APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

[Filed Feb. 5, 2025]

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12132

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MALCOM ANWAR WILLIAMS,

Defendant-Appellant.

Appeal from United States District Court
for the Southern District of Florida
D.C. Docket No. 0:15-cr-60120-KAM-2

Before BRANCH, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Malcom Anwar Williams is serving 151 months' imprisonment after pleading guilty in 2015 to Hobbs Act robbery. He appeals the denial of his *pro se* motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). He argues that the district court abused its discretion when denying his motion by failing to consider his substantial rehabilitation efforts and his other arguments as to why he would receive a lower sentence if he were sentenced today. The government in turn moves for summary affirmance.

Summary disposition is appropriate where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).[1]

We review *de novo* whether a defendant is eligible for an 18 U.S.C. § 3582(c) sentence reduction. *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021). However, we review a district court's denial of a prisoner's § 3582(c)(1)(A) motion for an abuse of

[1] *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (holding that all decisions from the Fifth Circuit Court of Appeals issued prior to October 1, 1981, are binding precedent in the Eleventh Circuit).

discretion. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021). The "district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination," makes clearly erroneous factual findings, or "commits a clear error of judgment." *Id.* at 911-12.

Generally, a court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). Section 3582(c)(1)(A), however, provides the following limited exception:

> 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 … may reduce the term of imprisonment … after considering the factors set forth in [18 U.S.C. §] 3553(a) 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).

"The 'applicable policy statement[]' to which § 3582(c)(1)(A) refers states, in turn, that, the court may reduce a term of imprisonment if, as relevant here, it 'determines that … the defendant is not a danger to the safety of any other person or to the community.'" *United States v. Tinker*, 14 F.4th 1234,

1237 (11th Cir. 2021) (quoting U.S.S.G. § 1B1.13). The policy statements in § 1B1.13 apply to all 18 U.S.C. § 3582(c)(1)(A) motions, and "district courts may not reduce a sentence under Section 3582(c)(1)(A) unless a reduction would be consistent with 1B1.13." *United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021) (quotations omitted). Thus, under § 3582(c)(1)(A), the district court may reduce a movant's imprisonment term if: (1) there are extraordinary and compelling reasons for doing so, (2) the factors listed in 18 U.S.C. § 3553(a) favor doing so, and (3) doing so is consistent with the policy statements in U.S.S.G. § 1B1.13. *Tinker*, 14 F.4th at 1237. If the district court finds against the movant on any one of these requirements, it cannot grant relief, and need not analyze the other requirements. *Giron*, 15 F.4th at 1347-48; *Tinker*, 14 F.4th at 1237-38 (explaining that "nothing on the face of 18 U.S.C. § 3582(c)(1)(A) requires a court to conduct the compassionate-release analysis in any particular order").

Here, Williams argued that a sentencing reduction was warranted based on post-sentencing changes to the law that would have resulted in a lower sentence if he were sentenced today.[2] He also proffered his rehabilitative efforts in prison and asserted that he would pose no danger if released. The district court denied Williams's motion for compassionate release on the ground that Williams

[2] Williams argued that he established the existence of extraordinary and compelling reasons under the "other reasons" category in U.S.S.G. § 1B1.13(b)(5), or the "unusually long sentence" category in § 1B1.13(b)(6).

would be a danger to the community if released. The district court noted that it had made the same finding in ruling on an earlier § 3582(c) motion,[3] citing Williams's 15 prior felony convictions, "including strong arm robbery, two burglaries, two felon in possessions, two grand thefts, five attempted automobile thefts, one battery on a law enforcement officer, one fleeing and eluding and one possession with the intent to distribute." The district court explained that "nothing ha[d] changed" to alter its prior conclusion.[4] Accordingly the district court

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[3] Williams filed a *pro se* § 3582(c) motion for a sentence reduction in 2020 based on changes to the law since his sentencing that would have resulted in a lower guidelines range. The district court denied the motion, concluding that (1) it lacked the authority to reduce Williams's sentence because, at that time, a change in the law was not one of the listed extraordinary and compelling reasons listed in U.S.S.G. § 1B1.13; (2) even if it had the authority to reduce Williams's sentence, the 18 U.S.C. § 3553(a) factors did not support his early release; and (3) he was still a danger to the community based on his lengthy criminal history. We affirmed on appeal. *United States v. Williams*, No. 20-14360, 2021 WL 6101491 (11th Cir. Dec. 21, 2021) (unpublished).

