

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAMUEL EDELEN,

Defendant - Appellant.

No. 22-1360
(D.C. No. 1:20-CR-00191-CMA-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Samuel Edelen, appearing pro se, appeals the district court’s order denying his motion for compassionate release from federal prison under 18 U.S.C.

§ 3582(c)(1)(A)(i), as amended by the First Step Act of 2018, Pub. L. No. 115-391,

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

§ 603(b)(1), 132 Stat. 5194, 5239. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.¹

I. BACKGROUND

A. *First Step Act*

The First Step Act allows federal prisoners to move for compassionate release in district court after exhausting the Bureau of Prisons (the “BOP”) administrative remedies. *See United States v. Maumau*, 993 F.3d 821, 830-31 (10th Cir. 2021). The court may grant the motion only when it finds that

- (1) “extraordinary and compelling reasons” warrant release;
- (2) release is “consistent with applicable policy statements issued by the Sentencing Commission”; and
- (3) release is warranted after considering the applicable 18 U.S.C. § 3553(a) factors.

Id. at 831; *see* 18 U.S.C. § 3582(c)(1)(A). In general, “district courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking.” *Maumau*, 993 F.3d at 831 n.4 (quotations omitted); *see also United States v. McGee*, 992 F.3d 1035, 1043 (10th Cir. 2021).

B. *Procedural History*

Mr. Edelen pled guilty to being a felon in possession of a firearm and received a prison sentence of 60 months. ROA, Vol. I at 46-47. On August 1, 2022, he filed a

¹ Because Mr. Edelen appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

motion to reduce his sentence under the First Step Act. *Id.* at 53. He alleged “extraordinary and compelling reasons,” *id.* at 55, supporting his release:

- (1) He was vulnerable to the COVID-19 pandemic because he is immunocompromised and has hypertension and a family history of heart disease, and the BOP refused to administer the COVID-19 vaccine to him. *Id.* at 58-60; *see also id.* at 71.
- (2) His wife suffers from fibromyalgia, and that condition, coupled with the demands of her job, prevent her from fully taking care of their special needs minor child. *Id.* at 56-58.
- (3) He was unable to attend rehabilitation programs due to COVID-19 restrictions in the prison. *Id.* at 60-62.

The district court denied the motion. *Id.* at 80. It held Mr. Edelen had not shown any “extraordinary and compelling reasons,” *id.* at 84:

- (1) On COVID-19, the court found Mr. Edelen did “not provide evidence to support [his] assertions” that he “is ‘immunocompromised’ and has other life-threatening medical conditions.” *Id.* at 85. Medical records showed he had received at least one dose of the COVID-19 vaccine. *Id.* at 86.
- (2) As to family circumstances, the court said “Mr. Edelen’s spouse is present and able to care for the children” and receives “support from her mother in the interim period.” *Id.* at 84.
- (3) The court noted the Government’s argument that “a lack of available programming in BOP simply does not present circumstances warranting early release.” *Id.* at 83-84.

The district court also said that releasing Mr. Edelen early would be inconsistent with the § 3553(a) factors given his offense and history of criminal conduct. *Id.* at 86-87.

Mr. Edelen now appeals.

II. DISCUSSION

“We review the denial of First Step Act relief for an abuse of discretion, the same as other post-trial motions.” *United States v. Warren*, 22 F.4th 917, 927 (10th Cir. 2022) (quotations and citations omitted). We have repeatedly emphasized that district courts “possess the authority to determine for themselves what constitutes ‘extraordinary and compelling reasons.’” *Maumau*, 993 F.3d at 832.

On appeal, Mr. Edelen argues the district court abused its discretion by finding that (1) his vulnerability to COVID-19 and (2) his family circumstances were not extraordinary and compelling reasons supporting his release. Aplt. Br. at 3. He does not raise his inability to participate in the BOP’s programming. *Id.* We reject Mr. Edelen’s arguments and affirm.²

A. *Vulnerability to COVID-19*

Mr. Edelen claims he is vulnerable to COVID-19 because the BOP has refused to administer the second dose of the vaccine and because he is immunocompromised and has hypertension. Aplt. Br. at 3.

