

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 18, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERALD BEASLEY,

Defendant - Appellant.

No. 23-3056
(D.C. No. 6:13-CR-10112-JWB-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

Gerald Beasley appeals the district court’s denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

In 2017, Beasley pleaded guilty to one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c) and one

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

count of possession of cocaine with the intent to distribute in violation of 21 U.S.C. § 841(a)(1). In 2020, the district court denied Beasley's first motion for compassionate release because the sentencing factors did not support a reduction. In 2021, Beasley filed a second motion for compassionate release, arguing that his long-term health problems after contracting COVID-19, his other health conditions, and the COVID-19 pandemic warranted his release. The district court similarly denied the second motion because the sentencing factors did not support a sentence reduction, and we affirmed.¹

Beasley filed a third motion for compassionate release earlier this year, arguing for a reduction of his sentence to time served or home confinement because of his age, medical conditions, and an alleged lack of adequate medical care. Once again, the district court denied the motion. Proceeding directly to the sentencing factors, the court found that the imposed sentence was sufficient, determining that reducing Beasley's sentence to time served would not reflect the seriousness of his criminal conduct, nor would it furnish adequate deterrence or provide just punishment for the offense. The court also found that Beasley failed to establish that he is receiving inadequate medical care, reasoning that Beasley did not identify how he is being denied satisfactory care, and that records submitted by Beasley support a finding that he is receiving care. The court was also not persuaded that Beasley's age

¹ The Honorable J. Thomas Marten denied Beasley's first motion for compassionate release, and the Honorable John W. Broome denied Beasley's subsequent motions.

was a factor to be weighed in his favor since he committed his crimes in this case when he was in his late fifties. Nor was the district court convinced Beasley should be granted compassionate release because a co-defendant received compassionate release, or that there was a disparity between their sentences. The court found that, unlike Beasley, his co-defendant was granted compassionate release because it was unopposed and he had significant health conditions that posed a risk in the middle of the COVID-19 pandemic. In addition, Beasley's criminal conduct and circumstances were not sufficiently similar to his co-defendant such that release was appropriate.² Finally, the district court denied Beasley's request to finish his sentence on home confinement, or alternatively, to modify his sentence, reasoning that the court lacked authority to expand the use of home confinement. Beasley now appeals.

II.

“We review a district court's order denying relief on a § 3582(c)(1)(A) motion for abuse of discretion.” *United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021). Since Beasley appeals pro se, we construe his filings liberally but “will not supply additional factual allegations to round out [Beasley's] complaint or construct a legal theory on [his] behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997).

a.

² The district court also noted that it had denied a motion for compassionate release filed by a different co-defendant.

“Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but th[at] rule of finality is subject to a few narrow exceptions.” *United States v. McGee*, 992 F.3d 1035, 1041 (10th Cir. 2021) (alteration in original). One such exception is the First Step Act, which allows prisoners to “file a motion for compassionate release with the district court after either exhausting administrative rights to appeal the Director of the BOP’s failure to file such a motion or the passage of 30 days from the defendant’s unanswered request to the warden for such relief.” *Id.* at 1042.³ A district court may grant a motion for a sentence reduction or compassionate release if: (1) extraordinary and compelling reasons warrant the reduction; (2) the reduction is consistent with applicable policy statements issued by the United States Sentencing Commission; and (3) the court considers the factors set forth in § 3553(a), to the extent they are applicable. *Id.*

b.

The district court did not abuse its discretion by denying Beasley’s third motion for compassionate release. “An abuse of discretion occurs where the district court clearly erred or ventured beyond the limits of permissible choice under the circumstances,” or “when it issues an arbitrary, capricious, whimsical or manifestly unreasonable judgment.” *Hamric v. Wilderness Expeditions, Inc.*, 6 F.4th 1108, 1117 (10th Cir. 2021) (citations omitted). Nothing of the sort occurred here. Indeed, the district court provided a detailed analysis of the sentencing factors as applied to Beasley,

³ The government conceded that Beasley exhausted his administrative remedies here.

and the court's determination that Beasley had not presented extraordinary or compelling reasons to grant him compassionate release was well within the court's discretion.

“[D]istrict courts, in carrying out step one of § 3582(c)(1)(A)'s three-part statutory test, possess the authority to determine for themselves what constitutes ‘extraordinary and compelling reasons.’” *United States v. Maumau*, 993 F.3d 821, 832 (10th Cir. 2021).

In the end, Beasley gives us no reason to disturb the district court's conclusion that extraordinary and compelling reasons were absent in this case. And because Beasley cannot obtain the compassionate release he seeks without showing “extraordinary and compelling reasons,” *McGee*, 992 F.3d at 1042, we need not go further.

III.

Finally, we agree with the district court that it lacked authority to expand the use of home confinement here. The Bureau of Prisons' Director alone has the power to make that decision. *See, e.g., United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020); *United States v. Cumins*, 833 F. App'x 765, 766 (10th Cir. 2021) (“Home confinement amounts to a designation of the home as the place of imprisonment. Like other placement decisions, this one is reserved to the Bureau of Prisons' Director.”).

IV.

We AFFIRM the district court.

Entered for the Court

Allison H. Eid
Circuit Judge