

APPENDIX

Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6702

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSCAR OMAR LOBO-LOPEZ, a/k/a Joker,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. Leonie M. Brinkema, District Judge. (1:08-cr-00194-LMB-1)

Submitted: November 14, 2024

Decided: November 19, 2024

Before THACKER and HARRIS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Oscar Omar Lobo-Lopez, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Oscar Omar Lobo-Lopez appeals the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) and the order granting in part and denying in part his motion for reconsideration.

We review a district court's denial of a motion for compassionate release for abuse of discretion. *United States v. Brown*, 78 F.4th 122, 127 (4th Cir. 2023). "In doing so, we ensure that the district court has not acted arbitrarily or irrationally, has followed the statutory requirements, and has conducted the necessary analysis for exercising its discretion." *Id.* (internal quotation marks omitted). "To grant a compassionate release motion, the district must conclude that the prisoner is eligible for a sentence reduction because he has shown extraordinary and compelling reasons supporting relief, and that release is appropriate under the 18 U.S.C. § 3553(a) sentencing factors, to the extent those factors are applicable." *Id.* at 128 (alterations and internal quotation marks omitted).

We conclude that the district court did not abuse its discretion in determining that Lobo-Lopez failed to identify an extraordinary and compelling reason to grant relief and that, even if he had, the 18 U.S.C. § 3553(a) factors counseled against a sentence reduction. Accordingly, we affirm the district court's orders. *United States v. Lobo-Lopez*, No. 1:08-cr-00194-LMB-1 (E.D. Va. June 4 & 26, 2024).

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

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FILED: November 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6702
(1:08-cr-00194-LMB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

OSCAR OMAR LOBO-LOPEZ, a/k/a Joker

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

OSCAR OMAR LOBO-LOPEZ,

Defendant.

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1:08-cr-194 (LMB)

ORDER

Before the Court is pro se defendant Oscar Omar Lobo-Lopez's ("defendant" or "Lobo-Lopez") Motion for Reconsideration, seeking reconsideration of the Court's June 4, 2024 Order denying his Motion for Compassionate Release because the government did not provide him with a copy of its Opposition, and as such, "he never has [sic] the opportunity to respond to the government motion." [Dkt. No. 562] at 3.¹ Defendant also argues that because "courts in this district routinely impose sentence[s] [of] 30-years for defendants involved in drug-related killings," and because he will be deported by United States Immigration and Customs Enforcement, his sentence should be reduced to "remain consistent with precedent." Id. at 4. Given that defendant's court-appointed counsel neither responded to the government's Opposition nor provided defendant with a copy of the government's Opposition, defendant's Motion for Reconsideration will be granted only to the extent that the Court will consider defendant's new arguments regarding compassionate release.

In his Motion for Reconsideration, defendant seeks compassionate release because his

¹ Because defendant was represented by counsel when the government filed its Opposition, it did not send a copy of its Opposition to defendant's correctional institution address. See [Dkt. No. 560] at 16.

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sentence “is disproportionately severe compared with the sentence received by other defendants with similar crimes,” [Dkt. No. 562] at 6; however, defendant misunderstands that his murder in aid of racketeering conviction under 18 U.S.C. §§ 1959(a)(1) and (2) carries a mandatory sentence of life imprisonment. Although Lobo-Lopez cites to cases in which defendants “involved in drug-related killings” did not receive sentences of life imprisonment, the defendants in those cases were not convicted of offenses which carried mandatory life sentences. See id. at 3. If Lobo-Lopez were sentenced today for the same offenses he would again receive the exact same mandatory sentence of life imprisonment. Given the offenses for which defendant was convicted, he has failed to present any extraordinary and compelling reasons supporting his request for compassionate release.

