

APPENDIX 'A'

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DALTON LAQUANE SMITH, Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2023 U.S. App. LEXIS 17654

No. 22-7383

July 12, 2023, Decided

June 30, 2023, Submitted

Editorial Information: Subsequent History

Later proceeding at United States v. Smith, 2023 U.S. App. LEXIS 21486 (4th Cir., Aug. 15, 2023) Rehearing denied by, En banc, Rehearing denied by United States v. Smith, 2023 U.S. App. LEXIS 24814 (4th Cir., Sept. 19, 2023) Motion denied by United States v. Smith, 2023 U.S. App. LEXIS 26050 (4th Cir., Oct. 2, 2023)

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeal from the United States District Court for the District of South Carolina, at Columbia. (3:13-cr-01038-JFA-1). Joseph F. Anderson, Jr., Senior District Judge. United States v. Smith, 2022 U.S. Dist. LEXIS 157181, 2022 WL 3908692 (D.S.C., Aug. 30, 2022)

Disposition:

AFFIRMED.

Counsel

Dalton Laquane Smith, Appellant, Pro se.

Judges: Before KING and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Opinion

PER CURIAM:

Dalton Laquane Smith appeals the district court's orders denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, and denying reconsideration. We review the district court's orders for abuse of discretion. See *United States v. Kibble*, 992 F.3d 326, 329 (4th Cir. 2021). A district court abuses its discretion when it "acts arbitrarily or irrationally, . . . fails to consider judicially recognized factors constraining its exercise of discretion, . . . relies on erroneous factual or legal premises, or . . . commits an error of law." *United States v. High*, 997 F.3d 181, 187 (4th Cir. 2021) (cleaned up). After reviewing the record in this case, we conclude that the district court did not abuse its discretion in concluding that there was no extraordinary or compelling reason to reduce Smith's sentence. Therefore, we affirm the district court's orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument{2023 U.S. App. LEXIS 2} would not aid the decisional process.

AFFIRMED

CIRHOT

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APPENDIX 'B'

UNITED STATES OF AMERICA v. DALTON L. SMITH
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
2022 U.S. Dist. LEXIS 157181
CR No.: 3:13-1038-JFA
August 30, 2022, Decided
August 30, 2022, Filed

Counsel {2022 U.S. Dist. LEXIS. 1}For USA, Plaintiff: William Kenneth Witherspoon, LEAD ATTORNEY, Stanley D Ragsdale, US Attorneys Office, Columbia, SC.
Judges: Joseph F. Anderson, Jr., United States District Judge.

Opinion

Opinion by: Joseph F. Anderson, Jr.

Opinion

MEMORANDUM OPINION AND ORDER

This matter is before the court on the defendant's *pro se* motion for a reduction in his sentence pursuant to the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A) (ECF No. 130). The defendant does not rely upon any medical condition or the ongoing COVID-19 pandemic as the basis for his release. Rather, he contends that changes in sentencing law, as well as his post-rehabilitation conduct, support an extraordinary and compelling reason for consideration of his release.

The government has responded in opposition, arguing that the defendant has not shown an extraordinary and compelling reason for release. The defendant did not reply to the government's response.

The court has carefully considered the record before it and conducted an individualized analysis of the facts and issues raised by the parties. For the reasons which follow, the defendant's motion is respectfully denied.

STANDARD OF REVIEW

Ordinarily, a court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c); See *United States v. Chambers*, 956 F.3d 667, 671 (4th Cir. 2020); *United States v. Jackson*, 952 F.3d 492, 495 (4th Cir. 2020); {2022 U.S. Dist. LEXIS 2} *United States v. Martin*, 916 F.3d 389, 395 (4th Cir. 2019). But, "the rule of finality is subject to a few narrow exceptions." *Freeman v. United States*, 564 U.S. 522, 526, 131 S. Ct. 2685, 180 L. Ed. 2d 519 (2011). One such exception is when the modification is "expressly permitted by statute." 18 U.S.C. § 3582(c)(1)(B); See *Jackson*, 952 F.3d at 495.

Commonly termed the "compassionate release" provision, § 3582(c)(1)(A)(i) provides a statutory vehicle to modify a defendant's sentence. It was originally adopted as part of the Sentencing Reform Act of 1984.

