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Per Rule 34.4

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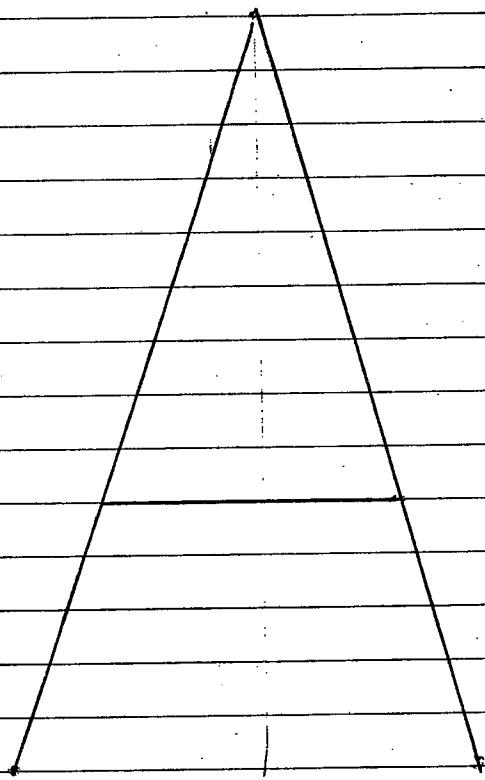
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# APPENDIX

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

Feb 10, 2025

KELLY L. STEPHENS, Clerk

No. 24-5474

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AUBURN CALLOWAY,

Defendant-Appellant.

Before: KETHLEDGE, BUSH, and LARSEN, Circuit Judges.

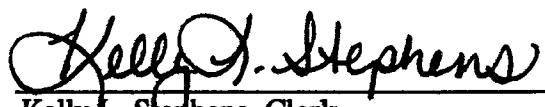
**JUDGMENT**

On Appeal from the United States District Court  
for the Western District of Tennessee at Memphis.

THIS CAUSE was heard on the record from the district court and was submitted on the  
briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court  
is AFFIRMED.

**ENTERED BY ORDER OF THE COURT**

  
\_\_\_\_\_  
Kelly L. Stephens, Clerk

Appx A

NOT RECOMMENDED FOR PUBLICATION

No. 24-5474

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

Feb 10, 2025

KELLY L. STEPHENS, C

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff-Appellee, )  
 ) ON APPEAL FROM THE UNITED  
 v. ) STATES DISTRICT COURT FOR  
 ) THE WESTERN DISTRICT OF  
 AUBURN CALLOWAY, ) TENNESSEE  
 )  
 Defendant-Appellant. )

ORDER

Before: KETHLEDGE, BUSH, and LARSEN, Circuit Judges.

G.W. Bush

Trump

1 Auburn Calloway, a pro se federal prisoner, appeals the district court's order denying his  
2 motion for compassionate release. He also moves for the appointment of counsel, recusal of the  
3 district court judge, recusal of Judge Gibbons, disqualification of the United States Attorney's  
4 office, and expedition of the ruling on his appointment-of-counsel motions. This case has been  
5 referred to a panel of the court that, upon examination, unanimously agrees that oral argument is  
6 not needed. *See Fed. R. App. P. 34(a).* For the following reasons, we affirm.

7 In 1994, Calloway was a flight engineer for FedEx. During a flight, he attacked members \*  
8 of a FedEx crew and attempted to hijack the airplane. *United States v. Calloway*, 116 F.3d 1129,  
9 1131-32 (6th Cir. 1997). A federal jury found Calloway guilty of attempted aircraft piracy and  
10 interference with flight crew members. *Id.* at 1332. The district court sentenced Calloway to an  
11 above-guidelines term of life imprisonment. *Id.* On appeal, we vacated Calloway's conviction of  
12 interference with flight crew members based on the government's concession that it was a lesser-

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1 included offense of attempted aircraft piracy. *Id.* at 1331. But we affirmed Calloway's conviction  
2 of attempted aircraft piracy and his life sentence. *Id.*

3 In 2023, Calloway moved for a sentence reduction and compassionate release under 18  
4 U.S.C. § 3582(c)(1)(A).

5 We review the denial of a motion for compassionate release under § 3582(c)(1)(A) for an  
6 abuse of discretion. *United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020). An abuse of  
7 discretion occurs when the district court "relies on clearly erroneous findings of fact, applies the  
8 law improperly, or uses an erroneous legal standard." *United States v. Jones*, 980 F.3d 1098, 1112  
9 (6th Cir. 2020) (quoting *United States v. Pembrook*, 609 F.3d 381, 383 (6th Cir. 2010)).

10 The compassionate-release statute allows the district court to reduce a defendant's sentence  
11 if it finds that (1) "extraordinary and compelling reasons warrant such a reduction," (2) the  
12 "reduction is consistent with applicable policy statements issued by the Sentencing Commission,"  
13 and (3) the § 3553(a) factors, to the extent that they apply, support the reduction. 18 U.S.C.  
14 § 3582(c)(1)(A). The district court may deny the motion if any of these "prerequisites . . . is  
15 lacking." *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021).

16 Calloway identified three factors that he considered extraordinary and compelling reasons  
17 for granting compassionate release: (1) his age—71 years old—places him at an increased risk of  
18 severe illness or death from COVID-19, (2) he has 15 "chronic comorbid medical infirmities," and  
19 (3) although he received the COVID-19 vaccination, he is not immune from the virus. Calloway  
20 also argued that the 18 U.S.C. § 3553(a) factors weighed in favor of reducing his life sentence  
21 because (1) his offense was the result of a sleeping disorder and not an act of terrorism, (2) there  
22 is no need for deterrence or protection of the public because he is a "law abiding honorably  
23 discharged decorated veteran," (3) no other person convicted of aircraft piracy received a life  
24 sentence, and (4) he has no prior criminal history.