Mr. Edelen did not present his first argument—that the BOP refused to administer the second dose of the COVID-19 vaccine—to the district court, and does not argue plain error on appeal, so this argument is waived. *See Richison v. Ernest*

² In light of this conclusion, we need not address the district court’s determination that the § 3553(a) factors do not support Mr. Edelen’s release.

Grp., Inc., 634 F.3d 1123, 1127-31 (10th Cir. 2011).³ Although Mr. Edelen did argue to the district court that he had not received *any* dose of the vaccine, he later received at least one dose, which the court noted in its order. ROA, Vol. I at 86. The court therefore lacked the opportunity to consider Mr. Edelson’s new allegations about the second dose.⁴ Moreover, on appeal, Mr. Edelen attached a document to his brief showing that an additional dose of the vaccine is available to him at his facility. *See* Aplt. Br. at 7 (advertisement for a prison vaccination clinic).

We also find that the district court did not abuse its discretion in determining that Mr. Edelen did not show his alleged immunocompromised state and hypertension are extraordinary and compelling reasons. As the Government points out in its response brief, Mr. Edelen presented only a blood test showing a slightly diminished white blood cell count to support his claim that he is immunocompromised. *Aplee*. Br. at 8-9 (citing ROA, Vol. I at 77). He provides no evidence of an immune system

³ Though Mr. Edelen is *pro se*, he is subject to the same procedural rules governing other litigants. *See United States v. Green*, 886 F.3d 1300, 1307-08 (10th Cir. 2018) (stating that a litigant’s *pro se* status did not excuse compliance with the general procedural rules).

⁴ In his reply brief, Mr. Edelen claims that his second-dose argument “isn’t introducing new evidence as the government states, but is in fact the continuation of a preserved argument presented at every stage in every motion filed by [the] defendant.” Aplt. Reply Br. at 1. But Mr. Edelen’s second-dose allegation is a “new theory on appeal.” *Planned Parenthood of Rocky Mountains Servs., Corp. v. Owens*, 287 F.3d 910, 927 n.18 (10th Cir. 2002) (quotations omitted). It also appears that some of the factual allegations underlying this argument took place in late October 2022, after the district court denied Mr. Edelen’s motion, *see* Aplt. Br. at 6, suggesting the court lacked the opportunity to consider the second-dose theory.

deficiency diagnosis. Nor has Mr. Edelen presented evidence showing that his hypertension makes him vulnerable to COVID-19.

We therefore affirm the district court's conclusion that "Mr. Edelen has not established that his medical conditions constitute 'extraordinary and compelling' reasons justifying compassionate release." ROA, Vol. I at 84.⁵

B. Family Circumstances

Mr. Edelen also argues that the district court abused its discretion in finding that his family circumstances were not an extraordinary and compelling reason to release him. Aplt. Br. at 3. He contends that his "spouse is medically limited to 30 hours a week" due to fibromyalgia and does not "qualify for medical insurance that is desperately needed to help care for Mr. Edelen's autistic son." *Id.*

We see no abuse of discretion. The district court said it was "sympathetic to the hardships facing Mr. Edelen's family," but observed that his spouse—despite her medical issues—"is present and able to care for the children in Mr. Edelen's absence." ROA, Vol. I at 84. The court's order "reflect[ed] its opinion that [Mr. Edelen's] circumstances were not extraordinary and compelling compared to other, perhaps more typical cases of caregiver incapacitation." *United States v. Guerrero*,

⁵ To the extent Mr. Edelen argues that he has presented extraordinary and compelling reasons based on deficiencies in the BOP's medical care in general, we disagree. The district court "[wa]s satisfied that Mr. Edelen is receiving adequate medical care" based on a review of his medical records. ROA, Vol. I at 85. Having reviewed those records ourselves, we find no abuse of discretion in that determination.

No. 22-3053, 2022 WL 16646565, at *3 (10th Cir. Nov. 3, 2022) (unpublished) (cited for persuasive value under Fed. R. App. P. 32.1; 10th Cir. R. 32.1(A)). Given the district court’s “authority to determine for [itself] what constitutes ‘extraordinary and compelling reasons,’” *Maumau*, 993 F.3d at 832, Mr. Edelen has not shown the district court abused its discretion in determining that his family circumstances do not justify early release.

III. CONCLUSION

We affirm the district court.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge