but "the § 3553(a) factors counseled against a sentence reduction").

First, the court acknowledges and credits Defendant's steps towards rehabilitation. However, the court remains concerned that Defendant would pose a threat to her community and her minor children if released. Her offense conduct, including several years of selling narcotics, harmed her community. ECF No. 93 at 37-38. More troubling was that she sold the drugs from her home with some of her children present and while pregnant with her seventh child. See id. at 38. Defendant's possession of a firearm during her time selling narcotics further heightened the danger her conduct posed to herself, her community, and her children. See id. at 39; ECF No. 88 at ¶¶ 9, 17-29. Defendant has not presented to the court sufficient evidence of her rehabilitation to dispel concerns that she will return to drug dealing after release, even if she took on the role of primary caregiver of her children.

Defendant also has a substantial portion of her sentence remaining. She has served almost three (3) years of her seven and a half (7.5) year sentence. See id. at 14; Kibble, 992 F.3d at 331 (recognizing that district courts are "entitled to consider the amount of time [defendants] ha[ve] served as one factor in the § 3553(a) analysis"). Though the time remaining on Defendant's

sentence is not the dispositive factor, it is one factor to consider when weighing Defendant's steps towards rehabilitation against the seriousness of her offense conduct and the factors under 18 U.S.C. § 3553(a). See United States v. Bowser, 539 F. Supp. 3d 572, 576 (E.D. Va. 2021) (Smith, J.).

Having considered the factors under 18 U.S.C. § 3553(a), Defendant's offense conduct, criminal history, and rehabilitation while incarcerated, the court concludes that reducing Defendant's sentence would not reflect the seriousness of the offense, promote respect for the law, provide adequate deterrence for her, or protect the public from further crimes of Defendant. See id. For all these reasons, the court concludes that Defendant's sentence remains "sufficient, but not greater than necessary," considering all the facts and circumstances of this case.

III. Conclusion

The court concludes that neither COVID-19 nor Defendant's family concerns constitute an "extraordinary and compelling reason[]" justifying her release or a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i). The factors under 18 U.S.C. § 3553(a) also weigh against her compassionate release. Accordingly, Defendant's Motion for Compassionate Release, ECF No. 66, is **DENIED**.

The Clerk is **DIRECTED** to forward a copy of this Memorandum Order to Defendant, the United States Attorney at Newport News, and the Bureau of Prisons.

IT IS SO ORDERED.

/s/


Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

May 13, 2022