

APPENDIX A

UNITED STATES V. ROBERT TIMOTHY BLAKE

21-50215 (5 th Cir. Jan 11, 2023).

A

United States Court of Appeals for the Fifth Circuit

No. 21-50215
CONSOLIDATED WITH
No. 21-51194
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 11, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT TIMOTHY BLAKE,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 5:15-CR-66-1, 5:15-CR-66-1

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM: *

Robert Timothy Blake, federal prisoner # 46959-380, has appealed the district court's order denying his amended motion under 18 U.S.C. § 3582(c)(1)(A) for compassionate release in light of conditions related to the COVID-19 pandemic. Based on our review of the arguments of the parties

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

A

No. 21-50215
c/w No. 21-51194

and the record on appeal, we hold that the district court did not abuse its discretion in denying Blake's motion on the ground that Blake's medical conditions were not extraordinary or compelling. *See United States v. Cooper*, 996 F.3d 283, 286 (5th Cir. 2021); *see also* § 3582(c)(1)(A)(i). We do not reach the district court's alternative holding that early release was unmerited because Blake presented a danger to society. The district court's order is AFFIRMED.

APPENDIX B

UNITED STATES V. ROBERT TIMOTHY BLAKE

21-50215 (5 th Cir. April 4, 2023).

B

United States Court of Appeals for the Fifth Circuit

No. 21-50215

CONSOLIDATED WITH

No. 21-51194

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT TIMOTHY BLAKE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas

USDC No. 5:15-CR-66-1

USDC No. 5:15-CR-66-1

ON PETITION FOR REHEARING AND REHEARING EN BANC

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges:*

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX C

U.S. DISTRICT COURT TEXT DOCUMENT

5:15-cr-00066-XR (November 30, 2021) ,

C-2 (March 3, 2021).

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C

From: TXW_USDC_Note@txwd.uscourts.gov
Subject: Activity in Case 5:15-cr-00066-XR USA v. Blake Order on Sealed Motion
Date: November 30, 2021 at 4:54 PM
To: cmevf_notices@txwd.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 11/30/2021 at 4:53 PM CST and filed on 11/30/2021

Case Name: USA v. Blake

Case Number: 5:15-cr-00066-XR

Filer:

Document Number: No document attached

Docket Text:

Text Order DENYING [162] Sealed Motion as to Robert Timothy Blake (1) Entered by Judge Xavier Rodriguez. A court, on a motion by the BOP or by the defendant after exhausting all BOP remedies, may reduce or modify a term of imprisonment, probation, or supervised release after considering the factors of 18 U.S.C. § 3553(a), if extraordinary and compelling reasons warrant such a reduction. § 3582(c)(1)(A)(i). In commentary, the Sentencing Guidelines describe extraordinary and compelling reasons to include a terminal illness (i.e., a serious and advanced illness with an end of life trajectory) such as metastatic cancer, though no specific prognosis of life expectancy is required. § 1B1.13 (p.s.), comment. (n.1(A)(i)). United States v. Chambliss, 948 F.3d 691, 69293 (5th Cir. 2020). The Defendant has various medical ailments, including heart disease. His conditions are being treated and do not rise to "extraordinary and compelling reasons." However, [e]ven if extraordinary and compelling reasons for early release exist, the relevant policy statements provide for a reduction in sentence only if a defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. § 3142(g). U.S.S.G. § 1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant's history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. See 18 U.S.C. § 3142(g). United States v. Jackson, No. 4:14-CR-00576, 2020 WL 1955402, at *4 (S.D. Tex. Apr. 23, 2020). Defendant continues to violate no contact orders with minors and continues to be a danger to the community. (This is a text-only entry generated by the court. There is no document associated with this entry.) (XR)

5:15-cr-00066-XR-1 Notice has been electronically mailed to:

David Acosta dacosta@ayala-acosta.com, lawoffice@ayala-acosta.com, mayala@ayala-acosta.com

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5:15-cr-00066-XR-1 Notice has been delivered by other means to:

U.S. District Court
Western District of Texas

C-2

THIS IS AN OFFICIAL NOTICE FROM THE COURT

The following transaction was entered by the court at 3:59 PM CST on 3/3/2021:

Case Name: USA v. Blake
Case Number: 5:15-cr-00066-XR(1)

Docket Text:

Text Order DENYING [126] Motion to Reduce Sentence - First Step Act as to Robert Timothy Blake (1) Entered by Judge Xavier Rodriguez. Even if extraordinary and compelling reasons for early release exist, the relevant policy statements provide for a reduction in sentence only if a defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. 3142(g). U.S.S.G. 1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendants history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendants release. See 18 U.S.C. 3142(g). United States v. Jackson, No. 4:14-CR-00576, 2020 WL 1955402, at *4 (S.D. Tex. Apr. 23, 2020). The Government argues that the Defendant continues to pose a danger to public safety. The Court agrees. The Defendant even while incarcerated has violated no contact orders. (This is a text-only entry generated by the court. There is no document associated with this entry.) (XR)

APPENDIX D

UNITED STATES OF AMERICA V. ROBERT TIMOTHY BLAKE

21-50215 (5 th Cir. September 1, 2022).

701-668
D

United States Court of Appeals for the Fifth Circuit

No. 21-50215 and No. 21-51194

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT TIMOTHY BLAKE,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 5:15-CR-66-1

ORDER:

Robert Timothy Blake filed a pro se motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). The motion was denied. Blake appealed, and this court granted the Government's motion for a limited remand for consideration of further submissions of the parties, retaining jurisdiction over the appeal in case number 21-50215.

On remand, Blake's motion for appointment of counsel was granted. Counsel filed an amended § 3582(c)(1)(A) motion. The amended motion was denied, and counsel filed a notice of appeal, which was docketed as case number 21-51194.

4-1-22
D

No. 21-50215 and No. 21-51194

Blake contends in his pro se brief in case number 21-50215 that the district court abused its discretion in denying his motion for compassionate release. He requests appointment of counsel.

In case number 21-51194, Blake has appointed counsel. In the counseled brief in that appeal, Blake asserts the same issue—whether the district court abused its discretion in denying his motion for compassionate release. Blake's challenges to the district court's orders should be handled in one appeal, and Blake is not entitled to hybrid representation. *See Louisiana Generating, L.L.C. v. Illinois Union Ins. Co.*, 719 F.3d 328, 332 n.2 (5th Cir. 2013); *Myers v. Johnson*, 76 F.3d 1330, 1335 (5th Cir. 1996).

IT IS ORDERED that case number 21-50215 is CONSOLIDATED with the appeal in case number 21-51194;

IT IS FURTHER ORDERED that Blake's pro se brief in case number 21-50215 is STRUCK; and

IT IS FURTHER ORDERED that Blake's motion for appointment of counsel is DENIED AS MOOT.

Cory T. Wilson
CORY T. WILSON
United States Circuit Judge

APPENDIX E
U.S. DISTRICT COURT TEXT DOCUMENT
5:15-cr-00066-XR (March 3, 2021).
E-2 (April 9, 2021).
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U.S. District Court
Western District of Texas

E

THIS IS AN OFFICIAL NOTICE FROM THE COURT

The following transaction was entered by the court at 4:04 PM CST on 3/3/2021:

Case Name: USA v. Blake
Case Number: 5:15-cr-00066-XR(1)

Docket Text:

Text Order DENYING [130] Motion for Discovery as to Robert Timothy Blake (1) Entered by Judge Xavier Rodriguez. The Defendant does not explain why he is seeking any of his medical records, but it is likely that he is seeking them to support his motion for compassionate release. The Court has reviewed his medical records, which were attached in the Government's response. Despite Defendant's medical conditions, the Court has found that he poses a danger to the public and the section3553 factors have guided the Court to the conclusion that his motion for compassionate release should be denied. (This is a text-only entry generated by the court. There is no document associated with this entry.) (XR)

This is a text-only entry generated by the court.
There is no document associated with this entry.

4-7-21
U.S. District Court
Western District of Texas

E-2

THIS IS AN OFFICIAL NOTICE FROM THE COURT

The following transaction was entered by the court at 10:25 AM CST on 4/9/2021:

Case Name: USA v. Blake
Case Number: 5:15-cr-00066-XR(1)

Docket Text:

Text Order DISMISSING [135] Motion to Supplement as to Robert Timothy Blake (1). The Court denied Defendant's motion for compassionate release, finding Defendant continues to pose a danger to public safety. Defendant's appeal of that decision is currently pending. Entered by Judge Xavier Rodriguez. (This is a text-only entry generated by the court. There is no document associated with this entry.) (tmj)

This is a text-only entry generated by the court.
There is no document associated with this entry.

APPENDIX F

UNITED STATES OF AMERICA V. ROBERT TIMOTHY BLAKE

21-50215 (5 th Cir. Jan 1, 2022

United States Court of Appeals for the Fifth Circuit

No. 21-50215

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT TIMOTHY BLAKE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:15-CR-66-1

ORDER:

On September 2, 2021, this court granted the Government's motion for limited remand to allow the district court to consider the parties' further submissions before ruling on Robert Timothy Blake's motion for sentence reduction. This court suspended briefing until the district court resolved Blake's motion on remand. The district court did so on November 30, 2021.

Blake now moves for leave to supplement his opening brief, arguing that he seeks to respond to arguments the Government raised for the first time on remand. Although supplemental briefs are ordinarily not allowed, there are "some occasions" where supplemental briefing is warranted, *see* 5TH CIR. R. 28.4. This is one of those occasions, given that Blake's

No. 21-50215

F

proposed supplemental brief addresses what occurred on remand and was submitted before the Government's responsive brief, currently due on or before January 10, 2022.

Accordingly, IT IS ORDERED that appellant's motion for leave to supplement his opening brief is GRANTED. The Clerk is DIRECTED to file Blake's supplement to his opening brief.

IT IS FURTHER ORDERED that the Government is GRANTED additional time, until January 24, 2022, to file its brief in response to Blake's opening brief, as supplemented.

Cory T. Wilson
CORY T. WILSON
United States Circuit Judge

APPENDIX G

UNITED STATES OF AMERICA V. ROBERT TIMOTHY BLAKE

21-50215 (5 th Cir. Jan 5, 2022).

Doc. 88 * STRICKEN*

Appellant's Supplemental Brief Filed *.

**Item G is Mailed Separately
Due to Mail Restrictions at FCI Bastrop.**

**Additional material
from this filing is
available in the
Clerk's Office.**