

NOT RECOMMENDED FOR PUBLICATION

No. 22-5320

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Nov 29, 2022

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

)

Plaintiff-Appellee,

)

v.

) ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE

TERENCE CRAWLEY,

)

Defendant-Appellant.

)

O R D E R

Before: McKEAGUE, GRIFFIN, and NALBANDIAN, Circuit Judges.

Terence Crawley, a federal prisoner proceeding pro se, appeals the district court's order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2011, Crawley pleaded guilty, pursuant to a plea agreement, to aiding and abetting an armed bank robbery, in violation of 18 U.S.C. §§ 2 and 2113(d), and using, carrying, and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2 and 924(c)(1)(A). The district court designated Crawley a career offender and sentenced him to 272 months of imprisonment. We affirmed the criminal judgment on appeal. *United States v. Crawley*, 526 F. App'x 551, 559 (6th Cir. 2013).

In September 2020, Crawley filed a motion for compassionate release. The district court denied the motion the next month. The district court determined that, even if Crawley had extraordinary and compelling reasons for compassionate release, such release was not supported

Appendix A Pg's 1-4

in light of an analysis of the sentencing factors described in 18 U.S.C. § 3553(a). Crawley filed multiple documents after the district court's denial to support his arguments for compassionate release, including a motion for judicial notice and a motion for reconsideration. In April 2022, the district court denied reconsideration of the original denial. Crawley filed a notice of appeal.

We review the district court's decision not to grant compassionate release for an abuse of discretion. *United States v. Jones*, 980 F.3d 1098, 1112 (6th Cir. 2020). That discretion is "substantial." *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). An abuse of discretion occurs when the district court "relies on clearly erroneous findings of fact, applies the law improperly, or uses an erroneous legal standard." *Jones*, 980 F.3d at 1112 (quoting *United States v. Pembrook*, 609 F.3d 381, 383 (6th Cir. 2010)). We also review the district court's denial of reconsideration, to the extent, if any, that it raises issues not related to the underlying merits, for an abuse of discretion. *United States v. Scarborough*, 821 F. App'x 598, 600 (6th Cir. 2020).

In order to reduce the defendant's sentence under § 3582(c)(1)(A), a district court must (1) find that "extraordinary and compelling reasons warrant such a reduction" in the defendant's sentence; (2) find that "such a reduction is consistent with applicable policy statements issued by the [United States] Sentencing Commission," if such statements exist; and (3) take into account the § 3553(a) sentencing factors "to the extent that they are applicable." *Ruffin*, 978 F.3d at 1003, 1005 (quoting 18 U.S.C. § 3582(c)(1)(A)). When a prisoner moves for compassionate release on his own behalf, district courts have "full discretion" to determine whether extraordinary and compelling reasons exist without reference to any policy statement in the sentencing guidelines. *Jones*, 980 F.3d at 1111. Furthermore, a district court may deny compassionate release in this situation if either of the two remaining prerequisites is lacking. *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021).

In addressing the § 3553(a) factors, the court need not "engage in a ritualistic incantation" of the factors, but the analysis should be sufficiently detailed to show that the applicable factors were considered. *United States v. McBride*, 434 F.3d 470, 474 (6th Cir. 2006) (quoting *United States v. Chandler*, 419 F.3d 484, 488 (6th Cir. 2005)); *see United States v. Navarro*, 986 F.3d 668, 672 (6th Cir. 2021). The district court is not obliged to prioritize any one factor above other

App. A, 2-4

sentencing factors. *See United States v. Allen*, 956 F.3d 355, 357 (6th Cir. 2020) (discussing use of the § 3553(a) factors in a First Step Act case). Moreover, “district courts have wide latitude to deny compassionate release based on the seriousness of the underlying offense,” as long as they take into account the arguments of the parties and provide a reasoned basis for denying compassionate release. *United States v. Wright*, 991 F.3d 717, 719 (6th Cir. 2021).

The district court, both in its original order denying the motion for compassionate release and in the order denying reconsideration of its first decision, determined that, even if Crawley had extraordinary and compelling reasons for compassionate release, the § 3553(a) sentencing factors did not support a reduction of Crawley’s sentence. In the original order, the court noted the seriousness of Crawley’s offenses and observed that Crawley still had a substantial portion of his custodial sentence remaining. The court determined that the nature and circumstances of the offenses, as well as the needs for the sentence to reflect the seriousness of the offenses, promote respect for the law, afford an adequate deterrence, and protect the public, did not support a modification of Crawley’s sentence. After receiving the motions for reconsideration, the district court acknowledged Crawley’s efforts at rehabilitation and desire to return to his family, but the court nevertheless denied compassionate release based on its prior analysis and the seriousness of the offenses.

Crawley argues on appeal that the district court should have also taken into account changes to the United States Sentencing Guidelines since the court originally sentenced him to prison. He argues that, if sentenced for his offenses today, he would not have received a career-offender designation and would have had a guidelines range of only 135 to 155 months. He also argues that the inclusion of a Maryland assault conviction as a crime of violence that contributed to his career-offender designation was an error that should have been corrected with the motion for compassionate release.