[4] Citing decisions from the Fourth Circuit, Williams argues that when, as here, a defendant provides evidence of post-sentencing rehabilitation, the district court cannot merely rely on the defendant's prior criminal behavior and instead must provide a detailed explanation as to why the defendant's rehabilitation does not warrant a sentence reduction under § 3582(c). *See, e.g.*, *United States v. Kibble*, 992 F.3d 326, 335 (4th Cir. 2021) (Gregory, C.J., concurring) (separately concurring and affirming the denial of a § 3582(c)(2) motion, but disagreeing with the government's assertion that a district court satisfies its duty to

denied Williams's motion because he failed to satisfy one of the necessary policy statements in § 1B1.13.

Contrary to Williams's argument on appeal, the district court did not fail to consider his rehabilitative efforts. Rather, the district court implicitly considered Williams's rehabilitation arguments when, after reviewing his motion, it determined that "nothing ha[d] changed" to alter its conclusion that Williams remained a danger to the community if released. Because one of the required conditions in U.S.S.G. § 1B1.13 for a sentence reduction was not satisfied, the district court did not abuse its discretion in denying Williams's motion. *Giron*, 15 F.4th at 1347-48; *Tinker*, 14 F.4th at 1237-38.

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consider the § 3553(a) factors "by merely recounting the considerations that supported the original sentence" and stating that various other post-sentencing factors may be relevant); *United States v. McDonald*, 986 F.3d 402, 411-12 (4th Cir. 2021) (vacating and remanding the form order denial of defendants' motions for a sentence reduction under § 404(b) of the First Step Act because where defendants present post-sentencing mitigation evidence, the district court is required "to provide an explanation on the record of its reasons for deciding a sentencing reduction motion"); *United States v. Martin*, 916 F.3d 389, 396-97 (4th Cir. 2019) (vacating and remanding the denial of a § 3582(c) motion because district court focused solely on defendant's criminal behavior and failed to "provide an individualized explanation for why [the defendant's] steps toward rehabilitation are meaningless"). However, those cases are out-of-circuit precedent and are not binding on this Court. *In re Bowles*, 935 F.3d 1210, 1217 (11th Cir. 2019) ("We are not bound by the decisions of our sister circuits." (alteration adopted) (quotations omitted)).

Accordingly, the government's motion for summary affirmance is **GRANTED**.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-60120-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MALCOLM ANWAR WILLIAMS,

Defendant.

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ORDER DENYING MOTION FOR COMPASSIONATE RELEASE

THIS CAUSE is before the Court upon Defendant's Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(A) **[DE 136].** This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

In deciding a motion for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A)(i), a district court can only grant a reduction in sentence if it will be consistent with the policy statements of the United States Sentencing Commission as set forth in §1B1.13.

United States v. Bryant, 996 F.3d 1243, 1262 (11th Cir. 2021). That policy statement provides, in relevant part, that in order for the court to grant a sentence reduction based on "extraordinary and compelling reasons," the defendant cannot be "a danger to the safety of any other person or to the community." §1B1.13 (a)(1)(A)(2); *See United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021).

This Court has previously found relative to an earlier motion filed by Defendant that he would be a danger to the community if he is released early from incarceration. [DE 110 at 3-4]. As the Court there noted, Defendant's Presentence Investigation Report reveals 15 felony convictions over the years, including strong arm robbery, two burglaries, two felon in possessions, two grand thefts, five attempted automobile thefts, one battery on a law enforcement officer, one fleeing and eluding and one possession with the intent to distribute. [DE 60, ¶¶ 28, 30, 31, 33, 34-36]. This Court's previous denial of Defendant's motion for a sentence reduction based, in part, on the Court's finding that Defendant would be a danger to the community was affirmed on appeal. *United States v. Williams*, Appeal No. 20-14360, 2021 WL 6101491 *3 n. 3 (11th Cir. December 21, 2021). Nothing has changed since the Court's prior order to alter the conclusion that Defendant is a danger to the community. Therefore, Defendant cannot satisfy the conditions for a reduction in his sentence and his motion is DENIED.

DONE AND ORDERED in West Palm Beach, Florida this 11th day of June, 2024.

/s/ Kenneth A. Marra
KENNETH A. MARRA
United States
District Judge

Copies provided to:

All counsel

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-60120-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MALCOLM WILLIAMS,

Defendant.

