

United States Court of Appeals
for the Fifth Circuit

*June
31, 2023
3/19/2023*

No. 22-11004
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 31, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALFREDO MEDINA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-133-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

Alfredo Medina, federal prisoner # 39027-177, appeals the district court's denial of his motion for compassionate release, filed pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). He also moves to file a supplemental brief. We review the denial of a motion for compassionate release for abuse of discretion. *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020).

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 22-11004

Medina argues, without authority, that the district court erred in failing to allow the Government the opportunity to refute or concur with his arguments; his assertion lacks merit. Medina also argues that the district court abused its discretion in failing to consider the grounds that he raised in support of compassionate release. However, a district court is not required “to make a point-by-point rebuttal of the parties’ arguments[;] [a]ll that is required is for a district court to demonstrate that it has considered the arguments before it.” *Concepcion v. United States*, 142 S. Ct. 2389, 2405 (2022). Here, the district court stated that it had considered the motion for compassionate release and the record and that it was not persuaded by Medina’s arguments; thus, the court indicated that it considered and rejected these arguments. *See United States v. Escajeda*, 58 F.4th 184, 188 (5th Cir. 2023); *United States v. Batiste*, 980 F.3d 466, 479 (5th Cir. 2020).

He further asserts that the district court erred by heavily relying on the U.S.S.G. § 1B1.13 policy statement and its commentary and other criteria. The district court stated that the nonbinding Sentencing Guidelines’ policy statement and commentary could be used as a tool for review of a motion for compassionate release, and the court was entitled to do so. *See United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021); *cf. United States v. Shkambi*, 993 F.3d 388, 392-93 (5th Cir. 2021).

Noting the district court’s statement that many of the arguments raised by Medina regarding mitigation had been rejected on direct appeal, Medina argues that the district court’s analysis of the 18 U.S.C. § 3553(a) factors relied on assessments of those factors at the time of sentencing and failed to take into consideration his post-sentencing conduct or changes in the law. Medina’s arguments amount to no more than a disagreement with the district court’s balancing of these factors, which is insufficient to show an abuse of discretion. See *Chambliss*, 948 F.3d at 694.

No. 22-11004

Accordingly, Medina has not demonstrated an abuse of discretion, and the district court's decision is AFFIRMED. His motion to file a supplemental brief is GRANTED.

APPENDIX A

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ALFREDO MEDINA,

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Movant,

VS.

NO. 4:22-CV-777-A
(NO. 4:09-CR-133-A)

UNITED STATES OF AMERICA,

Respondent.

CLERK, U.S. DISTRICT COURT
By _____ Deputy

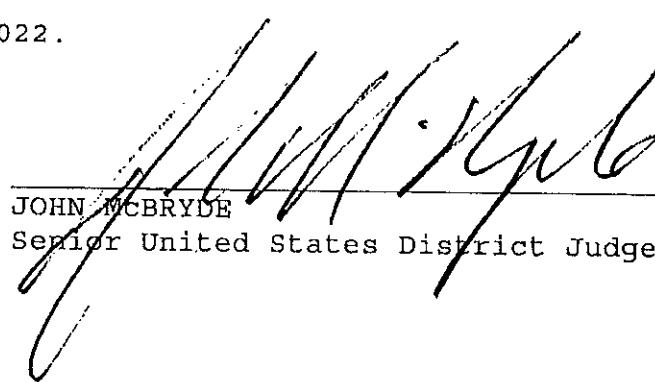
AUG 31 2022

FINAL JUDGMENT

Consistent with the court's order signed this date,

The court ORDERS, ADJUDGES, and DECREES that the motion of
movant, Alfredo Medina, for compassionate release be, and is
hereby, denied.

SIGNED August 31, 2022.


JOHN MCBRYDE
Senior United States District Judge

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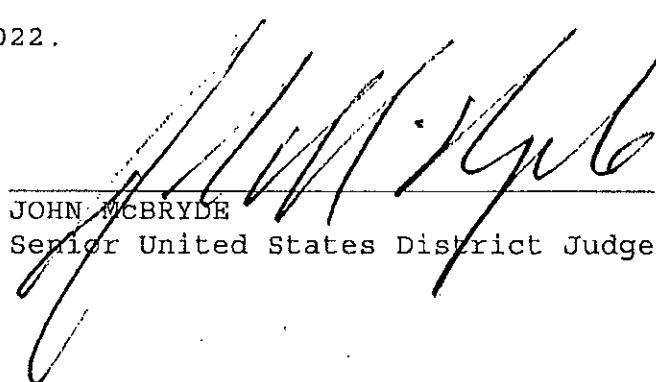
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Movant,

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ORDER

Came on for consideration the motion of Alfredo Medina for compassionate release. The court, having considered the motion, the record, including the record in the underlying criminal case, No. 4:09-CR-133-A, and applicable authorities, finds that the motion should be denied.

The Fifth Circuit has determined that neither the sentencing guidelines' policy statement nor the commentary is binding on the court when addressing a motion under § 3582. United States v. Shkambi, 993 F.3d 388 (5th Cir. 2021). Instead, the court is bound only by 18 U.S.C. § 3582(c)(1)(A) and 18 U.S.C. § 3553(a). Nevertheless, the court may use the policy statement as a tool in its review of the motion. In sum, to prevail on a motion for compassionate release, the movant must still (1) show extraordinary reasons, (2) show that compassionate release is consistent with applicable policy

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statements, and (3) convince the district judge to exercise discretion to grant the motion after considering the § 3553(a) factors. United States v. Cooper, 996 F.3d 283, 287 (5th Cir. 2021) (citing Shkambi, 993 F.3d at 392). In making its determination, the court is to consider, but is not bound to accept, arguments that evidence of rehabilitation or other changes in law counsel in favor of sentence reduction or, on the other hand, that evidence of violent behavior in prison counsels against providing relief. Concepcion v United States, 597 U.S. ___, 2022 WL 2295029 (2022).

The court notes that movant does not appear to have a medical condition that would qualify as extraordinary or compelling. Nor does he appear to meet any other criteria of the policy statement.

Movant is only 61 years of age.¹ He is serving a sentence of 480 months for his participation in an extensive drug distribution network involving La Familia drug cartel in Mexico² and the Aryan Brotherhood. His base offense level was 42. He received two-level increases for possession of a firearm and for importation. He was subject to a mandatory minimum term of ten years' imprisonment and a maximum term of life. Movant objected

¹ The motion erroneously reflects that he is 67.

² Movant obtained drugs from that organization in Mexico.

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to the amount of drugs attributed to him in the guideline calculations and the probation officer determined that 162.84 kilograms of methamphetamine was a conservative estimate and was accurate. The probation officer noted that movant and his wife possessed firearms and drugs in their home without regard for the welfare and safety of their minor children. One of the children was used to facilitate a drug transaction and to send text messages in furtherance of drug activity. At his sentencing hearing, movant withdrew his formal objection to the drug calculation, but persisted in his position that he should only be held responsible for 5-6 kilograms. The court determined that movant frivolously denied and falsely contested relevant conduct as to the quantity of the methamphetamine distributed and denied him acceptance of responsibility. The Fifth Circuit affirmed.³

The court is not persuaded by any of movant's arguments. In particular, the court declines to "declar[e] a categorical policy disagreement with the 'purity-driven' methamphetamine sentencing guidelines" as movant suggests. Doc.⁴ 1 at 9. Movant's sentence was and is neither unjust nor wrongful. He was held responsible for his own conduct.

³ The court notes that many of the arguments movant now urges, e.g., about his age, education, health, and lack of criminal background, were made on appeal and rejected by the Fifth Circuit.

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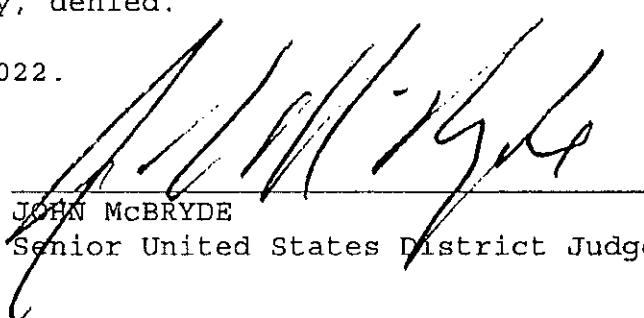
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Having considered all the factors set forth in 18 U.S.C. § 3553(a), the court is not persuaded that relief should be granted. A reduction of movant's sentence would not reflect the seriousness of his conduct, promote respect for the law, provide just punishment, or afford adequate deterrence to criminal conduct.

The court ORDERS that movant's motion for compassionate release be, and is hereby, denied.

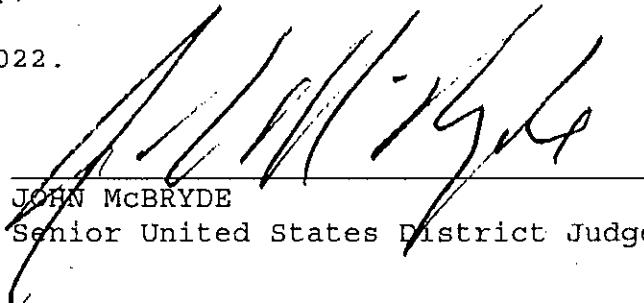
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JOHN MCBRYDE
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The court ORDERS that movant's motion for compassionate release be, and is hereby, denied.

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JOHN McBRYDE
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APPENDIX B