25 The district court denied Calloway's § 3582(c)(1)(A) motions because the § 3553(a)  
26 factors continued to support a life sentence. The court explained that Calloway posed "a grave  
27 threat to the public," given the violent nature of the offense and the intended harm. The court

1 concluded that a life sentence properly reflected the seriousness of the crime, promoted respect for  
2 the law, provided deterrence, and protected the public.

3 We need not consider whether Calloway presented an extraordinary and compelling reason  
4 for compassionate release because the district court's § 3553(a) analysis is sufficient to support its  
5 denial of Calloway's motion. *See Elias*, 984 F.3d at 519. The district court described the facts as  
6 "disturbing" and explained that Calloway used a spear gun and claw hammers to strike the victims  
7 in the head before engaging in hand-to-hand combat. The district court recognized "the heroic  
8 acts of the pilots" in safely landing the plane but explained the lifelong physical and mental injuries  
9 Calloway inflicted on the victims. Based on these considerations, the district court reasonably  
10 concluded that the § 3553(a) factors weighed against compassionate release. Calloway's  
11 disagreement with how the district court balanced the § 3553(a) factors is "simply beyond the  
12 scope of our appellate review" and is insufficient to warrant reversal. *United States v. Ely*, 468  
13 F.3d 399, 404 (6th Cir. 2006). The district court, therefore, did not abuse its discretion in denying  
14 Calloway's motions for compassionate release.

15 Calloway made several additional motions, all of which the district court denied. He first  
16 moved for the recusal of the government prosecutor, who was—by the time of his motion—a  
17 judge. He does not appear to appeal the denial of this motion, but he does move for the  
18 disqualification of Judge Thomas Parker, who denied his motion. Calloway has not, however,  
19 raised any arguments about Judge Parker that would lead "a reasonable, objective person, knowing  
20 all of the circumstances, [to] have questioned the judge's impartiality." *United States v. Hartsel*,  
21 199 F.3d 812, 820 (6th Cir. 1999) (citation omitted). Calloway also seeks the disqualification of  
22 the entire Memphis U.S. Attorney's office because the U.S. Attorney (at the time he filed this  
23 appeal) clerked for his sentencing judge. But Calloway did not raise this argument before the  
24 district court, so it is not properly before us for review. *See McFarland v. Henderson*, 307 F.3d  
25 402, 407 (6th Cir. 2002). Calloway also moves for the recusal of Judge Gibbons, his sentencing  
26 judge in this case. We deny that motion as moot because Judge Gibbons was not assigned to this

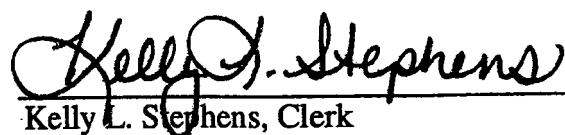
Appx A

1 case and is not a member of the en banc court. Calloway also moves for the appointment of a  
2 master under Fed. R. App. P. 48. We decline to exercise our discretion to appoint a master here.

3 Finally, Calloway moves for appointment of counsel. But “there is no constitutional (or  
4 statutory) right to appointed counsel in § 3582(c) proceedings,” *United States v. Manso-Zamora*,  
5 991 F.3d 694, 696 (6th Cir. 2021) (per curiam), and he cites no exceptional circumstances that  
6 would warrant appointment here, *see, e.g., Bryant v. McDonough*, 72 F.4th 149, 152 (6th Cir.  
7 2023).

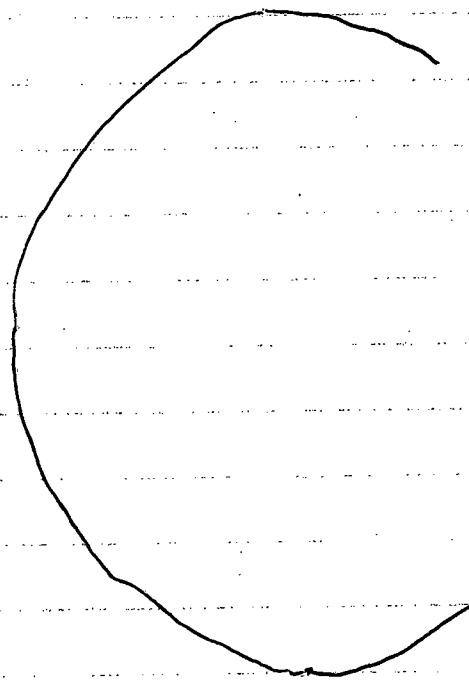
8 Thus, we **AFFIRM** the district court’s judgment. We **DENY** the motions to disqualify the  
9 United States Attorney’s office, recuse the district court judge, recuse Judge Gibbons, appoint  
10 counsel, and appoint a special master. And we **DENY** as moot the motions to expedite ruling on  
11 the appointment-of-counsel motions.

ENTERED BY ORDER OF THE COURT

  
\_\_\_\_\_  
Kelly L. Stephens, Clerk

Appx A

# APPENDIX



No. 24-5474

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

Apr 9, 2025

KELLY L. STEPHENS,

UNITED STATES OF AMERICA,

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Plaintiff-Appellee,

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v.

)

AUBURN CALLOWAY,

)

Defendant-Appellant.

)

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O R D E R

**BEFORE:** KETHLEDGE, BUSH, and LARSEN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.\* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

  
Kelly L. Stephens, Clerk

Appendix C

Judge Ritz is recused in this case.

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