NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD JOHNSON,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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2025 WL 1949738
Only the Westlaw citation is currently available.
United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff - Appellee
v.
Richard JOHNSON, Defendant - Appellant

No. 24-2393
|
Submitted: April 14, 2025
|
Filed: July 16, 2025

Appeal from United States District Court for the Western District of Arkansas - Hot Springs

Attorneys and Law Firms

Kevin Charles Eaton, David A. Harris, Candace L. Taylor Assistant U.S. Attorneys, U.S. Attorney's Office, Fort Smith, AR, for Plaintiff - Appellee.

Richard Johnson, Forrest City, AR, Pro Se.

Anna Marie Williams, Assistant Federal Public Defender, Federal Public Defender's Office, Fayetteville, AR, for Defendant - Appellant.

Before ERICKSON, ARNOLD, and STRAS, Circuit Judges.

[Unpublished]

PER CURIAM.

***1** Richard Johnson appeals the district court's[1] denial of his motions for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). He contends the disparity between the 32-year sentence he received in 2012 and the sentence he would receive today under the First Step Act of 2018 ("FSA") constitutes an "extraordinary and compelling" reason for relief. We affirm.

In 2010, a grand jury indicted Johnson on four counts of an eight-count indictment. Count Five charged robbery involving controlled substances, in violation of 18 U.S.C. §§ 2118(a) and (c)(1), and aiding and abetting under § 2. Count Six charged him with using, carrying, and possessing a firearm in furtherance of the robbery charged in Count Five, in violation of § 924(c)(1)(A) and § 2. Count Seven charged possession with intent to distribute hydrocodone, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Count Eight charged the use, carrying, and possession of a firearm in furtherance of the drug trafficking offense in Count Seven, also under § 924(c)(1)(A) and § 2.

In 2011, Johnson pled guilty to the two § 924(c) firearm offenses charged in Counts Six and Eight. At the time, § 924(c) required a 7-year mandatory minimum sentence for a first offense involving brandishing a firearm, and a 25-year minimum sentence for a second conviction—even when both convictions arose from the same proceeding. See 18 U.S.C. §§ 924(c)(1)(A)(ii), 924(c)(1)(C)(i) (2012). The district court sentenced Johnson to consecutive terms of 7 and 25 years for the two convictions, totaling a "stacked" sentence of 32 years.

In 2018, Congress amended § 924(c) to eliminate this form of sentence "stacking." See First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221–22. Under the amended statute, the 25-year penalty in § 924(c)(1)(C) applies only when a prior § 924(c) conviction has become final. Id. Congress limited retroactivity to defendants for whom "a sentence for the offense has not been imposed as of such date of enactment." Id. § 403(b). Because Johnson was sentenced in 2012, the amendment did not apply retroactively to his case. If he were sentenced today, however, the two § 924(c) convictions would not trigger the 25-year penalty, and the applicable mandatory minimum would be 7-year terms for each conviction, or 14 years total.

In 2020 and 2021, Johnson filed two motions to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A), contending the 18-year disparity between his actual sentence and the sentence he would receive under current law constituted an "extraordinary and compelling" reason warranting relief. In 2024, the district court concluded that our decision in United States v. Crandall, 25 F.4th 582, 586 (8th Cir. 2022), foreclosed relief and declined to reduce Johnson's sentence under U.S.S.G. § 1B1.13(b)(6). Johnson timely appealed.

We review *de novo* a defendant's eligibility to seek a sentence reduction under the FSA. United States v. Sisco, 41 F.4th 1032, 1035 (8th Cir. 2022). If the defendant is eligible, we review the district court's decision to deny relief for an abuse of discretion. Id. A district court may reduce a sentence under § 3582(c)(1)(A) if three conditions are met: (1) "extraordinary and compelling reasons" justify the reduction; (2) the reduction is consistent with applicable

policy statements issued by the Sentencing Commission; and (3) the sentencing factors under § 3553(a) support relief. See § 3582(c)(1)(A); United States v. Avalos Banderas, 39 F.4th 1059, 1061 (8th Cir. 2022). Congress authorized the Sentencing Commission to define "extraordinary and compelling" reasons in 28 U.S.C. § 994(t), subject to the limitation that rehabilitation alone is not sufficient.

