



USA v. Hopkins et al

2022 | Cited 0 times | W.D. North Carolina | July 18, 2022

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION DOCKET NO. 3:01-cr-00002-FDW

THIS MATTER is before the Court on Davieyon D. Hopkins Defendant pro se Motion for Compassionate Release/Reduction of Sentence (Doc. No. 251). The Court ordered the Government to respond by May 19, 2021, (Doc. No. 252); however the Government has failed to do so. The motion is now ripe for review. is DENIED.

I. Background On March 21, 2002, Defendant plead guilty to Conspiracy to Possess Cocaine Base with Intent to Distribute in violation of 21 U.S.C. §§ 846 and 841(a)(1)) and Use of a Firearm in Relation to a Drug Trafficking Crime Resulting in Death and Aiding and Abetting Others in violation of 18 U.S.C. §§ 924(c)(1) and 924(j)(1) and 2 265, p. 1). Defendant and the Government agreed that the appropriate sentence was 30 years imprisonment, and the Court sentenced Defendant to an aggregate term of 360 months. (Doc. 251, p. 2). Defendant is currently imprisoned at FCI Edgefield, with an anticipated release date of July 17, 2028. Id. UNITED STATES OF AMERICA,

vs. DAVIEYON DEVELLE HOPKINS,

Defendant.

ORDER on convictions stem largely from his involvement with a gang and a conspiracy to distribute at least fifty grams of crack cocaine alongside three other individuals. In September 1999, Defendant and three others bought two ounces of crack cocaine from a supplier. Defendant and his co-conspirators ob him. One of the co-conspirators aimed his firearm at the supplier while Defendant robbed him. When Defendant and his co-conspirators turned to leave, the supplier fired at them. Defendant and his co-conspirators fired back and bullets from one of the co- supplier. (Doc. No. 265, p. 5).

On March 2, 2021, Defendant filed a request for compassionate release to the warden. (Doc. No. 251, pp. 2, 13). n May 11, 2021, Defendant submitted a motion to this Court, citing: (1) his steps toward rehabilitation, (2) heightened ages, and (3) d 841(B)(1)(A) [which] would

lower his term of imprisonment under the First Step Act reasons for compassionate release. (Doc.



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No. 251, p. 5).

Defendant is approximately forty-two years old and has served approximately 254 months at FCI Edgefield. Though Defendant contends he has not received any disciplinary infractions in the last three years, he has a disciplinary record that includes various infractions spanning back to 2006. While incarcerated, Defendant has earned his G.E.D. and has taken courses in nutrition, parenting, and law library training. (Doc. No. 238-1). He has completed programs related to drug education, finance, and adult development. He has also held various jobs as an orderly and in food service. *Id.* If released, Defendant plans to reside with his parents during which time he plans to work at (Doc. No. 251, p. 8).

II. Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) Defendant has completed approximately seventy-one percent of his federal sentence for a violent crime and petitions this court for Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), seeking a sentence reduction. (Doc. No. 251 modify a term of imprisonment once i *Dillon v. United States*, 560 U.S. 817,

819 (2010) (citing 18 U.S.C. § Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, allowing defendants to seek such reductions

P] 18 U.S.C. §(c)(1)(A)(i).

Therefore, in order to grant compassionate release, this Court must: 1) determine whether extraordinary and compelling reasons warrant such a reduction; 2) determine whether such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission; and 3) consider the factors set forth in § 18 U.S.C. § 3582(c)(1)(A)(i); see also *United States v. Hargrove*, 30 F.4th 189, 194 (4th Cir.

20220), *United States v. McCoy*, 981 F.3d 271, 280 (4th Cir. 2020), *United States v. Kibble*, 992 F.3d 326, 330 (4th Cir.), cert. denied, 142 S. Ct. 383 (2021) (per curiam) (noting consideration of § Commission has lacked quorum since Congress enacted the First Step Act, and thereby has not

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McCoy, 981 F.3d at 282 n.7. Nonetheless, the Court should independently determine whether extraordinary and compelling reasons warrant a sentence reduction following consideration of § . *Hargrove*, 30 F.4th at 195; see also *McCoy* . . to consider any (citing *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020); emphasis in the original)). In

arriving at a decision in this matter, the Court need not acknowledge and address each of s *High*, 997 F.3d at 189 (internal quotations omitted); see also *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1965 (2018). The Court will examine each of these procedural steps in turn.



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A. Exhaustion of Administrative Remedies On March 2, 2021, Defendant made a request to the warden for compassionate release. (Doc. No. 251, p. 3). Here, the record is unclear as to whether Defendant exhausted his administrative remedies. Although the request to the warden appears in the record, Defendant did Nevertheless, given the duration for which this motion has been pending and the fact the Government has not responded to raise an objection to the exhaustion requirement, the Court will presume without deciding that the administrative exhaustion requirement is satisfied. The Court thus turns its analysis to whether

1 The Fourth Circuit has recognized that [by] its plain terms . . . § 1B1.13 does not apply to defendant-filed motions only provided guidance for BOP-filed motions. McCoy, 981 F.3d at 282. extraordi the relevant § 3553(a) factors.

B. First Step Act 841(B)(1)(A) to a prison term of 360 [months] where the First Step Act today would lower [his]

Defendant fails to provide any further argument or identify upon which provision of the First Step Act he relies to support this assertion. To the extent Defendant contends his sentence for Count 1 and Count 2 as received would be lower today because of intervening changes in law, Defendant has failed to articulate a sufficient basis for this argument.