On December 21, 2018, the First Step Act was signed into law. Broadly, the Act's goals are to reform

federal prisons and sentencing laws to reduce recidivism, decrease the federal inmate population, and maintain public safety. The First Step Act also expanded the existing compassionate release provisions of federal law by allowing an inmate to move for compassionate release himself, rather than allowing only the Director of the Bureau of Prisons (BOP) to do so. The relevant portion of the First Step Act, codified at 18 U.S.C. § 3582(c)(1)(A), as amended by § 603(b) of the First Step Act, provides:

[T]he court, . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever{2022 U.S. Dist. LEXIS 3} is earlier, may reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) [of Title 18] to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.18 U.S.C. § 3582(c)(1)(A).

By its terms, § 3582(c)(1)(A) permits the court to reduce the defendant's term of imprisonment after considering the factors set forth in 18 U.S.C. § 3553(a) if the court first finds that (i) extraordinary and compelling reasons warrant such a reduction; and (ii) such a reduction is consistent with applicable policy statements issued by the Sentencing Commission. In addition, a district court may not grant a sentence reduction under § 3582(c)(1)(A) without considering the § 3553 factors to the extent they are applicable. *United States v. Kibble*, 992 F.3d 326, 332 (4th Cir. 2021).

In *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020), the Fourth Circuit agreed with the Second Circuit in *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020) and found that there is, as of now, no "applicable policy statement governing compassionate release motions filed by defendants under the recently amended § 3582(c)(1)(A)." As a result, district courts are "empowered . . . to consider any extraordinary and compelling reason for release that a defendant might raise." *McCoy*, 981 F.3d at 284 (citing *Brooker*, 976 F.3d at 230);{2022 U.S. Dist. LEXIS 4} see also, *Kibble*, 992 F.3d at 331.

A defendant's rehabilitation standing alone does not provide sufficient grounds to warrant a sentence modification. 28 U.S.C. § 994(t). Also, the defendant bears the burden to establish that he or she is eligible for a sentence reduction. *United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016).

When deciding whether to reduce a defendant's sentence under § 3582(c)(1)(A), a district court generally proceeds in three steps. See *United States v. High*, 997 F.3d 181, 185-86 (4th Cir. 2021). First, the court determines whether "extraordinary and compelling reasons" support a sentence reduction. Next, the court considers whether a sentence reduction is consistent with applicable policy statements issued by the Sentencing Commission. As noted previously in this order and as set out in *McCoy*, because there is no applicable policy statement governing compassionate release motions filed by defendants under the recently amended § 3582(c)(1)(A), district courts are empowered to consider any extraordinary and compelling reason for release that a defendant might raise. Finally, if the court finds that extraordinary and compelling reasons warrant relief, the court must consider the § 3553(a) factors in deciding whether to exercise its discretion to reduce the defendant's term of imprisonment.

Even if the defendant meets the eligibility criteria for compassionate{2022 U.S. Dist. LEXIS 5} release, this court retains discretion as to whether to grant relief. See 18 U.S.C. § 3582(c)(1)(A) (providing the court *may* reduce the term of imprisonment) (emphasis added).

Exhaustion of Administrative Remedies

Before a court may consider a defendant's motion for compassionate release, the defendant must

have completed the initial step of requesting that the BOP bring a motion on their behalf. The defendant may file a motion with the court after (1) fully exhausting all administrative rights to appeal; or (2) after the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier. 18 U.S.C. § 3582(c)(1)(A); see *United States v. Muhammad*, 16 F.4th 126, 129 (4th Cir. 2021).

The government has not raised exhaustion as an affirmative defense in this case. However, the defendant attests in his motion that he submitted a request for compassionate release to the Warden on March 14, 2022, and he did not receive a response within the 30-day time frame. Thus, the court will proceed to review the matter on the merits.

DISCUSSION

Procedural History

The defendant was the sole defendant named in a 12-Count Indictment filed in this District in December 2013. Counts 1, 4, 7 and 10 charged the defendant with possession with intent to distribute a quantity{2022 U.S. Dist. LEXIS 6} of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Counts 3, 6, 9, and 12 charged the defendant with using and carrying a firearm during and in relation to, and 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 11 charged the defendant with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g).

The government filed an Information (ECF No. 43) pursuant to 21 U.S.C. § 851 notifying the defendant that he would be subject to increased penalties as provided by 21 U.S.C. §§ 841(a)(1) and 851 based on 6 prior felony drug convictions.²

Pursuant to a written Plea Agreement (ECF No. 49), the defendant pleaded guilty to Count 5 of the Indictment which charged him with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). He also pleaded guilty to Count 6 which charged him with possession of a firearm during and in relation to, and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c).

A Presentence Report (PSR) (ECF No. 66) was prepared which determined that the defendant was an Armed Career Criminal under 18 U.S.C. § 924(e) and U.S.S.G. § 4B1.4(c)(2), and that the defendant was also a Career Offender under 18 U.S.C. § 924(c) and U.S.S.G. § 4B1.1(c)(2).

The defendant's total offense level was 30 and his criminal history category was VI.{2022 U.S. Dist. LEXIS 7} This yielded a Guideline sentencing range of 262 to 327 months. This court sentenced the defendant to a total of 262 months incarceration, consisting of 202 months on Count 5, and 60 months on Count 6, with the terms running consecutive as required by statute.

Motion for Compassionate Release

As indicated above, the defendant does not base his compassionate release motion upon medical conditions in general or the ongoing COVID-19 pandemic. Rather, he contends that, if sentenced today, his sentence would be substantially different because of intervening changes in sentencing law. Specifically, he relies upon the Fourth Circuit Appeals decision in *United States v. Hope*, 28 F.4th 487 (4th Cir. 2022).

With commendable candor, the government concedes that the *Hope* decision is applicable to the defendant's Armed Career Criminal conviction under 18 U.S.C. § 924(e). The government points out, however, that even with the Armed Career Criminal statutory provision removed, the defendant's sentence remains the same. In taking this position, the government is correct.

Under *Hope*, *supra*, the defendant's prior felony drug convictions would not be considered serious drug felonies under § 401 of the First Step Act. Thus, if sentenced today, the defendant would not be deemed an Armed Career{2022 U.S. Dist. LEXIS 8} Criminal. Because of this, the defendant's maximum sentence for violating 18 U.S.C. § 922(g)(1) would be 10 years, with an additional 5 years for violating 18 U.S.C. § 924(c).

Section 4B1.1 of the Sentencing Guidelines directs that career offenders be sentenced at enhanced offense levels and at criminal history category VI. A defendant is a career offender if he or she was at least 18 years old when the instant offense was committed; the instant offense is a felony and is either a crime of violence or a drug offense; and he or she has at least 2 prior felony convictions for crimes of violence or controlled substance offenses. See U.S.S.G. § 4B1.1.

At the time of this offense, the defendant was over the age of 18. His conviction for violating 18 U.S.C. § 924(c) is considered a crime of violence. He had previously been convicted of at least 2 prior felony controlled substance offenses, to wit: possession with the intent to distribute marijuana within proximity to a school (ECF No. 66 at ¶ 65); possession with the intent to distribute marijuana within proximity to a school (*Id.* at ¶ 66); possession with the intent to distribute marijuana within proximity to a school (*Id.* at ¶ 67); distribution of cocaine within proximity of a school (*Id.* at ¶ 68); possession with intent to distribute cocaine within{2022 U.S. Dist. LEXIS 9} proximity to a school (*Id.* at ¶ 68); and possession with intent to distribute cocaine, 1st (*Id.* at ¶ 74).

As noted above, even with the Armed Career Criminal statutory provision removed, the fact remains that the defendant was also classified as a Career Offender under U.S.S.G. § 4B1.1. As the government notes, the defendant in this case does not challenge his Career Offender status under the Guidelines.

Under U.S.S.G. § 4B1.1(c)(2)(B), the Guideline range for the defendant with a 3-level reduction for acceptance of responsibility would be 262 to 327 months. This court sentenced the defendant to 262 months. Thus, neither the First Step Act nor the *Hope* decision affect the defendant's Guideline in this case.

The defendant also references his lack of disciplinary infractions and the 13 educational/vocational courses he has taken while incarcerated. The defendant's efforts are commendable, but, as noted earlier in this order, rehabilitation alone is not a ground for compassionate release.