***2** The applicable policy statements are found in U.S.S.G. § 1B1.13. In 2023, the Sentencing Commission amended § 1B1.13 to include subsection (b)(6), which permits courts to consider certain nonretroactive changes in law as an "extraordinary and compelling reason" for a sentence reduction. Relief under this provision is limited to defendants who (1) are serving an unusually long sentence, (2) have served at least ten years, (3) show that the change in law has created a gross sentencing disparity, and (4) present individualized circumstances justifying a reduction. U.S.S.G. § 1B1.13(b)(6). The Guidelines also clarify that, outside subsection (b)(6), changes in law may not be considered in determining whether "extraordinary and compelling" reasons exist. U.S.S.G. § 1B1.13(c).

Nonetheless, our precedent holds that a nonretroactive change in sentencing law cannot, independently or in combination with other factors, constitute an "extraordinary and compelling reason" under § 3582(c)(1)(A). Crandall, 25 F.4th at 586; United States v. Rodriguez-Mendez, 65 F.4th 1000, 1004 (8th Cir. 2023) (considering proposed amendments to § 1B1.13, including subsections (b)(6) and (c), and reaffirming Crandall as binding precedent). In Crandall, we rejected a similar claim for relief based on the FSA's amendment to § 924(c). 25 F.4th at 583. We explained that congressional changes to sentencing laws, while consequential, "may not be 'extraordinary' as an empirical matter." Id. at 586. Moreover, a defendant's insufficient individualized factors—such as age, health, and rehabilitation—do not become "extraordinary and compelling" because they are paired with an impermissible legal ground. Id.

Johnson argues that § 1B1.13(b)(6) supersedes Crandall by expanding the definition of "extraordinary and compelling," but that argument is foreclosed by Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). There, the Supreme Court overruled Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), and held that courts may not defer to agency interpretations of ambiguous statutes merely because the statute is ambiguous. Id. at 412. It further described such deference as the "antithesis" of judicial review, particularly when it "forces courts to [defer] even when a pre-existing judicial precedent holds that the statute means something else." Id. at 399 (citation modified).

Although Loper Bright involved the Administrative Procedure Act, it reinforces the principle that courts have the final authority to interpret statutes. Id. at 373. As the Third Circuit recently observed in the sentencing context, "Loper Bright is still instructive as we assess the assertion that the Commission's view of a statute should trump our own." United States v. Rutherford, 120 F.4th 360, 379 (3d Cir. 2024), cert. granted, No. 24-820, 2025 WL 1603603 (U.S. June 6, 2025). That principle controls here. While § 994(t) authorizes the Sentencing Commission to identify permissible grounds for relief, it cannot displace our interpretation of the statutory limits of § 3582(c)(1)(A). Crandall remains binding law in this circuit, and the nonretroactive change in law on which Johnson relies does not constitute an "extraordinary and compelling" reason under the statute. Because Johnson presents no other legally sufficient basis for relief, the district court did not abuse its discretion in denying his motions.

We affirm the judgment of the district court.

All Citations

Not Reported in Fed. Rptr., 2025 WL 1949738

Footnotes

1 The Honorable Susan O. Hickey, Chief Judge, United States District Court for the Western District of Arkansas.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2393

United States of America

Appellee

v.

Richard Johnson

Appellant

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:10-cr-60032-SOH-2)

ORDER

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

Judge Shepherd did not participate in the consideration or decision of this matter.

September 02, 2025

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

/s/ Susan E. Bindler

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

UNITED STATES OF AMERICA PLAINTIFF

v. Case No. 6:10-cr-60032-002

RICHARD JOHNSON DEFENDANT

ORDER

Before the Court is Defendant Richard Johnson's Motion for Compassionate Release and Supplemental Motion. ECF Nos. 191, 198. The Government has responded. ECF No. 201. The Court finds the matter ripe for consideration.

I. BACKGROUND

On November 4, 2010, Defendant was charged with four counts in an eight-count indictment: (1) Count Five—robbery involving controlled substance, aiding and abetting, in violation of 18 U.S.C. § 2118(a) and (c)(1) and 18 U.S.C. § 2; (2) Count Six—use, carry, and possession of a firearm in furtherance of a crime of violence, that is robbery involving controlled substance, aiding and abetting, in violation of 18 U.S.C. § 942(c)(1)(A) and 18 U.S.C. § 2; (3) Count Seven—possession with intent to distribute a controlled substance (hydrocodone), aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C § 2; and (4) Count Eight—use, carry, and possession of a firearm in furtherance of a drug trafficking crime, that is possession with intent to distribute a controlled substance (hydrocodone), aiding and abetting, in violation of 18 U.S.C. § 924(c)(1)(A) and 18 U.S.C. § 2. Defendant pled guilty to Count Six and Count Eight of the Indictment.

