

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 23-6977**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL PAUL PUZEY, a/k/a Big Pete,

Defendant - Appellant.

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Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, District Judge. (3:00-cr-00057-GMG-RWT-16)

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Submitted: November 16, 2023

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Decided: November 28, 2023

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Before KING and AGEE, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Michael Paul Puzey, Appellant Pro Se. Jennifer Therese Conklin, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Paul Puzey, a federal prisoner, appeals the district court's September 11, 2023, order upon remand that again denied his motion for compassionate release and reinstated motion for compassionate release. Having reviewed the record, we conclude that the district court did not abuse its discretion in determining that the 18 U.S.C. § 3553(a) factors weighed against compassionate release. *See United States v. Malone*, 57 F.4th 167, 172 (4th Cir. 2023) (explaining standard of review). Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG

UNITED STATES OF AMERICA,

v.

CIVIL ACTION NO.: 3:00-CR-57-16  
(GROH)

**MICHAEL PAUL PUZEY,  
a/k/a "Big Pete,"**

**Defendant.**

**ORDER DENYING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE**

The Defendant's Motion for Compassionate Release is before this Court on remand. In its April 18, 2023 per curiam opinion, the Fourth Circuit held that this Court abused its discretion when it denied the Defendant's Motion, citing three errors. Generally, the appellate court held that this Court's prior order focused too much on the Defendant's criminal history and provided an analysis that did not allow for meaningful appellate review.

Federal courts are authorized to reduce the sentences of federal prisoners facing extraordinary health conditions and other serious hardships, but only under very limited circumstances. Before a court can grant a compassionate release motion, there must be "extraordinary and compelling reasons" to warrant the reduction. See 18 U.S.C. § 3582(c)(1)(A). The First Step Act of 2018 amended § 3582(c)(1)(A) to add a provision allowing courts to consider motions by defendants for compassionate release without a

motion by the Bureau of Prisons ("BOP") Director, so long as the defendant has asked the Director to bring such motion and the Director fails or refuses.

Specifically, courts may now consider motions for compassionate release "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 BOP to bring a motion on the defendant's behalf or the lapse of thirty (30) days from receipt of such request by the warden of the defendant's facility, whichever is earlier[.]" See id.; see also First Step Act of 2018, Pub. L. 115-391, Title VI § 603, 132 Stat. 5194 (Dec. 21, 2018).

The Fourth Circuit reviews a decision regarding a motion for compassionate release for an abuse of discretion. United States v. Kibble, 992 F.3d 326, 329 (4th Cir.), cert. denied, 142 S. Ct. 383 (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. Hargrove, 30 F.4th 189, 195 (4th Cir. 2022) (quoting United States v. Dillard, 891 F.3d 151, 158 (4th Cir. 2018)).

This standard shows more deference to lower courts than reviews conducted under arbitrary and capricious, reasonableness, substantial evidence, clearly erroneous or *de novo* standards.

In considering what district courts must include in these orders, the Fourth Circuit has rejected the contention that lower courts must address every argument made by a defendant. Summarizing the Supreme Court's analysis, the Fourth Circuit explained:

But, the Court emphasized, "[j]ust how much of an explanation this requires . . . depends . . . upon the circumstances of the particular case."

In some cases, it may be sufficient for purposes of appellate review that the judge simply relied upon the record, while making clear that he or she has considered the parties' arguments and taken account of the § 3553(a) factors, among others. But in other cases, more explanation may be necessary (depending, perhaps, upon the legal arguments raised at sentencing). That may be the case even when there is little evidence in the record affirmatively showing that the sentencing judge failed to consider the § 3553(a) factors. If the court of appeals considers an explanation inadequate *in a particular case*, it can send the case back to the district court for a more complete explanation.

United States v. High, 997 F.3d 181, 188 (4th Cir. 2021) (quoting Chavez-Meza v. United States, 138 S. Ct. 1959, 1963 (2018)).

After considering the Defendant's reinstated motion, original motion, attachments to other filings, presentence investigation report, applicable law and the entire court file, the Court finds the Defendant's motions for compassionate release should be denied.<sup>1</sup>

Looking to the statute under which the Defendant seeks relief, the "court may not modify a term of imprisonment once it has been imposed except" in limited, narrowly defined circumstances. 18 U.S.C. § 3582(c). One of only a few of these narrow exceptions provides,

**(A)** the court, 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, **may** reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

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<sup>1</sup> The Court finds the Defendant exhausted his administrative remedies because this Circuit holds that "the defendant is not required to exhaust his administrative remedies with the BOP *at all* beyond making the initial request for compassionate release." United States v. Ferguson, 55 F.4th 262, 268 (4th Cir. 2022).

