

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

No: 23-2823

Keith Hager

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:17-cv-00060-LRR)

JUDGMENT

Before COLLTON, GRUENDER, and BENTON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motion for appointment of special master is denied as moot.

The request for judicial notice is denied.

October 12, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 23-2823

Keith Hager

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:17-cv-00060-LRR)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 14, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

KEITH HAGER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 17-cv-0060-LRR
11-cr-0143-LRR

JUDGMENT

DECISION BY THE COURT: This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED pursuant to the Order filed July 7, 2017 (docket number 2): That the Plaintiff's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 is denied. A certificate of appealability under 28 U.S.C. § 2253 will not issue.

DATED this 7th day of July, 2017.

ROBERT L. PHELPS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA



By: Karen S Yorgensen, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

KEITH HAGER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 17-CV-60-LRR
No. 11-CR-143-LRR

ORDER

The matter before the court is Petitioner Keith Hager’s (“the movant”) “Motion for Relief From Final Judgment in § 2255 Proceeding Pursuant to Fed. R. Civ. P., Rule 60(b)(6)” (“the Motion”), which the Clerk of Court received on June 5, 2023 (civil docket no. 19).

On July 7, 2017, the court denied the movant’s pro se § 2255 motion and denied the issuance of a certificate of appealability (civil docket no. 3). The movant filed a motion to amend (civil docket no. 4) which the court also denied (civil docket no. 6). The movant then filed a motion for a certificate of appealability (civil docket no. 7) which the court denied (civil docket no. 10). The movant applied to the Eighth Circuit for a certificate of appealability (civil docket no. 11) and was denied in October 2020. *Hager v. United States*, No. 20-2587 (8th Cir. 2020).

In the Motion, the movant asserts the court denied his § 2255 motion without an opinion. Motion at 2. He also asserts the court’s opinion failed to reach the merits of his § 2255 motion and address any grounds for relief. *Id.* at 2-3. He asserts that the court failed to address all grounds of relief as required by law. *Id.* at 3. He states the undersigned denied the movant’s “right to redress the government to redress grievances.”

Id. at 3. Additionally, the movant asserts the undersigned “has been removed from the bench” for misconduct and should be removed from the case. *Id.* at 3-4.

Rule 60(b) of the Federal Rules of Civil Procedure provides that:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6). Rule 60(b)(6) is “available only when Rules 60(b)(1) through (b)(5) are inapplicable” and “[e]ven then, extraordinary circumstances must justify reopening.” *Kemp v. United States*, 142 S. Ct. 1856, 1861 (2022). Additionally, motions made pursuant to Rules 60(b)(1)-(3) must be made no more than a year after the entry of the judgment. Fed. R. Civ. P. 60(c)(1).

The movant’s first assertion is false; the court’s order denying his § 2255 motion is filed at civil docket no. 3. Next, the Motion is improperly made under Rule 60(b)(6) because it alleges the court made mistakes by not addressing the movant’s claims, failing to reach the merits, and denying his rights. A court’s errors of law are mistakes under Rule 60(b)(1) and thus subject to a 1-year limitations period. *Kemp*, 142 S. Ct. at 1862, 65 (“Rule 60(b)(1) covers all mistakes of law made by a judge”). Because the movant

only alleges mistake, the Motion is cognizable under Rule 60(b)(1) and subject to the 1-year limitations period. *Id.* The movant seeks relief from a judgment made in 2017; it is now 2023. Accordingly, those claims must be denied as untimely.¹ *Kemp*, 142 S. Ct. at 1865.

Lastly, the undersigned has not been removed from the bench for misconduct and declines to remove herself from the case. The movant's assertions are baseless. Regardless, the movant has failed to carry his burden of proof on the issue of recusal. He has presented no affidavit. *See Holloway v. United States*, 960 F.2d 1348, 1354-55 (8th Cir. 1992) ("Relief under [§] 144 is expressly conditioned on the timely filing of a legally sufficient affidavit.") In short, he has failed to provide any evidence rebutting the presumption of impartiality.

IT IS THEREFORE ORDERED:

- 1) The movant's "Motion for Relief From Final Judgment in § 2255 Proceeding Pursuant to Fed. R. Civ. P., Rule 60(b)(6)" (civil docket no. 19) is **DENIED**.

DATED this 6th day of July, 2023.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ Moreover, the court briefly notes that the movant's claims are false. The court addressed the movant's ineffective assistance of counsel claims and also found that an evidentiary hearing was unnecessary (civil docket no. 2 at 1-4). Thus, even if it were timely, the court would deny the motion.

United States District Court

NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE

KEITH HAGER

Case Number: **CR 11-143-11-LRR**
USM Number: **45486-424**

Michael K. Lahammer

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Third Superseding Indictment filed on May 23, 2013

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(b)(1)(B), 846, and 860	Conspiracy to Distribute 100 Grams or More of Heroin Within 1,000 Feet of a School	Nov. 2012	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

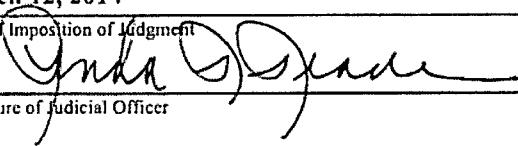
The defendant has been found not guilty on count(s) _____

Count 2 of the Third Superseding Indictment is dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in economic circumstances.