This argument seems to rely on the Supreme Court’s decision in *Borden v. United States*, 141 S. Ct. 1817, 1834 (2021), which clarified that prior convictions for offenses that require only a reckless state of mind do not qualify as violent felonies under the Armed Career Criminal Act, 18 U.S.C. § 924(e). The district court had discretion to take this change into account in reanalyzing

App. A, 3-4.

Crawley's sentence with respect to the § 3553(a) sentencing factors, but the court was not obligated to do so. *United States v. Hunter*, 12 F.4th 555, 568-69 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2771 (2022); *United States v. Jarvis*, 999 F.3d 442, 445 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 760 (2022). Although the district court did not explicitly consider Crawley's *Borden* argument, its reliance on the "period of time remaining on Defendant's sentence" as a "significant" § 3553(a) factor suggests that the court was unmoved by that argument. See *United States v. Manso-Zamora*, No. 20-1665, 2022 WL 43182, at *3 (6th Cir. Jan. 5, 2022). The district court did not abuse its substantial discretion by not expressly considering what Crawley's guidelines range might look like today when the court analyzed his existing sentence in light of the § 3553(a) sentencing factors.

Indeed, the district court exercised its discretion appropriately in denying Crawley's original motion for compassionate release and his motions for reconsideration. We therefore **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

App. A, 4-4

ACCOMPLISHED
TO DATE
EXCERPTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA) Case No. 1:10-cr-5
v.) Judge Travis R. McDonough
TERENCE CRAWLEY) Magistrate Judge Susan K. Lee

ORDER

Before the Court are Defendant's pro se motions for reconsideration on compassionate release. (Docs. 208, 217, 220.) As discussed below, Defendant's motions will be denied.

Defendant previously requested compassionate release based on his risk of serious complications should he contract COVID-19 and his desire to serve as caregiver to his mentally ill father. (Doc. 188.) The Court found that Defendant's health conditions amid the COVID-19 pandemic were not extraordinary and compelling because Defendant's medical records did not reflect any conditions that would make him particularly vulnerable to the virus. (Doc. 200, at 2.) The Court further found that, even assuming Defendant's father's condition and need for care constituted an extraordinary and compelling reason for release, the factors set forth in 18 U.S.C. § 3553(a) weighed against a sentence reduction. (*Id.* at 2–3.)

As a basis for reconsideration, Defendant asks the Court to consider additional medical records, which he claims establish that he is at special risk of serious complications from COVID-19. Specifically, he presents medical records from 2018, showing that he had a “high” level of “AST” and “ALT.” (See Doc. 208, at 13–14.) Based on those records, Defendant asks the Court to conclude he currently suffers from liver disease. (Id. at 8.) Defendant also claims

that medical records from 2017 and 2018 showing a diagnosis of “sinus arrhythmia” indicate that he suffers from cardiac arrhythmia. (*Id.*; Doc. 203, at 5–6.) However, Defendant presents no current medical records showing that he suffers from liver disease, heart problems, or any other condition that would place him at heightened risk of serious illness from COVID-19.¹ Moreover, Defendant asserts that he has already tested positive for COVID-19 and has not reported that he suffered any complications from that infection. (Doc. 217, at 1.) Hence, the Court still finds that Defendant’s pandemic-related health concerns do not constitute an extraordinary and compelling reason for release.

As another basis for reconsideration, Defendant argues that the Court failed to consider his rehabilitative efforts and the harshness of his sentence. (*See, e.g.* Doc. 208, at 4–6.) The Court acknowledges Defendant’s rehabilitative efforts while incarcerated and sympathizes with his desire to return to his children and other family members. (*See, e.g.* Doc. 220, at 3–5, 19–20). However, the nature of Defendant’s criminal conduct in this case, which involved aiding and abetting a bank robbery and using a firearm in relation to a crime of violence, was serious. Also, the period of time remaining on Defendant’s sentence, while less than before, is still significant. Having considered Defendant’s motions and all evidence of record, the Court still finds that the § 3553(a) factors weigh against release.

Accordingly, Defendant’s pro se motions for reconsideration on compassionate release (Docs. 208, 217, 220) are **DENIED**.

¹ Defendant also asserts that he suffers from anxiety. (Doc. 208, at 7.) Defendant has not submitted any new medical evidence concerning that condition. However, even assuming Defendant suffers from anxiety, the Court still finds that Defendant’s health conditions amid the COVID-19 pandemic do not rise to the level of extraordinary and compelling.

SO ORDERED.

/s/Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDG

No. 22-5320

FILED

Feb 15, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERENCE CRAWLEY,

Defendant-Appellant.

O R D E R

BEFORE: McKEAGUE, GRIFFIN, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

App. C. 1-1

2/21/2023