(i) extraordinary and compelling reasons warrant such a reduction[.]

18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

Under this framework, terms of imprisonment are generally not to be modified. Instead, Congress has seen fit to provide narrow exceptions when a court *may* reduce a defendant's term of imprisonment. Nothing in the language of the statute requires a court to act. Congress could have written the statute using the terms must or shall, *requiring* courts to reduce a term of imprisonment when "extraordinary and compelling reasons warrant such a reduction," but that is not how it chose to write the statute. Thus, it appears Congress gave sentencing courts great deference in deciding when to make an exception to the rule that a term of imprisonment may not be modified.

The Court must determine whether extraordinary and compelling circumstances exist to permit this Defendant's compassionate release. Although this Court's view of what constitutes "extraordinary and compelling" is a bit more literal, the approach in this circuit has been broad. Because the Fourth Circuit has vacated and remanded motions for compassionate release for, *inter alia*, not explicitly identifying a defendant's "alleged obesity in its analysis," this Court generally presumes most defendants could establish the "extraordinary and compelling" circumstances required upon appellate review.

Assuming arguendo the Defendant has demonstrated extraordinary and compelling circumstances, the Court must turn its attention to the factors set out in 18 U.S.C. § 3553(a).

This Court sentenced the Defendant on October 22, 2001. He was convicted of six counts across two criminal cases for drug distribution, conspiracy, and possessing a firearm in relation to a drug trafficking crime. As a result, the Defendant received a life

sentence on one count, to be run concurrent to 240-month sentences (on three counts), and a 480-month sentence on another. Finally, the Defendant received a 60-month sentence to be served consecutively on the single charge in the other case. This Court previously granted the Defendant's First Step Act Motion in part and reduced his sentence from life to 480 months. In reaching that conclusion and significantly lowering the Defendant's sentence, this Court noted the "Defendant's progress and path toward rehabilitation while incarcerated." ECF No. 2049 at 4.

To make this abundantly clear, the Court considered and granted in part the Defendant's Motion for a Reduced Sentence Pursuant to the First Step Act of 2018 on April 13, 2020. The Fourth Circuit affirmed this Court's Order by a per curiam opinion on August 28, 2020. On September 16, 2020, the Defendant filed a second notice of appeal, appealing the same April 13, 2020 Order that was just affirmed by the Fourth Circuit. While that second appeal remained pending, the Defendant filed the instant Motion for Compassionate Release.

Although the Fourth Circuit has stated that "Judges are not like pigs, hunting for truffles buried in briefs[.]" this Court has scoured the record for the Defendant's rehabilitation evidence that he "did not attach . . . to his compassionate release motion or reinstated motion[.]" as acknowledged by the appellate court. ECF No. 2150 at 5; See, e.g., Vannoy v. Fed. Rsrv. Bank of Richmond, 827 F.3d 296, 302 (4th Cir. 2016); Hensley on behalf of N. Carolina v. Price, 876 F.3d 573, 581 (4th Cir. 2017); and Walker v. Prince George's Cnty., MD, 575 F.3d 426, 429 (4th Cir. 2009) (quoting United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)).

The Defendant has participated in many programs over the past two decades in prison. He has taken parenting classes, screen play writing, swissball fitness, eating to win, talking with your doctor, legal research, GED classes, anger management group, culinary arts, and step & bike. ECF No. 2028-2 at 1. It appears to the Court he has earned his GED while incarcerated. Id. It appears that he has earned about 40 certificates from various programs and courses. See ECF No. 2028-7. Prison officials rate the Defendant's work and attitude very highly. See ECF Nos. 2028-8 & 2028-9.

Turning to the content of the Defendant's Motions, in a handwritten letter to the Court dated February 4, 2021, the Defendant states he is seeking compassionate release and writing the Court because the Public Defender's Office instructed one of his family members that he should write the Court. ECF No. 2083. He continues that he is seeking compassionate release because he has "served 20 yrs for drugs and gun charges." Id. He also cites his rehabilitative efforts and medical conditions. Specifically, he avers that he suffers from unstable blood pressure, uses a C-PAP machine, has an ulcer condition, and previously injured his elbow and ankle. He concludes the letter by noting that this was his first felony conviction and he is a changed man.

On July 6, 2021, he filed a Reinstated Motion to Reduce Sentence Pursuant to the First Step Act of 2018. ECF No. 2094. As support for this Motion, the Defendant relies upon his "increased risk of contracting COVID-19 in prison [and] the unusual length of his sentence." Id. He also points the Court to his "considerable rehabilitation." Id.

The Defendant sets out what he titled relevant factual and procedural history, which generally captures the details of his case and proceedings with accuracy and great detail. Curiously missing from this section, however, is the Court's April 13, 2020 Order

granting in part his motion for a reduced sentence under the First Step Act. ECF No. 2049. Indeed, the Defendant erroneously states, “all post-conviction motions were denied.” That is incorrect. The Court previously granted, in part, the Defendants motion to reduce his sentence, reducing his term of imprisonment from life to 480 months.

The Court wonders whether Mr. Puzey realizes that his prior motion was granted in part because he continues on to say that “this Court is presented with its first opportunity to reduce Mr. Puzey'[s] life sentences, imposed under the Draconian crack cocaine laws in effect in 2001.” ECF No. 2094 at 24.

The explanation for Defendant’s sentence, including the Court’s analysis of the § 3553 factors, remains unchanged and is incorporated by reference. Nonetheless, the Court finds it prudent for appellate review to rehash all the reasons why the Defendant’s recently reduced sentence remains appropriate.

As the Fourth Circuit summarized in its opinion upholding the convictions and sentence upon the Defendant’s appeal in 2003, “Puzey was one of twenty-six conspirators indicted in a sixty-five count indictment arising our of a large crack cocaine conspiracy lasting over ten years in Jefferson County, West Virginia.” ECF No. 1009 at 4. After a jury trial, the Defendant was convicted of conspiracy to distribute crack cocaine, distribution of crack cocaine (four counts), and use of a firearm during and in relation to a drug trafficking offense. Id. at 1

Also noted in the same Opinion, the evidence at trial showed the Defendant “was an organizer/leader of a drug conspiracy involving twenty-five other persons . . . and that he intimidated and threatened the residents of Fox Glen, dealt crack cocaine from their

homes, and had the homeowners act as ‘runners,’ with Puzey receiving the largest share of the proceeds.” *Id.* at 5.

Moreover, at the time of sentencing, the Court found that the Defendant failed to show remorse for the crimes he had been convicted of, noting that he had taken the stand during his trial and falsely testified under oath. ECF No. 936-1 at 44. The Court explained that the Defendant had not been a productive member of society, had a recurring pattern of assaultive behavior, including carrying handguns, had been undeterred from prior stints of incarceration, and had demonstrated that supervision was ineffective as he had a history of probation revocations. The Defendant had a criminal history category IV and was on parole from similar crimes in Philadelphia, Pennsylvania, at the time this criminal conduct was committed. *Id.* at 45.

The Court noted that the “Defendant is considered to be a substantial and continuing threat to the community and must be held accountable for his actions.” *Id.* The Defendant’s PSR leaves no doubt. At 19 years old, the Defendant was charged with concealed deadly weapon. Less than a year later, the Defendant was convicted of carrying a handgun and served a few weeks in jail, receiving the remainder of the sentence on probation. That probation would be revoked, and the Defendant served three months incarceration on the revocation.

At 20, the Defendant was convicted of battery and received another probation sentence. This probation would be revoked within two months. At 21, the Defendant was convicted of providing a false statement to a police officer. Specifically, officers observed the Defendant engage in a drug transaction and fled when they approached. After the Defendant was apprehended, he gave the officers a false name.

At 26, the Defendant was convicted after a jury trial of carrying a firearm without a license and simple assault. He was eligible for parole at the time of sentencing and released (after serving 7 months and 25 days). The underlying facts of this case are quite concerning. The Defendant went to a residence in Philadelphia, kicked in the door, went to the second floor and pointed a gun in the fact of his ex-girlfriend's mother, demanding to know where she was. He went to the front porch of the residence, and when the ex-girlfriend's father and an unidentified female arrived, the Defendant became upset, ordered the woman off the porch, walked to his car, and then fired three shots at the female. He left and returned to fire more shots at his ex-girlfriend's father. The Defendant was on parole for that conduct when he committed the instant offenses.

Those charges followed the same ex-girlfriend reporting the Defendant was controlling and would not let her leave their house to get formula for her seven-month-old, which was why the child had lost weight since her last checkup. An investigation into this led to the girlfriend stating the Defendant was physically violent toward her and had hit the seven-month-old with a belt because she was crying. According to police reports, the Defendant admitted to police that he had hit the baby with a belt because she was crying, but it would not happen again. ECF No. 842 at 19.

In January 2001, a warrant was issued for the Defendant for assault second degree and sex offense in the fourth degree. As a 29-year-old, the Defendant met a 16-year-old girl at White Oak Shopping Center in Prince George's County in Maryland. After driving around in his vehicle, the Defendant took the victim to the Northway Ballfields and allegedly told her, "I should leave your ass here. You know what you've gotta do or I'm gone." Id. at 20. The victim did not know where she was and was afraid to be left alone in

the woods. The Defendant then allegedly told the victim to pull her pants down and turn away from him; he attempted vaginal intercourse but was unsuccessful. The two returned to the car, where the Defendant allegedly penetrated the victim's vagina, digitally, and exposed his penis. The Defendant then instructed the victim to "sit on it" and vaginally penetrated the victim his penis. The victim took a registration card from the vehicle and told police that the Defendant had stopped at an ATM machine. Officers were able to identify the Defendant on surveillance footage from the ATM. This incident allegedly occurred on December 5, 2000—the same day the Defendant was indicted in this case.

Turning to the 3553(a) factors, the nature and circumstances of the offense and the history and characteristics of the defendant lend themselves toward the sentence imposed by the Court, as modified by this Court's April 13, 2020 Order. Specifically, this was a very serious offense. The Defendant was a leader/organizer in a large drug conspiracy. Not only was he a leader, but also the Defendant used firearms in furtherance of his crimes. Moreover, he has a lengthy history of carrying and using firearms.

The Court also finds that this sentence the Defendant is currently serving reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense. Further, this sentence is necessary to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Defendant points the Court to his programming over the last twenty-plus years. That is certainly to be commended, and the Court is pleased to see that the Defendant is taking seriously the opportunity he currently has to better himself and

prepare for release. Still, this is one of the aims of sentencing, and given the Defendant's education and career history prior to sentencing in this matter, incarceration has afforded the Defendant an opportunity to make corrections and gain valuable knowledge and skills. Although he has availed himself of these benefits to this point, that is not a single, determinative factor warranting release.

The Defendant committed numerous, serious, potentially deadly crimes prior to this conviction. None of those convictions were accompanied by seriously meaningful incarceration, and that is supported by the Defendant's unabated criminal activities. Our actions have consequences.

The Court finds that the Defendant's sentence, as modified, does not create an unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct. There is no continuing need to provide restitution to any victims, so that factor does not merit continued incarceration.

In sum, the Defendant's current sentence is appropriate. As modified by this Court's April 13, 2020 Order, the Defendant's sentence is sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of 18 U.S.C. 3553(a).

Therefore, the Defendant's Motion for Compassionate Release [ECF No. 2083] and Reinstated Motion for Compassionate Release [ECF No. 2094] are hereby **DENIED**.

The Clerk of Court is **DIRECTED** to transmit a copy of this Order to all counsel of record herein and to mail a copy to the Defendant by certified mail, return receipt requested.

**DATED:** September 11, 2023

  
GINA M. GROH  
UNITED STATES DISTRICT JUDGE

No.

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**MICHAEL PAUL PUZEY,**

**PETITIONER**

v.

**UNITED STATE OF AMERICA,**

**CERTIFICATE OF SERVICE**

I Michael Paul Puzey hereby certify that on this 24<sup>th</sup>, day of February, 2024, I caused one copy of the Petition for Writ of Certiorari to be served by U.S. Mail to the United States Solicitor General at U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

I further certify that all parties required to be served have been served.



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Michael Paul Puzey

**ATTACHMENTS**

1). Court of Appeals Opinion

2). District Court Opinion