March 12, 2014

Date of Imposition of Judgment


Signature of Judicial Officer

Linda R. Reade

Chief U.S. District Court Judge

Name and Title of Judicial Officer

March 13, 2014
Date

DEFENDANT: **KEITH HAGER**
CASE NUMBER: **CR 11-143-11-LRR**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **960 months on Count 1 of the Third Superseding Indictment.**

- The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.
That the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.
That the defendant participate in a Bureau of Prisons' Vocational Training Program specializing in the culinary arts, carpentry, horticulture, HVAC, plumbing, and/or welding.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **KEITH HAGER**
CASE NUMBER: **CR 11-143-11-LRR**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **8 years on Count 1 of the Third Superseding Indictment.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **KEITH HAGER**
CASE NUMBER: **CR 11-143-11-LRR**

SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the U.S. Probation Office:

- 1) The defendant must participate in and successfully complete a program of testing and treatment for substance abuse.
- 2) The defendant must not use alcohol nor enter bars, taverns, or other establishments whose primary source of income is derived from the sale of alcohol.
- 3) The defendant must not knowingly associate with any member, prospect, or associate member of any gang without the prior approval of the United States Probation Office. If the defendant is found to be in the company of such individuals while wearing the clothing, colors, or insignia of a gang, the Court will presume that this association was for the purpose of participating in gang activities.
- 4) If not employed at a regular lawful occupation, as deemed appropriate by the probation officer, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.
- 5) The defendant must submit to a search of the defendant's person, residence, adjacent structures, office and vehicle, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant must warn any other residents that the residence or vehicle will be subject to searches pursuant to this condition. This condition may be invoked with or without the assistance of law enforcement, including the United States Marshals Service.

Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: **KEITH HAGER**
CASE NUMBER: **CR 11-143-11-LRR**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(l), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **KEITH HAGER**
CASE NUMBER: **CR 11-143-11-LRR**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A Lump sum payment of \$ 100 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Codefendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 11-CR-143-CJW-MAR

vs.

ORDER

KEITH HAGER,

Defendant.

This matter is before the Court on defendant's pro se motion for compassionate release. (Doc. 784). Defendant asserts that release is appropriate because his sentence was harsh, he would have been sentenced differently today, and he has been rehabilitated. (*Id.*, at 12-27).

The term "compassionate release" refers to Title 18, United States Code, Section 3582(c)(1)(A), which allows a defendant to directly petition a district court for a sentence reduction "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." Under Section 3582(c)(1)(A), if a defendant fully exhausts administrative remedies, the court may reduce the defendant's sentence, after considering the factors set forth in Title 18, United States Code, Section 3553(a) to the extent they are applicable, if the court finds that "extraordinary and compelling reasons warrant such a reduction." *See also United States v. Rodd*, 966 F.3d 740, 748 (8th Cir. 2020).

The Court cannot grant compassionate release based on rehabilitation alone. *See* 28 U.S.C. § 994(t) ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason" for release). Thus, this reason is insufficient to support defendant's motion here.

The Court also declines to resentence defendant. The compassionate release system was not designed to be a parole system by which courts can merely change the sentence of any defendant for any reason. *See United States v. Crandall*, No. 89-CR-21-CJW-MAR, 2020 WL 7080309, at *8 (N.D. Iowa Dec. 3, 2020). Whether this Court would have sentenced defendant differently today is irrelevant. Rather, defendant must identify some extraordinary and compelling reason now which justifies his release. His mere assertion that his sentence was harsh, long, or unfair is not a proper ground for compassionate release. Further, the Court notes defendant's sentence has been affirmed on appeal. (Docs. 679 & 704). Thus, the Court finds that defendant has not stated an extraordinary and compelling reason for release.

Even if the Court found defendant had stated such a reason, the Court would still deny release under the Section 3553(a) factors. Defendant's projected release date is seven decades away.¹ This sentence was appropriate in light of the offense conduct here. (Doc. 597). Reducing defendant's sentence now would fail to achieve the goals of sentencing and cause defendant's sentence to be disparate from other, similarly situated defendants. *See United States v. Lizarraga*, No. 15-CR-2027-CJW-MAR, 2020 WL 7346036, at *6 (N.D. Iowa Dec. 14, 2020) ("The Court has often turned to the remainder of a defendant's term of imprisonment . . . as reflecting many of the goals of Section 3553(a)[.]") (citation omitted). Such a reduction would fail to reflect the seriousness of defendant's offense, promote respect for the law, provide just punishment, deter defendant and others, and protect the community. Defendant's stated reasons for release do not overcome the utility of upholding his sentence for all the same reasons the Court initially expressed in imposing its judgment.

¹ *Find an Inmate*, BOP, <https://www.bop.gov/inmateloc/>.

IV. CONCLUSION

For these reasons, defendant's pro se motion for compassionate release (Doc. 784) is denied.

IT IS SO ORDERED this 19th day of May, 2021.



C.J. Williams
United States District Judge
Northern District of Iowa