FILED
United States Court of Appeals
Tenth Circuit

May 22, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRENCE RUTLAND,

Defendant - Appellant.

No. 22-8073
(D.C. No. 1:10-CR-00077-WFD-1)
(D. Wyo.)

ORDER AND JUDGMENT*

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

Terrence Rutland is serving a 40-year prison sentence following his 2010 convictions for drug trafficking and Hobbs Act robbery. He 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, § 603(b)(1), 132 Stat. 5194, 5239. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I. BACKGROUND

A. *First Step Act*

The First Step Act permits 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 a sentencing reduction;

(2) a reduction is "consistent with applicable policy statements issued by the Sentencing Commission"; and

(3) a reduction 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).

The § 3553(a) factors are: (1) "the nature and circumstances of the offense and the history and characteristics of the defendant"; (2) "the need for the sentence imposed to reflect the seriousness of the offense"; (3) "the kinds of sentences available"; (4) "the kinds of sentences available and sentencing range established for" the offense at the time of sentencing; (5) "any pertinent policy statement" in effect at the time of the defendant's sentencing; (6) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"; and (7) "the need to provide restitution to any victims of the offense." *Id.* § 3553(a)(1)-(7).

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). In this case, the district court denied Mr. Rutland's motion on two independent grounds: (1) Mr. Rutland had not demonstrated "extraordinary and compelling" justifications for release, and (2) a reduction was not warranted under the § 3553(a) factors. ROA, Vol. I at 88.

B. ***Procedural History***

In 2008, Mr. Rutland was trafficking methamphetamine in Rock Springs, Wyoming. *See United States v. Rutland*, 705 F.3d 1238, 1242 (10th Cir. 2013). He had a dispute with another local drug trafficker, Charles Jerabek, and decided to rob him. *Id.* During the robbery, Mr. Rutland either hit Mr. Jerabek with his gun or shot him, grazing the side of his head. *Id.* at 1243. Mr. Jerabek lost consciousness. *Id.* Mr. Rutland fled with cash, drugs, and a gun. *Id.*

In 2010, a jury convicted Mr. Rutland of (1) conspiracy to traffic in methamphetamine, in violation of 21 U.S.C. §§ 841 and 846; (2) Hobbs Act robbery, in violation of 18 U.S.C. § 1951; (3) carrying a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1); and (4) using a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c). We affirmed his convictions on direct appeal. *See Rutland*, 705 F.3d at 1242.

The district court sentenced Mr. Rutland to concurrent 120-month prison terms for Counts (1) and (2), a consecutive term of 84 months for Count (3), and a consecutive term of 300 months for Count (4). This amounted to 504 months in prison. During the sentencing hearing, the district court remarked that "it has disdain

for mandatory sentences of any kind" and stated that Mr. Rutland's sentence is "more than sufficient and more than necessary" for his crimes. Suppl. ROA, Vol. I at 29, 33. After the Supreme Court's decision in *Alleyne v. United States*, 570 U.S. 99 (2013), the district court reduced his sentence to 480 months.

In April 2022, Mr. Rutland filed a motion seeking compassionate release or sentence reduction under the First Step Act. He listed the following arguments:

- Due to the First Step Act's changes to sentence "stacking" under § 924(c), he would receive a significantly shorter sentence if sentenced today;[1]
- He is at-risk to COVID-19 because he has a history of asthma, hepatitis C, attention deficit hyperactive disorder, and severe depression;
- He was young at the time of his crimes;
- No one was seriously injured as a result of his crimes;
- His co-conspirators who were equally culpable received more lenient sentences;
- As a juvenile he had a history of addiction and placement in youth homes;
- He had participated in rehabilitation programs in prison and had been moved from a high security to a medium security facility;

[1] Mr. Rutland's convictions of two counts for violating 18 U.S.C. § 924(c) were "stacked" at sentencing. In 2018, Congress enacted § 403(a) of the First Step Act, providing that defendants would no longer receive "stacked" sentences for multiple convictions under § 924(c) in the same proceeding. Although Congress did not make this change retroactive, *see McGee*, 992 F.3d at 1047, we have held that a district court may consider the First Step Act's elimination of sentence-stacking in its § 3553(a) analysis. *See United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021).

- His mother, who is disabled, and his grandmother, who is fighting cancer and taking care of his deceased sister's five children, need his support; and,

- He has support from his community and job opportunities upon his release.

See ROA, Vol. I at 81.

The district court denied his motion on two independently sufficient grounds.

First, it concluded Mr. Rutland had not demonstrated "extraordinary and compelling circumstances." ROA, Vol. I at 81. It rejected his argument that he would be eligible for a lesser sentence today, finding that the First Step Act's changes on "stacking" were non-retroactive. It also found that Mr. Rutland's health conditions, "even in the age of COVID-19[,] do not present anything extraordinary and compelling" and that he had been fully vaccinated against COVID-19. *Id.* at 82. The court rejected Mr. Rutland's remaining arguments because:

- He was 28 when he committed Hobbs Act robbery, which is not especially young;

- His not causing a serious injury was "due to pure, dumb luck and not Mr. Rutland's lack of trying";

- His co-conspirators received lesser sentences because they did not commit the Hobbs Act robbery; and

- His completion of some prison programs was not convincing because he had a five-year gap when he had not taken any courses.

ROA, Vol. I at 83-84.

Second, the district court held that the § 3553(a) factors did not support a sentencing reduction. Based on the severity of Mr. Rutland's conduct, the court

found "[t]he nature and circumstances of [his] offense weigh against any sentence reduction." *Id.* at 85. It also found that Mr. Rutland's refusal to accept responsibility at his sentencing hearing and that his participation in prison programs "has not been above average" did not show rehabilitation. *Id.* at 86. Lastly, the court noted that the needs of Mr. Rutland's family "offer some weight toward a sentence reduction," but they did not outweigh the other factors. *Id.* at 87. The court concluded "a sentence reduction would fail to reflect the seriousness of the offense, fail to promote respect for the law, and fail to provide just punishment for the offense." *Id.* at 87-88.

The district court thus denied Mr. Rutland's motion for compassionate release. Mr. Rutland appeals.

II. **DISCUSSION**

A. ***Mr. Rutland's Arguments***

Mr. Rutland advances two arguments on appeal. First, he contends the district court abused its discretion when it found that his "stacked" sentence and his family circumstances were not "extraordinary and compelling" circumstances. Aplt. Br. at 9. Second, he argues the district court abused its discretion in applying the § 3553(a) factors because it failed to consider (i) the difference between the "stacked" sentence he received and the one he would receive if sentenced today, and (ii) comments made by the district court suggesting that Mr. Rutland's sentence was excessive. *Id.* at 16-19.

We conclude the district court did not abuse its discretion in denying Mr. Rutland's motion for compassionate release based on the § 3553(a) factors. Because

this was an independently sufficient ground for the denial of his motion, we need not address Mr. Rutland's arguments about the district court's treatment of his purported "extraordinary and compelling" reasons. *See United States v. Hald*, 8 F.4th 932, 949 (10th Cir. 2021) ("[I]f a district court properly denies compassionate release because of the § 3553(a) factors, it is irrelevant how the court viewed whether the defendant had demonstrated extraordinary and compelling circumstances."); *see also McGee*, 992 at 1043.

B. ***Legal Background***

"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). "[T]he weighing of the § 3553(a) factors is committed to the discretion of the district court," and "we cannot reverse unless we have a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Hald*, 8 F.4th at 949 (quotations omitted).

When determining whether a district court properly applied the § 3553(a) factors, "[w]e look to the record to determine whether the district court satisfactorily engaged and examined the factors in a holistic faction," bearing in mind that "the court need not rely on every single factor." *United States v. Barnes*, 890 F.3d 910, 916 (10th Cir. 2018). The district court also "need not afford equal weight to each § 3553(a) factor." *United States v. Cookson*, 922 F.3d 1079, 1094 (10th Cir. 2019). For First Step Act motions, "all that [i]s required" is that the district court "consider[]

the § 3553(a) factors." It has no duty "to address every nonfrivolous, material argument raised by the defendant." *United States v. Piper*, 839 F.3d 1261, 1267 (10th Cir. 2016).

C. ***Application***

Here, the district court listed the six § 3553(a) factors and highlighted the two factors it found most important—the nature and circumstances of Mr. Rutland's offense and his failure to accept responsibility for it. The court determined that these factors outweighed others that may have favored sentence reduction. Because the district court "considered the § 3553(a) factors," it fulfilled its obligations under § 3582(c)(2) and did not abuse its discretion. *See Piper*, 839 F.3d at 1267.

Mr. Rutland's arguments to the contrary are not persuasive, and he cites no case law to support them.

First, he contends the court "did not look at any other defendants who had similar records or were found guilty of similar conduct" and "largely ignored" his argument about the difference between the sentence he received and the one he would receive now under the First Step Act. Aplt. Br. at 17.

We see no abuse of discretion in the district court's weighing of the § 3553(a) factors. It reasonably decided that the "nature and circumstances" factor—namely, Mr. Rutland's "extraordinarily dangerous criminal behavior" that "placed a great many lives in jeopardy" and "warranted a severe sanction," combined with his refusal to accept responsibility—outweighed any countervailing considerations. ROA, Vol. I at 85-86. The district court "need not rely on every single factor," *Barnes*, 890 F.3d

at 917, and also "need not afford equal weight to each § 3553(a) factor," *Cookson*, 922 F.3d at 1094. Mr. Rutland has failed to show a "clear error of judgment" warranting reversal. *Hald*, 8 F.4th at 949 (quotations omitted).

Second, Mr. Rutland argues the district court erred by not addressing the judge's statements that his sentence was "more than sufficient and more than necessary." Aplt. Br. at 19-20 (quoting Suppl. ROA, Vol. I at 33). We disagree. Before denying Mr. Rutland's motion, the district court expressly considered Mr. Rutland's sentence and found that the sentencing court provided "two significant breaks" to Mr. Rutland by reducing his criminal history category from III to II and departing downward from an initial offense level of 34 to 30. ROA, Vol. I at 87. Because the court "considered the § 3553(a) factors, which is all that was required," "[i]t had no further duty to address every nonfrivolous, material argument raised" by Mr. Rutland. *Piper*, 839 F.3d at 1267 (quotations omitted).

III. **CONCLUSION**

We affirm the district court.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge