

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 6, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIE F. FORD,

Defendant - Appellant.

No. 23-3038
(D.C. No. 2:10-CR-20129-KHV-7)
(D. Kan.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **McHUGH**, and **CARSON**, Circuit Judges.

Willie F. Ford, a federal prisoner, appeals the district court’s order denying his motion for compassionate release. Because the district court did not err in addressing Mr. Ford’s arguments and applying the compassionate-release standards, we affirm.

I. Background

In 2011, a jury found Mr. Ford guilty of four drug-trafficking offenses. The district court sentenced Mr. Ford to 420 months in prison. The district court

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

subsequently reduced Mr. Ford's sentence to 330 months under 18 U.S.C.

§ 3582(c)(1)(A), finding that its denial of relief to Mr. Ford under Amendment 782 to the Sentencing Guidelines was an extraordinary and compelling reason for a reduced sentence.

In 2022, Mr. Ford moved for compassionate release because of (1) his health conditions and concerns about COVID-19; (2) alleged errors at sentencing and counsel's ineffective assistance at trial; and (3) recent changes in Department of Justice guidelines and prosecutorial priorities. The district court denied Mr. Ford's motion. In its order, the district court explained that Mr. Ford's medical conditions and the conditions at FTC Oklahoma City did not constitute extraordinary and compelling reasons for a reduced sentence.

The court also explained that Mr. Ford "failed to show that [its] sentencing findings [were] incorrect or otherwise constitute[d] extraordinary and compelling reasons to reduce his sentence." R. at 289. The court also found this to be the case with his ineffective-assistance-of-counsel argument. In response to Mr. Ford's final argument, the court explained that he did not show that the purported change in Department of Justice guidance on charging decisions was an extraordinary and compelling reason for his release.

II. Discussion

We review a denial of compassionate release for abuse of discretion. *See United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021). The district court exercises broad discretion in determining what constitutes extraordinary and

compelling reasons for compassionate release. *United States v. Maumau*, 993 F.3d 821, 838 (10th Cir. 2021) (Tymkovich, C.J., concurring). Because Mr. Ford is proceeding *pro se*, we construe his arguments liberally. *United States v. Pinson*, 584 F.3d 972, 974 (10th Cir. 2009). “[T]his rule of liberal construction stops, however, at the point at which we begin to serve as his advocate.” *Id.*

Mr. Ford’s requested relief—modification of his sentence by a federal court—may only occur where Congress has explicitly authorized the court do so. 18 U.S.C. § 3582(b)–(c). Under the 2018 First Step Act, a court may order compassionate release for “extraordinary and compelling reasons.” *Id.* § 3582(c)(1)(A)(i). Mr. Ford must establish that (1) extraordinary and compelling reasons warrant a reduced sentence, (2) a reduced sentence is consistent with applicable Sentencing Commission policy statements, and (3) § 3553(a) factors warrant a reduced sentence. *Id.* Because the Sentencing Commission has not issued a policy statement, we evaluate only the first and third requirements. *See Maumau*, 993 F.3d at 831; *United States v. McGee*, 992 F.3d 1035, 1042–43 (10th Cir. 2021).

On appeal Mr. Ford focuses on the district court’s treatment of his COVID-19 arguments.¹ He argues that the district court denied his motion even though health staff at his facility commented that home confinement would be better; Mr. Ford also

¹ Because he has not pressed his other arguments on appeal, we deem them forfeited. *Conroy v. Vilsack*, 707 F.3d 1163, 1170 (10th Cir. 2013) (“Conroy has not briefed any arguments pertaining to that claim, so we consider it abandoned.”). Even if we did not, we could still not consider his ineffective-assistance-of-counsel argument for relief as we lack jurisdiction to consider trial errors. *See United States v. Wesley*, 60 F.4th 1277, 1288–89 (10th Cir. 2023).

avers that the district court is undermining what medical staff and the CDC say about COVID-19 because of his age. He further argues that the district court denied his motion for his past mistakes and not in consideration of the serious harm he faces from COVID-19.

We note that the district court is no stranger to Mr. Ford's medical conditions and the conditions at his various correctional facilities. In denying his motion, the district court explained that “[n]early two years ago, this Court determined that defendant’s medical conditions and the conditions at FCI Bennettsville, individually and collectively, did not constitute extraordinary and compelling reasons for a reduced sentence,” and Mr. Ford, in his current motion, failed to “show[] any material change in his medical conditions that would warrant a different result at this time.” R. at 284. The district court then elaborated on Mr. Ford’s age, 41, his medical conditions—mild asthma, anxiety disorder, prediabetes, hypertension—and his vaccine history. Mr. Ford has received two doses of the COVID-19 vaccine but has refused a booster shot.

The district court likewise explained that the prevailing scientific view that vaccinated individuals, even with comorbidities, do not have a significant risk of severe disease or death from COVID-19 weighs against any finding of extraordinary and compelling reasons for release or a reduced sentence. Our recent jurisprudence says as much. *See United States v. Gunkel*, No. 22-5055, 2022 WL 17543489, at *2 (10th Cir. Dec. 9, 2022) (affirming denial of compassionate-release motion where district court concluded that movant’s “vaccinations prevented him from being at

‘undue risk’” of harm from COVID-19 even with his existing comorbidities); *United States v. McRae*, No. 21-4092, 2022 WL 803978, at *2 (10th Cir. Mar. 17, 2022) (“[A] defendant’s incarceration during the COVID-19 pandemic—when the defendant has access to the COVID-19 vaccine—does not present an ‘extraordinary and compelling reason’ warranting a sentence reduction.”) (internal quotation marks omitted).

On this record we cannot say the district court abused its discretion in finding that Mr. Ford failed to show that his health conditions constituted extraordinary and compelling reasons for release or a reduced sentence.

III. Conclusion

We affirm the district court’s denial of Mr. Ford’s motion for compassionate release.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge