

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-3079**September Term, 2021****1:05-cr-00143-RJL-1****Filed On: November 22, 2021**

United States of America,

Appellee

v.

Robert Frank Miller, also known as Robert
Franklin Miller,

Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Millett, Wilkins, and Jackson, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the memoranda of law and fact submitted by the parties. The court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36. Upon consideration of the foregoing, the motion for leave to file appellant's opening memorandum of law and fact, and the motion for leave to file the reply and to supplement the appendix, it is

ORDERED that the motion for leave to file appellant's opening memorandum of law and fact be granted. The Clerk is directed to file the lodged opening memorandum of law and fact. The court grants the motion because the government has already responded to the arguments presented in the opening memorandum, and accepting the opening memorandum will conserve governmental and judicial resources. It is

FURTHER ORDERED that the motion for leave to file the reply and to supplement the appendix be denied. Appellant has lodged a 93-page, single-spaced reply, which greatly exceeds the applicable length limitations. See Fed. R. App. P. 27(d)(2); D.C. Cir. Rule 9(b) (2,600 words if produced using a computer, 10 pages if handwritten or typewritten). Moreover, the reply primarily consists of new or conclusory arguments. See *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1001 (D.C. Cir. 2008) (arguments raised for the first time in reply are deemed forfeited); *SEC v. Banner Fund Int'l*, 211 F.3d 602, 613 (D.C. Cir. 2000) (the court may disregard "asserted but

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unanalyzed” arguments). Based on the foregoing, appellant has not shown good cause to exceed the length limitations applicable to the reply. See D.C. Cir. Rule 9(b). Likewise, appellant has not explained why the contents of the supplemental appendix are material to this appeal or were omitted from the appendix to his opening memorandum. See D.C. Cir. Rule 30(e). It is

FURTHER ORDERED AND ADJUDGED that the district court’s October 21, 2020, minute order denying appellant’s motion for compassionate release be affirmed. Appellant requested compassionate release under 18 U.S.C. § 3582(c)(1)(A), which, in relevant part, allows a court to reduce a defendant’s sentence if it determines, after considering the applicable 18 U.S.C. § 3553(a) factors, that extraordinary and compelling reasons warrant release.

The district court did not abuse its discretion in concluding that appellant had demonstrated neither extraordinary and compelling reasons nor that the § 3553(a) factors weighed in favor of release. See United States v. Long, 997 F.3d 342, 352 (D.C. Cir. 2021). Specifically, the district court acted within its discretion in determining that appellant failed to demonstrate that his risk of complications or death from COVID-19 constituted an extraordinary and compelling reason warranting compassionate release, especially in light of appellant’s refusal of available treatment for the most serious risk factor. Likewise, the district court did not abuse its discretion in concluding that, on balance, the relevant § 3553(a) factors weighed against compassionate release, particularly given the record evidence regarding appellant’s extensive criminal history and prior conduct involving dishonesty, including the offenses for which he was convicted here.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-3079**September Term, 2021****1:05-cr-00143-RJL-1****Filed On: April 8, 2022**

United States of America,

Appellee

v.

Robert Frank Miller, also known as Robert
Franklin Miller,

Appellant

BEFORE: Srinivasan, Chief Judge, and Henderson, Rogers, Tatel, Millett,
Pillard, Wilkins, Katsas, Rao, Walker, and Jackson*, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

* Circuit Judge Jackson did not participate in this matter.