CONCLUSION

After carefully considering the applicable law, the arguments of the parties, and the record before it, the court has conducted an individualized analysis and concludes that the defendant has not met his burden of establishing that he has{2022 U.S. Dist. LEXIS 10} an extraordinary and compelling reason such that he is eligible for release under § 3582(c)(1)(A). As the court finds no extraordinary and compelling reason, it is not necessary for the court to address the§ 3553(a) factors. Accordingly, the defendant's motion for appointment of counsel and compassionate release (ECF No. 130) are respectfully denied.

IT IS SO ORDERED.

August 30, 2022

Columbia, South Carolina

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

Footnotes

1

Pub. L. 115-391 (S. 756), 132 Stat. 5194 (Dec. 21, 2018).

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Those convictions listed in the Information include the following: (1) Possession with the intent to distribute in proximity, Docket No. 00-GS-32-04667, offense date 08-05-2000, sentencing date 06-12-2002; (2) Possession with the intent to distribute marijuana, 1st, Docket No. 01-GS-32-1782, offense date 11-14-2000, sentencing date 06-12-2002; (3) Possession with the intent to distribute marijuana, 1st, Docket No. 02-GS-32-3880, offense date 07-18-2002, sentencing date 03-13-2003; (4) Distribution of cocaine within proximity of school, Docket No. 03-GS-32-00738, offense date 11-06-2002, sentencing date 01-31-2006; (5) Possession with the intent to distribute cocaine, Docket No. 03-GS-32-00737, offense date 11-06-2002, sentencing date 01-31-2006; and (6) Possession with the intent to distribute cocaine 1st, Docket No. 07-GS-40-12981, offense date 12-15-2006, sentencing date 06-13-2007.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

United States of America,

CR No. 3:13-1038-JFA

v.

Dalton L. Smith.

ORDER

This matter originally came before the court on the defendant's *pro se* motion for a reduction in his sentence pursuant to the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A). (ECF No. 130). After receiving a response from the Government and waiting for a further reply from Defendant, which never came, the court issued an order denying Defendant's motion. (ECF No. 135).

Shortly thereafter however, Defendant filed a motion to reconsider. (ECF No. 137). In his motion to reconsider, Defendant avers that he never received the Government's response to his compassionate release motion and was thus not afforded a fair opportunity to respond before this court issued its Order. Accordingly, the court ordered Defendant to supply his response to determine if a reconsideration of the order denying his motion for compassionate release was warranted. (ECF No. 138).

Within his supplemental response, Defendant's sole argument is that the Government is incorrect that his sentence would be the same if sentenced today. (ECF No. 140). However, for the same reasons stated in this court's original order (ECF No. 135), Defendant is incorrect and therefore not entitled to any reconsideration. The court's prior

order is incorporated herein by reference. Accordingly, there is no need for a recitation of the relevant factual and procedural background. However, the court will again address the merits of Defendant's arguments.

At base, Defendant is incorrect in his contention that if sentenced today, he would receive only 180 months imprisonment, consisting of 120 months on Count 5 and 60 months on Count 6. In reality, if sentenced today without being classified as an armed career criminal under 18 U.S.C. § 924(e), Defendant would nevertheless be subject to the same guidelines range of 262-327 months. It is true that removal of the armed career criminal designation would subject Defendant to a new statutory maximum of 180 months (15 years)¹ for the 922(g) conviction contained in Count 5. However, this conviction, when combined with his additional conviction for the § 924(c) charge in Count 6, makes Defendant eligible for career offender designation under the sentencing guidelines. As stated in the court's prior order, a review of Defendant's criminal history indicates that the Government correctly concludes that Defendant's prior criminal convictions serve as proper predicates for a career offender designation under the guidelines even if they no longer serve as proper predicates for an armed career criminal designation under the statutory provisions in 18 U.S.C § 924(e).

¹ Defendant contends and the Government agreed that Defendant would be subject to a maximum of 10 years for the 922(g) conviction in Count 5. However, since the filing of those briefs, §924(a) was amended to increase the statutory maximum penalty for a § 922(g) conviction from 10 years to 15 years. 18 U.S.C. 924(a)(8)(“Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned for not more than 15 years, or both.”). This amendment however does not change the ultimate determination given that Defendant's guidelines for both counts of conviction remain unchanged.

Because Defendant has been convicted of multiple counts, one of which being a 924(c) charge, and he remains a career offender pursuant to U.S.S.G. § 4B1.1, his guidelines range would remain 262-327 months. *See U.S.S.G. § 4B1.1(c)(2)(B).* Thus, Defendant is incorrect that he would only receive 180 months if sentenced today.

If sentenced today, Defendant would receive the same 262-month sentence with the only difference being that his sentence pursuant to Count 5 would decrease from 202 months to 180 months. However, to maintain a within guidelines sentence, his term of incarceration for Count 6 would increase from 60 months to 82 months.

Defendant combats this proposition by arguing that the “Government is prohibited, from picking and choosing another instant offense of conviction or prior offense of conviction to increase a defendant’s sentence once the initial sentencing proceeding has been completed, and when the initial instant offence or prior offence of conviction has been found inapplicable for increase penalty, pursuant to *United States v. Carty* 570 F.3d 1251 (11th Cir, 2019)” (ECF No. 140, p. 5). Essentially, Defendant is arguing that the Government should not be able to reapportion his previous sentences to achieve the same sentencing result.

Defendant’s argument may have merit if asserted within the ambit of a direct appeal or collateral attack on his sentence.² However, this is a compassionate release motion. Accordingly, the Court is charged with first determining what constitutes an extraordinary

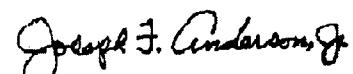
² The cases that Defendant cites to in his brief, *United States v. Ramos-Gonzalez*, 775 F.3d 483 (1st Cir. 2015) and *United States v. Carty*, 570 F.3d 1251, 1255 (11th Cir. 2009), were both direct appeals of criminal sentencing.

and compelling reason. Defendant's sole argument is that, if sentenced anew today, his sentence would be different. That simply is not the case. Defendant would still be subject to the exact same guidelines and receive the exact same sentence.

Because Defendant can show no change in the actual sentence he would receive if sentenced anew under current law, he has failed to present an extraordinary and compelling reason to support a claim for compassionate release. Thus, his request for reconsideration is denied.

IT IS SO ORDERED.

November 9, 2022
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

APPENDIX 'C'

UNITED STATES OF AMERICA, Plaintiff - Appellee v. DALTON LAQUANE SMITH, Defendant - Appellant
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
2023 U.S. App. LEXIS 24814
No. 22-7383
September 19, 2023, Filed

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}(3:13-cr-01038-JFA-1).

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Stanley D. Ragsdale, Assistant U. S. Attorney, William Kenneth Witherspoon, Assistant U. S. Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, SC.
DALTON LAQUANE SMITH, Defendant - Appellant, Pro se, Salters, SC.

Judges: Judge King, Judge Agee, and Senior Judge Floyd.

Opinion

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Agee, and Senior Judge Floyd.

For the Court

APPENDIX 'D'

UNITED STATES OF AMERICA, Plaintiff - Appellee v. DALTON LAQUANE SMITH, Defendant - Appellant

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2023 U.S. App. LEXIS 21486

No. 22-7383

August 15, 2023, Filed

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}(3:13-cr-01038-JFA-1).United States v. Smith, 2023 U.S. App. LEXIS 17654, 2023 WL 4488262 (4th Cir. S.C., July 12, 2023)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Stanley D. Ragsdale, Assistant U. S. Attorney, William Kenneth Witherspoon, Assistant U. S. Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, SC.
DALTON LAQUANE SMITH, Defendant - Appellant, Prisoner Number: Federal Prisoner: 26316-171, Pro se, Salters, SC.

Opinion

ORDER

This court's mandate issued 08/03/2023, is recalled for the limited purpose of considering a timely petition for panel and/or en banc rehearing.

APPENDIX 'E'

UNITED STATES OF AMERICA, Plaintiff - Appellee v. DALTON LAQUANE SMITH, Defendant - Appellant

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2023 U.S. App. LEXIS 26050

No. 22-7383

October 2, 2023, Filed

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}(3:13-cr-01038-JFA-1).United States v. Smith, 2023 U.S. App. LEXIS 17654, 2023 WL 4488262 (4th Cir. S.C., July 12, 2023)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Stanley D. Ragsdale, Assistant U. S. Attorney, William Kenneth Witherspoon, Assistant U. S. Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, SC.
DALTON LAQUANE SMITH, Defendant - Appellant, Pro se, Salters, SC.

Opinion

ORDER

Upon consideration of submissions relative to the motion to recall the mandate, the court denies the motion.