

NOT RECOMMENDED FOR PUBLICATION

No. 23-5066

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Aug 9, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
)
Plaintiff-Appellee,)
)
) ON APPEAL FROM THE UNITED
v.)
) STATES DISTRICT COURT FOR
RODNEY L. LOVE,)
) THE MIDDLE DISTRICT OF
) TENNESSEE
)
Defendant-Appellant.)
)

O R D E R

Before: GUY, ROGERS, and KETHLEDGE, Circuit Judges.

Rodney L. Love, a federal prisoner, appeals the district court's order denying his motion for compassionate release, filed pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). 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 2002, a federal grand jury indicted Love on two counts of possession with intent to distribute Dilaudid within 1,000 feet of a school, in violation of 21 U.S.C. §§ 841(a)(1) and 860 (Counts 1 & 7); one count of possession with intent to distribute Dilaudid, in violation of § 841(a)(1) (Count 4); three counts of possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c) (Counts 2, 5, & 8); and three counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Counts 3, 6, & 9). The government subsequently filed a notice under 21 U.S.C. § 851, informing Love that, if convicted, he would be subject to mandatory terms of life imprisonment on Counts 1 and 7 based upon his two prior convictions for "felony drug offense[s]." *See* 21 U.S.C. § 841(b)(1)(A) (2001).

After a two-day trial, a jury convicted Love on all counts and the district court sentenced him to a total term of life plus 55 years of imprisonment. We affirmed Love's convictions and sentence on direct appeal. *United States v. Love*, No. 04-5272 (6th Cir. Feb. 3, 2005). Love sought collateral relief under 28 U.S.C. § 2255, but to no avail. *See Love v. United States*, No. 09-6066 (6th Cir. Dec. 3, 2010). In 2017, President Barack Obama commuted Love's sentence to 322 months of imprisonment.

In January 2020, Love filed a motion for compassionate release under § 3582(c)(1)(A)(i), which he supplemented following the appointment of counsel, arguing that his “sentence remains primarily the product of overly harsh laws that Congress has now amended.” Love also argued that the 18 U.S.C. § 3553(a) factors weighed in favor of his release. The district court denied Love's compassionate-release motion, citing our decision in *United States v. McCall*, 56 F.4th 1048, 1065-66 (6th Cir. 2022) (en banc), which held that “[n]onretroactive legal developments, considered alone or together with other factors, cannot amount to an ‘extraordinary and compelling reason’ for a sentence reduction.” The district court added that, even if that was not the case, it was unlikely to grant relief because the § 3553(a) factors counseled against compassionate release.

Love now appeals. District courts have “substantial discretion” when ruling on a compassionate-release motion. *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). “Given the discretionary nature of a reduction-of-sentence decision, we review a district court's denial for an abuse of discretion.” *Id.* (citing *United States v. Keefer*, 832 F. App'x 359, 362-63 (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.” *United States v. Jones*, 980 F.3d 1098, 1112 (6th Cir. 2020) (quoting *United States v. Pembrook*, 609 F.3d 381, 383 (6th Cir. 2010)).

The compassionate-release statute allows the district court to reduce a defendant's sentence if it finds that (1) “extraordinary and compelling reasons” warrant a reduction, (2) a reduction is “consistent with applicable policy statements issued by the Sentencing Commission,” and (3) the § 3553(a) factors, to the extent applicable, support a reduction. 18 U.S.C. § 3582(c)(1)(A). When a defendant files for compassionate release on his own behalf, as Love did, no policy statement

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currently applies, so the second requirement plays no role. *See United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021) (citing *Jones*, 908 F.3d at 1108-11); *see also United States v. Hampton*, 985 F.3d 530, 531 (6th Cir. 2021). Thus, Love only needs to satisfy two “prerequisites” to justify compassionate release: extraordinary and compelling reasons and that the relevant § 3553(a) factors support a reduction. *Elias*, 984 F.3d at 519. But if either “prerequisite” is “lacking,” his motion fails. *Id.*

Love concedes that *McCall* forecloses his argument that non-retroactive changes in federal sentencing law can create “extraordinary and compelling” circumstances warranting compassionate release; he appeals simply to preserve that issue.

Because that is dispositive, we **AFFIRM** the district court’s order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk