

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 15 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESSIE VASQUEZ, AKA Pelon,

Defendant - Appellant.

No. 23-1214

D.C. No.

8:07-cr-00202-DOC-1

Central District of California, Santa
Ana

ORDER

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

Appellee's motion (Docket Entry No. 19) to summarily affirm the district court's order denying appellant's motion for a sentence reduction is granted. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). The district court did not abuse its discretion in concluding that appellant's release would be inconsistent with the 18 U.S.C. § 3553(a) factors given "the serious nature of defendant's crimes, his poor behavior in prison, and his continuing dangerousness." *See Concepcion v. United States*, 597 U.S. 481, 501 (2022); *United States v. Wright*, 46 F.4th 938, 948 (9th Cir. 2022).

AFFIRMED.

APPENDIX A

Page 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Case No. SA CR 07-00202-DOC-1

Date: June 5, 2023

Present: The Honorable David O. Carter

Interpreter N/A

Karlen Dubon
Deputy Clerk

N/A
Court Reporter / Recorder

N/A
Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s)</u>	<u>Present</u>	<u>Cust</u>	<u>Bond</u>	<u>Attorneys for Defendants: Present</u>	<u>App</u>	<u>Ret</u>
Jessie Vasquez	N/A			N/A		

Proceedings (IN CHAMBERS): ORDER DENYING DEFENDANT'S MOTION TO REDUCE SENTENCE PURSUANT TO 18 U.S.C. §3582(c)(1)(A) [3068] [3080]

The Court has read and considered Defendant Jessie Vasquez's ("Defendant") Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A) or Section 404 of the First Step Act. ("Motion" or "Mot.") (Dkt. 3068) and the government's Opposition ("Opposition" or "Opp.") (Dkt. 3071). Defendant did not file a Reply. As set forth below, the Court DENIES Defendant's Motion.

I. BACKGROUND

Defendant was one of the many gang members convicted as a result of a three year investigation into the racketeering and drug trafficking activities of the Florencia 13 street gang ("F13"). (See CR 3.) As summarized in defendant's Presentence Investigation Report, F13 is a violent gang that operates in Los Angeles County. (CR 1169, PSR ¶¶ 3032.) The gang was founded in the early 1950s and eventually came to be controlled by members of the "Mexican Mafia," an organized group that controls much of the drug trafficking and criminal activity within California's state prisons. (*Id.* ¶¶ 30, 32.) Pursuant to the orders of senior gang members, F13 members and associates traffic in illicit drugs; engage in acts of extortion by collecting "taxes" from members of the community; and commit murders, assaults, and robberies in order to maintain control of the region and to discipline members and associates of the gang. (*Id.* ¶ 32.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Defendant was a high-ranking member of this violent and dangerous gang. Indeed, he was the undisputed leader of one of F13's cliques, the "Jokers." (See CR 1169, PSR ¶ 71.) In this role, defendant ordered his fellow gang members to engage in drug trafficking. Defendant also helped the gang carry out plots to kill rival gang members, which were often racially motivated.

After a lengthy trial, a jury convicted defendant of racketeering in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), as well as conspiracy to violate RICO, conspiracy to distribute controlled substances, multiple substantive drug offenses, and possessing a firearm in furtherance of a drug trafficking crime. (CR 872.) The heart of the government's case was over 500 recordings of intercepted calls between defendant and his co-conspirators, obtained pursuant to wiretap orders. Defendant openly discussed his criminal activities on these calls — in shocking, racially explicit language.

In January 2010, this Court sentenced defendant to life plus 60 months in prison. (CR 1454.) Defendant was subject to a mandatory life sentence under 21 U.S.C. § 841(b)(1)(A) because he had two prior convictions for felony drug offenses. (Ex. A (Sentencing Transcript) at 25-26.) This Court also imposed an additional, consecutive 60-month term for defendant's one conviction under 18 U.S.C. § 924(c). (Id. at 26.) In imposing this sentence, this Court condemned defendant's crimes in strong terms:

I want there to be no doubt as we begin this sentence, Mr. Vasquez, that these tapes that the Court and jury heard convicted you. Your own words substantiated these convictions. The activities and discussion of these criminal acts and this organization are chilling. The killing based upon racial bigotry, and greed in the dope trade, and the concerted efforts to track down and kill members of a different racial group, and even your own associates and members who were murdered for lack of discipline and/or greed are abhorrent. These crimes pass any bound of understanding in even gang rationality. This Court firmly believes that the tapes disclosed that you are a high-ranking member of F13 vying for power. And you're a high member of this organization concerning direction and your narcotics dealing.

(Id. at 24-25.) Before ending the hearing, this Court reiterated that defendant's "conduct concerning killing, organization, et cetera, that is so explicit concerning race is absolutely a line that society will never condone." (Id. at 31.) Defendant is currently serving his life sentence at USP Victorville. He has continued his criminal ways while in prison. In June 2014, defendant pled guilty to assaulting another inmate at USP Hazelton with a dangerous weapon with intent to do bodily harm, in violation of 18

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

IV. DISPOSITION

For the reasons set forth above, the Court **DENIES** Defendant's Motion to Reduce Sentence Pursuant to Compassionate Release (Dkt. 3068) and **DENIES AS MOOT** Defendant's Motion for Extension of Time (Dkt. 3080).

The Clerk shall serve this minute order on the parties.

cc

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JESSIE VASQUEZ, AKA Pelon,

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No. 23-1214

D.C. No. 8:07-cr-00202-DOC-1

Central District of California,

Santa Ana

ORDER

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 24) is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

U.S.C. §§ 7(3), 113(a)(3). *See* Dkts. 5, 12, No. CR 1400050-IMK (N.D. W. Va.). Defendant received an additional, consecutive sentence of twelve months in prison for this offense. Dkt. 13, No. CR 14-0050-IMK (N.D. W. Va.). As a result, defendant's sentence has grown to life plus 72 months.

II. STANDARD FOR COMPASSIONATE RELEASE

Under 18 U.S.C. § 3582, a court may modify a defendant's sentence upon motion of the Director of the Bureau of Prisons or

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 is earlier.

18 U.S.C. § 3582(c)(1)(A)(i). Upon such a motion, a court may modify a defendant's sentence after considering the factors set forth in § 3553(a) to the extent 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." *Id.*

The policy statement regarding compassionate release sets forth three circumstances that are considered "extraordinary and compelling reasons." U.S. Sentencing Guidelines, § 1B1.13(1)(A) & cmt. n.1. Among these are the "medical condition of the defendant," including where the defendant is "suffering from a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." *Id.* § 1B1.13 cmt. 1. The policy statement also requires that the defendant not pose a danger to the safety of the community. *Id.* § 1B1.13(2).

III. DISCUSSION

The Court finds that Defendant has failed to demonstrate an "extraordinary and compelling" reason to warrant compassionate release. Defendant's continuing danger makes him ineligible for compassionate release. Defendant has not demonstrated that he does not pose a danger to the community. Defendant has not given the Court countervailing evidence to show that he does not pose a danger.