

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted February 3, 2023*

Decided February 6, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1873

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DUPREE PENN,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 13-cr-00102

Charles R. Norgle,
Judge.

ORDER

Dupree Penn, a federal prisoner, appeals the denial of his second motion for compassionate release. We affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Penn is serving a 200-month sentence in prison after pleading guilty to one count of possessing a controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1), and one count of possessing a firearm as a felon, 18 U.S.C. § 922(g)(1).

In mid-2020, Penn filed his first motion for compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i), based on his Type I diabetes. The district court denied the motion, explaining that Penn had not exhausted his administrative remedies; that the prison was able to manage Penn's diabetes, even in the face of the COVID-19 pandemic; and that the sentencing factors under 18 U.S.C. § 3553(a) weighed against release.

In 2022, Penn moved for compassionate release a second time, arguing that his diabetes—in combination with his rehabilitation, his advancing age (which made him unlikely to reoffend), and his supportive family—presented extraordinary and compelling reasons for release. The district court denied this motion too. The court explained that it already resolved this issue when it denied Penn's prior motion.

On appeal, Penn argues that the district court erred by ignoring the nonmedical factors listed in his second motion (that is, rehabilitation, age, and family support). He apparently regards these nonmedical factors as intervening changes of fact that a district judge must consider when adjudicating a compassionate-release motion. He cites *Concepcion v. United States*, 142 S. Ct. 2389, 2396 (2022), which held that district courts have discretion to consider intervening changes of fact (or law) when resentencing under the First Step Act.

But the context of *Concepcion* was a resentencing under the First Step Act. *Id.* That case does not address how a district court determines whether a prisoner has shown an extraordinary and compelling reason for compassionate release. *United States v. King*, 40 F.4th 594, 595–96 (7th Cir. 2022). Regardless, the district court appropriately declined to discuss Penn's new arguments in his second motion because they were weak or unsupported. *See United States v. Joiner*, 988 F.3d 993, 995 (7th Cir. 2021). For instance, Penn's age and family ties were known at the time of his original sentencing, *see United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021), and one's efforts at rehabilitation—however commendable—are not generally extraordinary and compelling.

AFFIRMED

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

March 13, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1873

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DUPREE PENN,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.

No. 13-cr-00102

Charles R. Norgle, *Judge.*

O R D E R

No judge of the court having called for a vote on the Petition for Rehearing and Rehearing En Banc, filed by Defendant-Appellant on February 23, 2023, and all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the Petition for Rehearing and Rehearing En Banc is **DENIED**.