Notably, as to Count 1, the Court has already sentence reduction under 18 U.S.C. § 3582(c)(1)(B), and § 404(b) of the First Step Act of 2018,

Pub. L. No. 115-391, 132 Stat. 5194, 5222. (Doc. No. 253). Although Defendant was eligible for relief under Section 404(b) of the First Step Act, the Court declined to reduce his sentence after assessing the 18 U.S.C. § 3553(a) factors. The Fourth Circuit Court of Appeals affirmed this ruling. United States v. Hopkins, No. 21-6895, 2022 WL 1552132, at *1 (4th Cir. May 17, 2022)

As to Count 2, in United States v. McCoy, 981 F.3d 271, 285-86 (4th Cir. 2020), the Fourth Circuit held that the district court may entences and those provided for under the First McCoy court acknowledged that Congress did not make the changes to the stacking rules retroactively applicable and thus does Case 3:01-cr-00002-FDW Document 282 Filed 07/18/22 Page 5 of 9 Id. at 288 (emphasis added) (citation omitted). Without any argument from Defendant as to the severity of his sentence or the extent of the disparity if he were to be sentenced today, he has failed to carry his burden in showing an extraordinary and compelling ground for release.

C. Other Extraordinary and Compelling Reasons Defendant largely relies on his steps toward rehabilitation as extraordinary and compelling reasons to grant Compassionate Release. While 18 U.S.C. § 3582(c)(1)(A)(i) fails to define what qualifies as extraordinary and compelling reasons, the Sentencing Commission provides persuasive guidance. USSG § 1B1.13. 2



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The Guidelines note various considerations that may justify a sentence reduction, including if Defendant is suffering from a serious medical condition, is at an advanced age, has certain family circumstances, and other reasons as determined by the Director of the BOP; however, a reduction. U.S.S.G. § 1B1.13, application note 1; see also 28 U.S.C. § 994(t) (authorizing the Commission to describe what should be considered extraordinary and compelling reasons for sentence reduction). toward rehabilitation fail to rise to the level of extraordinary and compelling reasons to support a

sentence reduction. See *United States v. Davis*, No. 21-6960, 2022 WL 127900, at *1 (4th Cir. Jan. 13, 2022) The only limitation

2 The Guidelines delineate subdivision (2) as a prerequisite for the Court imposing a sentence reduction based on the applicable policy statements and commentary. However, § 3582(c)(1)(A) only requires this dangerousness finding when making a determination pursuant to subsection (ii). Nonetheless, as McCoy instructs, the gap in revisions to the Guidelines following the see also *United States v. Gunn* [on the district court] is the statutory prohibition that rehabilitation alone cannot constitute an extraordinary and compelling reason for release. 28 U.S.C. § 994(t)).

Additionally, Defendant fails to cite any other extraordinary or compelling reason warranting compassionate release. In his motion, he specifically checks no for questions pertaining to advanced age, ailments or serious medical conditions, and having served thirty years or more of imprisonment pursuant to a sentence imposed under 18 U.S.C. § 3559(c). (Doc. No. 251). Though Defendant cites his advancing age and his need to care for them, Defendant fails to include any factual support as to whether his parents are incapacitated or whether he is the only possible caregiver for them. *United States v. Allen*, Crim. No. NKM-13-0024, 2021 WL 3025458, at *3 (W.D. Va. July 16, 2021) (citing *United States v. Bucci*, 409 F. Supp. 3d 1, 2 (D. Mass. 2019)) courts have found extraordinary and compelling grounds for compassionate release if a defendant demonstrates that (1) a parent is incapacitated and (2) the defendant is the only possible caregiver for that . Because Defendant has not demonstrated extraordinary and compelling reasons to reduce his sentence, denial of the motion is appropriate.

D. 18 U.S.C. § 3553(a) Factors Even presuming Defendant has sufficiently met his burden of establishing an applicable § 3553(a) factors . *U.S. v. High*,

extraordinary and compelling reasons, it is still not required to grant the defendant's motion for a of imprisonment. 18 U.S.C. §

In reconsidering all the § 3553(a) sentencing factors applicable here, the Court highlights a few, including the nature and circumstances of the offense and the history and characteristics of Defendant, as well as the need for the sentence to provide just punishment, afford adequate deterrence, provide Defendant with needed medical care, and protect the public.



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Defendant participated in two violent robberies in furtherance of a drug trafficking conspiracy. Both involved the discharging of a firearm, and one r Defendant also has two prior convictions involving drugs. The extraordinarily violent nature of

the need for deterrence, and the need to promote respect for the law, all weigh against reducing

Defendant s sentence.

As for rehabilitative efforts during his time of incarceration, Defendant has earned his G.E.D.; taken courses in nutrition, parenting, and law library training; and has completed programs related to drug education, finance, and adult development. He has also held various jobs as an orderly and in food service. The Court commends Defendant on his significant steps toward rehabilitation. However, as this Court previously explained:

[D]efendant s record in the Bureau of Prisons weighs against not in favor of Bureau of Prisons, Defendant has received 19 disciplinary citations, including two citations for fighting, four citations for using drugs or alcohol, and one citation for assault. In 2018 alone, Defendant received five disciplinary citations, four of which r mail. While Defendant has completed numerous work assignments and educational programs during his time in the Bureau of Prisons, his persistent misconduct demonstrates that he is not ready to abide by the law. (Doc. No. 253, p. 2). rehabilitation though commendable is insufficient to warrant a sentence reduction given the other § 3553(a) factors. See *Pepper v. United States*, 562 several of the § 3553

reduce his 3553(a) factors

counsel against such modification in this case. The Court Compassionate Release (Doc. No. 251).

III. Conclusion Release/Reduced Sentence (Doc. No. 251) is DENIED.

IT IS SO ORDERED.

Signed: July 18, 2022