_____/

ORDER ON MOTIONS TO REDUCE SENTENCE

THIS CAUSE is before the Court upon Defendant's Motion to Reduce Sentence **[DE 103]** and Addendum to Motion to Reduce Sentence to include Motion to Appoint Counsel **[DE 106]**. This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

Defendant was convicted of Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and 2 and sentenced to 151 months term of imprisonment. Defendant has moved the Court to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) asserting that there are

"extraordinary and compelling reasons" for the reduction. Defendant argues that, due to changes in the law since the time of his sentencing, the advisory guideline range that was established for his sentencing is no longer correct. Because, if Defendant was sentenced today his advisory guideline range would be lower than it was at the time of his sentencing, and because Defendant does not have the ability to collaterally attack his sentence pursuant to 28 U.S.C. § 2255, Defendant contends he has met his burden of establishing that "extraordinary and compelling reasons" exist to reduce his sentence.

As previously indicated, Defendant was convicted of Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a). Defendant and three other individuals entered a jewelry store in the Galleria Mall in Ft. Lauderdale, Florida wearing masks and armed with large hammers. With both employees and customers present, they smashed the display counters and seized numerous high-priced watches. The value of the stolen items exceeded $250,000.00.

At the time Defendant was sentenced, Hobbs Act Robbery was considered a violent felony under the residuary clause of §4B1.2(a)(2) of the United States Sentencing Guidelines (a crime that "otherwise involves conduct that presents a serious potential risk of physical injury to another). In addition, Defendant had a prior conviction for a controlled substance offense and a conviction for fleeing and eluding, which was also considered a crime of violence under the residuary clause at the time of Defendant's sentencing. As a result, Defendant was considered a

career offender under §4B1.1 of the Sentencing Guidelines. The career offender characterization increased Defendant's advisory guideline range from an offense level 23, criminal history category V (84-105 months of imprisonment), to an offense level 29, criminal history category VI (151-188 months of imprisonment). *See* DE 60, ¶¶ 17-27. In 2016, the Sentencing Guidelines were amended to remove the residual clause from §4B1.2(a)(2). Hence, if Defendant was sentenced after the 2016 amendment to the sentencing guidelines, his advisory guideline range would have been 84-105 months of imprisonment.

The Court rejects Defendant's contention that a post-sentencing amendment to the guidelines that was not given retroactive effect is an "extraordinary or compelling reason" to reduce his sentence. The sentencing guidelines make provision for amendments to have retroactive effect. §1B1.10(a)(1) and (d). To allow any district judge the discretion to reduce a defendant's sentence whenever there is an amendment to the sentencing guidelines that lowers that defendant's guideline range would render superfluous the authority of the United States Sentencing Commission to make guideline amendments retroactive. It would not be necessary for the Sentencing Commission to state explicitly that an amendment that lowers a defendant's advisory guideline range is to apply retroactively because, in any case, a district judge could conclude that the amendment is an "extraordinary and compelling reason" to reduce the sentence. Even assuming, however, that this Court has the authority and the

discretion to reduce Defendant's sentence in this case, it would not exercise its discretion to do so.

In considering the statutory factors set forth in 18 U.S.C. § 3553(a), the Court finds that based on the seriousness of the conduct of the underlying offense, Defendant's release from custody would not be consistent with § 3553(a) because it would not reflect the seriousness of the offense, provide just punishment or provide adequate individual or general deterrence. Moreover, before a defendant's sentence can be reduced under § 3582(c)(1)(A), the court must find that the defendant is not a danger to the safety of the community. The Court cannot make that finding in this case. Defendant understates his criminal history in arguing that he is not a danger. He only refers to prior convictions for which he was given points when calculating his criminal history category. He ignores numerous felony convictions which were not given points when calculating his criminal history category, but which this Court deems relevant to determining whether he will be a danger to the community. Defendant's Presentence Investigation Report reveals 15 felony convictions over the years, including strong arm robbery, two burglaries, two felon in possessions, two grand thefts, five attempted automobile thefts, one battery on a law enforcement officer, one fleeing and eluding and one possession with the intent to distribute. [DE 60, ¶¶ 28, 30, 31, 33, 34-36]. In considering the factors set forth in 18 U.S.C. § 3142(g), releasing Defendant from custody before the completion of his sentence would present a danger to the community.

In view of the forgoing, Defendant's Motions are DENIED.

DONE AND ORDERED in West Palm Beach, Florida this 4th day of November, 2020.

/s/ Kenneth A. Marra
KENNETH A. MARRA
United States
District Judge

Copies provided to:

All counsel