Lobo-Lopez argues that the 18 U.S.C. § 3553(a) factors support release because he will likely be deported once he has served his sentence. [Dkt. No. 562] at 6. Although courts may consider a defendant’s imminent deportation in determining whether he poses a danger to the community, courts must also consider the nature of the crime for which a defendant was convicted, his criminal history, and the need for deterrence. As explained in the June 4, 2024 Order, the § 3553(a) factors do not justify compassionate release because Lobo-Lopez has been convicted of “very serious” and “terrible” offenses, [Dkt. No. 440] at 24-25, including conspiracy to commit murder in aid of racketeering, murder in aid of racketeering, and use of a firearm during a crime of violence that caused a death; has an established pattern of dangerous conduct starting in 2001, including convictions for possession of a controlled substance, driving under the influence, and possession of marijuana; and has only served 16 years of his life sentence. Accordingly, it is hereby

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ORDERED that defendant's Motion for Reconsideration [Dkt. No. 562] be and is GRANTED to the extent that the Court considered defendant's arguments and DENIED to the extent that he sought a sentence reduction.

To appeal this decision, defendant must file a written notice of appeal with the Clerk of the court within fourteen (14) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order defendant wants to appeal. Defendant need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives defendant's right to appeal this decision.

The Clerk is directed to forward copies of this Order to counsel of record and defendant Oscar Omar Lobo-Lopez, pro se.

Entered this th26 day of June, 2024.

Alexandria, Virginia

1s/ JMB
Leonie M. Brinkema
United States District Judge

Appendix C.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

OSCAR OMAR LOBO-LOPEZ,

Defendant.

1:08-cr-194 (LMB)

ORDER¹

Before the Court is pro se defendant Oscar Omar Lobo-Lopez's ("Lobo-Lopez" or "defendant") Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A) ("Motion") [Dkt. No. 554], requesting that the Court reduce his life sentence to "a term of year or [t]ime served" because of his unusually long sentence, family circumstances, and rehabilitation. Id. at 10. The government opposes the Motion, arguing that defendant "fails both legally and factually to establish extraordinary and compelling reasons for release, or any reduction in sentence, as is his burden." [Dkt. No. 560] at 1. For the reasons that follow, defendant's Motion will be denied.

On April 21, 2009, a jury convicted Lobo-Lopez of offenses he committed while a member of the notorious gang MS-13, including one count of conspiracy to commit murder in aid of racketeering activity (RICO) in violation of 18 U.S.C. § 1959(a)(5); one count of murder in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and 2; and one count of use of a firearm during a crime of violence, resulting in death, in violation of 18 U.S.C. §§ 924(c)(1)(A), (j), and (2). [Dkt. No. 331]. On September 18, 2009, the Court sentenced Lobo-Lopez to life imprisonment plus an additional, consecutive ten years' imprisonment; five years of supervised release; a \$300 special assessment; and \$4,300 in restitution. [Dkt. No. 387].

Having exhausted his administrative remedies, Lobo-Lopez has now moved for a

¹ This case was reassigned to the undersigned judge on January 17, 2024.

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reduction in his sentence because his unusually long sentence, family circumstances, and the § 3553 factors “weigh strongly in favor of relief.” [Dkt. No. 554]. Pursuant to 18 U.S.C. § 3582(c)(1)(A), a court is authorized to reduce a defendant’s term of imprisonment upon finding that “extraordinary and compelling reasons warrant such a reduction.” Even if a defendant establishes an extraordinary and compelling reason for a sentence reduction, a court may only modify a sentence “after considering the factors set forth in section 3553(a).” Id.

As an initial matter, defendant argues that “[s]ignificant legal developments” have occurred since his sentence, rendering his sentence unusually long, including that had he been sentenced today he would “not have been subjected BOTH to the 924(c) and 924(j) provisions” and that a predicate offense no longer exists for his § 924 conviction. [Dkt. No. 554] at 6. Although a “gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed” may qualify as an extraordinary and compelling circumstance, U.S.S.G. § 1B1.13(b)(5), here, defendant has not shown any gross sentencing disparity. Defendant focuses on changes in law purportedly affecting his § 924 conviction; however, he misses the fact that his murder in aid of racketeering conviction under 18 U.S.C. §§ 1959(a)(1) and 2, which he does not allege has been affected by any change in law, carries a mandatory sentence of life imprisonment. Indeed, if defendant were to be sentenced today for the same offenses, he would again receive the exact same mandatory sentence of life imprisonment. See United States v. Green, 2021 WL 3044158, at *4 (W.D.N.C. July 19, 2021) (finding that the defendant’s stacked § 924(c) sentences were not extraordinary and compelling because, given “the severity of his criminal history, he would receive the same life sentence if he were convicted today”).