At the time of Defendant's sentencing, 18 U.S.C. § 924(c)(1)(C)(i) required that he receive

a mandatory 25-year consecutive sentence for a "second or subsequent conviction" under § 924(c). Because Defendant's first and second § 924(c) convictions were in the same indictment, he received a mandatory term of imprisonment of seven (7) years (84 months) for his first offense and a mandatory consecutive term of imprisonment of 25 years (300 months) for his second offense. *See United States v. Allee*, 282 F.3d 997, 1001 (8th Cir. 2002) (interpreting the pre-First Step Act version of § 924(c)(1)(B) as mandating "stacked" consecutive terms for multiple § 924(c) convictions within a single case). Thus, on June 27, 2012, Defendant was sentenced to eighty-four (84) months imprisonment on Count Six and three hundred (300) months imprisonment on Count Eight, to run consecutively. The Court imposed a term of supervised release of five (5) years to run concurrently, ordered a $200 special assessment fee, and ordered restitution in the amount of $61,952.61. ECF No. 31. ECF No. 80. Defendant is projected to be released from prison on April 15, 2040.

Defendant has filed the present Motion for Compassionate Release and Supplement, in which he asks the Court to reduce his sentence from thirty-two (32) years to fourteen (14) years. He is seeking a reduction of his sentence pursuant to Section 403 of the First Step Act of 2018 ("FSA") and 18 U.S.C. 3582(c)(1)(A)(i). Defendant notes that the FSA clarified that a "stacked" 25-year mandatory minimum consecutive sentence under § 924(c)(1)(B) may only be imposed where the defendant has a prior, *final* § 924(c) conviction. *See* 18 U.S.C. § 924(c). Defendant asserts that if he was sentenced today, because both his § 924(c) counts were charged in the same indictment, his mandatory minimum sentence for his second count would be seven (7) years instead of twenty-five (25) years. *See id.* He argues that this circumstance presents an "extraordinary and compelling" reason for a sentence reduction. The Government has responded in opposition. ECF No. 201.

II. DISCUSSION

Relief is available under the FSA if the Court finds: (1) that the requested sentence reduction is warranted due to "extraordinary and compelling reasons;" (2) that the sentencing factors set forth in 18 U.S.C. § 3553(a) support a reduction "to the extent that they are applicable;" and (3) that a reduction would be consistent with any applicable policy statements issued by the Sentencing Commission. 18 U.S.C. § 3582(c)(1)(A). Before an analysis of those factors can begin, the Court must determine if Defendant has exhausted all administrative remedies available. 18 U.S.C. § 3582(c)(1)(A).

A. Exhaustion of Administrative Remedies

The FSA provides two avenues for a defendant to bring a compassionate release motion to a district court. The defendant may either file a motion once he "has fully exhausted all administrative rights to appeal a failure of the [Bureau of Prisons] to bring the 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." § 3582(c)(1)(A).

The Bureau of Prisons ("BOP") has outlined the administrative exhaustion process in its Program Statement No. 5050.50. In short, a request for compassionate release must first be submitted to the warden of the BOP facility in which the defendant is housed. 28 C.F.R. § 571.61(a). If the warden approves the request, it is sent to the BOP's general counsel for approval. 28 C.F.R. § 571.62(A)(1). If the general counsel approves the request, it is sent to the BOP's director for a final decision. 28 C.F.R. § 571.62(A)(2). If the director approves, he or she will ask the United States Attorney in the applicable judicial district to file a compassionate release motion on BOP's behalf. 28 C.F.R. § 571.62(A)(3).

If the warden does not respond to the request, the defendant's administrative remedies are

deemed exhausted after thirty days. 18 U.S.C. § 3582(c)(1)(A)(i). If the warden denies the compassionate-release request, the defendant must appeal the decision pursuant to the BOP's Administrative Remedy Program. 28 C.F.R. § 571.63(a). If the request is denied by the BOP's general counsel or director, that decision is considered a final administrative decision and the defendant's administrative remedies are exhausted at that time. 28 C.F.R. § 571.63(b)-(c). Failure to exhaust the administrative remedies available with the BOP forecloses the consideration of any motion for compassionate release on its merits. *See U.S. v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020).

In this matter, Defendant has requested a "compassionate release/reduction in sentence" from the warden, and more than thirty days have elapsed without a response from the warden. ECF No. 198-1. The Government does not contest that Defendant has exhausted his administrative remedies and is eligible to file his request for relief directly with this Court. ECF No. 201, p. 6. Accordingly, the Court finds that Defendant has exhausted his administrative remedies and that his request for release may be evaluated on the merits.

B. Extraordinary and Compelling Reasons

Pursuant to the FSA, the Court can grant Defendant's request for a sentence reduction "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 [United States] Sentencing Commission[.]" 18 U.S.C. § 3582(c)(1)(A)(i). Congress has not defined what constitutes "extraordinary and compelling" reasons, although it did note that "[r]ehabilitation of the defendant alone" is insufficient. 28 U.S.C. § 994(t). Instead, the Sentencing Commission was directed to promulgate "the criteria to be applied and a list of specific" extraordinary and compelling examples. *Id.* Thus, the Court looks to the Sentencing Commission's policy statement in the

United States Sentencing Guidelines ("USSG") as a starting point in determining what constitutes "extraordinary and compelling reasons" under § 3582(c)(1)(A)(i). *See id.*

The most recent policy statement contemplates a reduction in the term of imprisonment if: (1) "extraordinary and compelling reasons warrant the reduction;" (2) a new sentence would be consistent with the factors set forth in 18 U.S.C. § 3553(a); (3) a new sentence would be consistent with any applicable policy statements, and (4) the defendant is not a danger to the safety of others, as provided in 18 U.S.C. § 3142(g). USSG § 1B1.13(a). As amended in 2023, the policy statement describes the following categories of reasons, or a combination thereof, that should be considered extraordinary and compelling: "Medical Circumstances of the Defendant," "Age of the Defendant," "Family Circumstances of the Defendant," "Victim of Abuse," "Other Reasons," and "Unusually Long Sentence." USSG § 1B1.13(b). Relevant to the instant case are the following subsections:

> (b)(6) Unusually Long Sentence—If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentences being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.
>
> (c) Limitation on Changes in Law.—Except as provided in subsection (b)(6), a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement. However, if a defendant otherwise establishes that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

USSG § 1B1.13(b)(6) and (c). Subsection (b)(6) specifically authorizes district courts to consider nonretroactive changes in the law (other than nonretroactive changes to the Guidelines Manual) as extraordinary and compelling circumstances warranting a sentence reduction, but only under a

narrow set of circumstances. USSG § 1B1.13(b)(6). Specifically, (1) the defendant must be serving an unusually long sentence; (2) the defendant must have served at least ten (10) years of that sentence; (3) the change in the law must have produced a gross disparity[1] between the sentence being served and the sentence likely to be imposed at the time the motion is filed; and (4) the court must have fully considered the defendant's individual circumstances. *Id.*

Having examined the most recent amendments to USSG § 1B1.13, the Court turns now to an examination of Eighth Circuit precedent. Prior to the enactment of § 1B1.13(b)(6), the Eighth Circuit Court of Appeals held that a nonretroactive change in law regarding sentencing "whether offered alone or in a combination with other factors, cannot contribute to a finding of 'extraordinary and compelling reasons' for a reduction in sentence under [18 U.S.C] § 3582(c)(1)(A)." *United States v. Crandall*, 25 F. 4th 582, 586 (8th Cir. 2022). Then, in *Rodriguez-Mendez*, the Eighth Circuit also considered the apparent impact of the then-pending 2023 Guidelines amendments, specifically the amendments at Guidelines §§1B1.13(b)(6) and 1B1.13(c), and concluded that those amendments would not change its reasoning in *Crandall*:

> It thus appears that the Commission proposes to adopt (or to express more clearly) that nonretroactive changes in sentencing law may not establish eligibility for a § 3582 (c)(1)(A) sentence reduction, as we held in *Crandall*, but may be considered in exercising a court's discretion whether to grant compassionate relief to an eligible defendant, consistent with the Supreme Court's decision in *Concepcion*.
>
> For these reasons, we conclude that *Crandall* remains controlling Eighth Circuit law that is binding on our panel.

United States v. Rodriguez-Mendez, 65 F.4th 1000, 1004 (8th Cir. 2023). The Eighth Circuit recognized that USSG § 1B.13(c) generally asserts that nonretroactive changes in the law may not establish eligibility for compassionate release. *Id.* However, there was no discussion of the

[1]It does not appear that any circuit courts have determined what kind of disparity rises to the level of "gross disparity." *United States v. Allen*, No. 1:09-cr-320-TCB, 2024 WL 631609, at *6, n.7 (N.D. Ga. Feb. 12, 2024) (collecting cases).

exception that is carved out in § 1B1.13(b)(6), which allows consideration of nonretroactive changes in the law—but not Guidelines amendments that have not been made retroactive—when the issue is whether an offender received an "unusually long sentence." Subsection 1B.13(b)(6) appears to be inconsistent and contrary to the Eighth Circuit's decision in *Crandall*, which was decided before the 2023 Guidelines went into effect but after the amendments had been proposed. In *Rodriguez-Mendez*, the Eighth Circuit cites to both § 1B.13(b)(6) and § 1.13(c) but does not discuss the interplay between these two provisions. Thus, as far as the Court can determine, both *Crandall* and *Rodriguez-Mendez* remain controlling Eighth Circuit law that is binding on this Court. *See Rodriguez-Mendez*, 65 F.4th at 1004.

In the present case, as explained above, Defendant was sentenced to an an overall 384-month term of imprisonment (32 years), which consisted of a mandatory 7-year consecutive term of imprisonment for his first 18 U.S.C. § 924(c) offense and a mandatory consecutive 25-year term of imprisonment for his second § 924 offense, which were charged in the same indictment. The government does not dispute that this is an "extremely long" sentence, s*ee* ECF No. 201, p 18, and Defendant has served almost fourteen years of this sentence, which is more than the ten years required to qualify for relief under §1B1.13(b)(6).

In 2018, the First Step Act clarified that a "stacked" 25-year mandatory minimum consecutive sentence under § 924(c) may only be imposed where the defendant has a prior, *final* §924(c) conviction. In other words, the sentences for the first and second § 924(c) offenses could not be "stacked" if both offenses were charged in the same indictment. Thus, had the First Step Act been in effect at the time Defendant was sentenced, he would have only faced an overall term of imprisonment of 168 months (14 years), which would consist of a mandatory minimum 7-year term of imprisonment for each § 924(c) offense charged in the indictment. *See* 18 USC §

924(c)(1). The difference in Defendant's current sentence and what his sentence would be today is 216 months (18 years), which the Court considers a gross disparity under USSG § 1B1.13(b)(6).[2]

Thus, it appears that Defendant falls within the USSG § 1B1.13 exception that would allow the Court to consider a retroactive change in the law in determining whether Defendant presents an extraordinary and compelling reason to warrant a sentence reduction. However, binding Eighth Circuit precedent instructs that a non-retroactive change in the law is not an adequate basis for a reduction in sentence under 18 U.S.C § 3582(c)(1)(A). *See Rodriguez-Mendez*, 65 F.4th at 1004; *see also Crandall*, 25 F. 4th 582 at 586. Accordingly, the Court must find that Defendant has failed to show that there are extraordinary and compelling reasons justifying a reduction in his sentence.[3]

III. CONCLUSION

For the reasons stated above, the Court finds that Defendant's Motion for Compassionate Release and Supplemental Motion (ECF Nos. 191 and 198) should be and hereby are **DENIED**.

IT IS SO ORDERED, this 2nd day of July, 2024.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge

[2]The Court notes that at least one other district court has found that an eighteen-year difference in the sentence the defendant received under § 924(c) and the sentence a defendant would receive today is a gross disparity. *United States v. Rahim*, 535 F. Supp. 3d 1309, 1319 & n.11 (N.D. Ga. 2021).

[3]In a motion for release pursuant to the FSA, courts must also determine whether the sentencing factors under 18 U.S.C. § 3553(a) support an inmate's release and ensure that the defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. § 3142(g). *See* USSG 1B.13(a). Because the Court finds that the binding law in this circuit precludes a finding that Defendant is eligible for compassionate release pursuant to USSG §1B.13(b)(6), the Court will not address the sentencing factors and safety considerations.