As to his family situation, Lobo-Lopez claims that he is entitled to relief because his grandmother is in poor health. He points to a letter from his grandmother in which she explains

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that she is 90 years old, lives alone in Honduras, has four children who live in the United States, and is in poor health. [Dkt. No. 554] Ex. G. The incapacitation of the defendant's "immediate family member . . . when the defendant would be the only available caregiver for such family member" can be an extraordinary and compelling reason for compassionate release, see U.S.S.G. § 1B1.13(b)(3)(D); however, district courts generally deny compassionate release on this ground in the absence of a "robust evidentiary showing" that a defendant is the only available caregiver. United States v. Richardson, 2020 WL 2200853, at *2 (E.D.N.C. May 6, 2020) (declining "to grant compassionate release in the absence of a robust evidentiary showing that defendant is the only available caregiver"); See United States v. Wendel, 2024 WL 2748493, at *2 (N.D. Ohio May 29, 2024) (denying compassionate release because the defendant's mother's "general assertion she is unable to 'manage her home' is not sufficient to demonstrate that she is incapacitated"). Here, defendant, who does not allege that he has ever been his grandmother's caregiver, has failed to provide evidence to support that he is his grandmother's only available caregiver, especially given that his grandmother has four children who defendant does not claim are incapable of acting as adequate caregivers.

Even if any of his claims amounted to "extraordinary and compelling" reasons, as the government correctly argues, granting defendant's request for a reduction in sentence would be inconsistent with the sentencing factors under 18 U.S.C. § 3553(a), which require the Court to consider, among other factors, the nature of the crime for which the defendant was sentenced and his criminal history. Lobo-Lopez, who had a criminal history category of III and an offense level of 43 at the time of his sentencing, was convicted of fully intentional and violent acts of conspiracy to commit murder in aid of racketeering, murder in aid of racketeering, and use of a firearm during a crime of violence that cased a death. See [Dkt. No. 440] at 24-25 (describing defendant's conduct as "very serious" and "terrible"). These convictions only add to his

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established pattern of dangerous conduct starting in 2001, including convictions for possession of a controlled substance, driving under the influence, and possession of marijuana. [Dkt. No. 522].

Moreover, defendant has served only 16 years of his life sentence. Releasing defendant when he has served only a small fraction of his sentence would not reflect the seriousness of his criminal conduct, promote respect for the law, or afford adequate deterrence of criminal conduct. Although, like many prisoners, defendant has participated in educational and rehabilitative courses while incarcerated, [Dkt. No. 554] at 10, these commendable factors by themselves are not exceptional and do not justify a sentence reduction in light of the § 3553(a) factors.² For all these reasons, it is hereby

ORDERED that defendant's Motion for Compassionate Release [Dkt. No. 554] be and is DENIED.

To appeal this decision, defendant must file a written notice of appeal with the Clerk of the court within fourteen (14) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order defendant wants to appeal. Defendant need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives defendant's right to appeal this decision.

The Clerk is directed to forward copies of this Order to counsel of record and to defendant Oscar Omar Lobo-Lopez, pro se.

Entered this 4th day of June, 2024.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge

² For this same reason, defendant's claim that he should be released under U.S.S.G. § 1B1.13(b)(5) because his rehabilitative efforts "present[] . . . circumstances" that are "similar in gravity to those described in paragraphs (1) through (4)" of the sentencing guidelines, similarly fails.

**Additional material
from this filing is
available in the
Clerk's Office.**