

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 17, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TAMARA LEDOM,

Defendant - Appellant.

No. 22-3274
(D.C. No. 2:12-CR-20015-JWL-5)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

Tamara Ledom appeals from the district court's order denying her 18 U.S.C. § 3582(c)(1)(A) motion for a reduction of sentence. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

In 2013, Ms. Ledom pleaded guilty to conspiracy to possess with intent to distribute mixtures and substances containing oxycodone, hydrocodone, methadone,

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

morphine, and methamphetamine, with death and serious bodily injury resulting from the use of those substances. The district court sentenced her to 216 months' imprisonment. In 2022, she filed a motion to reduce her sentence, citing myriad medical conditions and the ensuing heightened risk of an adverse outcome from catching COVID-19. The government opposed the motion.

Section 3582(c)(1)(A) allows a district court to reduce a sentence only if it (1) "finds that extraordinary and compelling reasons warrant such a reduction"; (2) "finds that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission"; and (3) "considers the factors set forth in [18 U.S.C.] § 3553(a), to the extent that they are applicable." *United States v. McGee*, 992 F.3d 1035, 1042 (10th Cir. 2021). The district court need not address all three requirements if it finds that one is not met. *See id.* at 1043.

Here, the district court's analysis began and ended with the first factor because it determined that Ms. Ledom had not established extraordinary and compelling reasons to reduce her sentence. The district court recognized that she sought "compassionate release based on what she describes as a deterioration in her mental and physical health, in addition to her increased risk for severe illness or death if she contracts COVID-19 again while incarcerated." R. Vol. I, CM/ECF p. 113. It found that although the record shows she suffers from several chronic physical conditions, including obesity, type II diabetes, and Chronic Obstructive Pulmonary Disorder (COPD), as well as psychological conditions, "the record also reflects that the BOP is closely monitoring defendant's health and that, contrary to her assertion that her

health is deteriorating, she has made significant progress in all areas of her health in recent months.” *Id.* at 114. After giving examples of such improvements, it stated:

In short, while the record certainly supports defendant’s argument that she suffers from numerous health conditions, the court cannot conclude that defendant’s health constitutes an extraordinary and compelling reason for compassionate release or a reduced sentence, particularly because the BOP and defendant, together, are managing defendant’s health effectively.

Id. at 114-15.

As for the risk from COVID-19, the court found that in June 2020, Ms. Ledom contracted COVID-19 and was intubated. After that, she received two doses of the Moderna vaccine before contracting COVID-19 again in December 2021. She then received a Moderna booster. The court found that the second infection was much less severe because “the vaccine worked as intended—unlike her first infection with COVID-19, defendant was not intubated or hospitalized.” *Id.* at 115. It further found that in February 2022, her “reported post-covid breathing issues were deemed ‘well controlled with albuterol.’” On this record, then, there is no reason to believe that a subsequent infection with COVID-19 will result in increased risk of harm to defendant if she remains incarcerated.” *Id.* The court therefore held that the risk posed by COVID-19 did not establish an extraordinary and compelling reason to reduce Ms. Ledom’s sentence.

Ms. Ledom now appeals.

DISCUSSION

“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). “A district court abuses its discretion when it relies on an incorrect conclusion of law or a clearly erroneous finding of fact.” *Id.* (internal quotation marks omitted). “[F]indings of fact are clearly erroneous when they are unsupported in the record, or if after our review of the record we have the definite and firm conviction that a mistake has been made.” *Holdeman v. Devine*, 572 F.3d 1190, 1192 (10th Cir. 2009) (internal quotation marks omitted).

The district court gave four reasons for finding that Ms. Ledom and the BOP were managing her health. First, it stated that although her diabetes was not well controlled in 2021, it was noted as well controlled in 2022, and “[t]here is no evidence that defendant’s diabetes is not presently well controlled.” R. Vol. I at 114. Second, it found that her “COPD is well controlled by her current medications.” *Id.* Third, it stated that “the most recent information from February 2022 indicates that defendant’s weight ‘has come down nicely, which is encouraging.’” *Id.* And fourth, her “mental health also appears to be stable in light of her current medications.” *Id.*

Ms. Ledom asserts that the court “made a clear error of judgment” in these findings “by relying on unsubstantiated statements by FCI Waseca’s warden and facts not in the record regarding Ms. Ledom’s serious health issues.” Aplt. Br. at 11. Ms. Ledom submitted only one medical record from 2022, which was a Bureau of Prisons historical summary of her medical conditions. In discussing the 2022 medical evidence, the district court therefore apparently relied on statements the prison warden made in denying Ms. Ledom’s administrative motion to reduce sentence, *see* R. Vol. II at 165 (referring to February 2022 chronic care clinic visit

notations that her diabetes and her COPD were well controlled), as well as excerpts from medical records that the government inserted into its response brief, *see id.* Vol. I at 103 (excerpt of February 2022 medical record stating “post covid breathing issues well controlled with albuterol” and “her weight has come down nicely which is encouraging”).

Because Ms. Ledom has not shown she argued in the district court that it would be improper to rely on the warden’s summary of the medical evidence or the excerpts included in the government’s brief, we review her argument only for plain error. *See United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019). On appeal, however, she has not argued for plain error review, and “[w]hen an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived . . . and decline to review the issue at all—for plain error or otherwise.” *Id.* “Under such circumstances, the failure to argue for plain error and its application on appeal surely marks the end of the road for an argument not first presented to the district court.” *Id.* (ellipses and internal quotation marks omitted).¹

Ms. Ledom also challenges the district court’s ruling regarding the risk from COVID-19. But she does not contest that she received at least three vaccine shots, or that, as the district court observed, her second bout with COVID-19 was less severe

¹ We caution the government, however, that in other circumstances the unusual decision to excerpt portions of documents in its response brief without submitting the documents themselves as exhibits may result in a different ruling.

than her first infection. Other circuits have held that “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.” *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021) (citing *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021)). And in dicta we have expressed doubt that vaccinated defendants can establish that the COVID-19 pandemic is an extraordinary and compelling reason to reduce their sentence. *See United States v. Hald*, 8 F.4th 932, 936 n.2 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 2742 (2022). Ms. Ledom’s assertion that immunity from her January 2022 booster “has likely waned or completely worn off,” so that she “is still in danger of serious illness or death from Covid-19,” Apl’t. Br. at 11, does not persuade us that the district court’s findings were clearly erroneous or that it abused its discretion in denying relief based on the risk of COVID-19.

CONCLUSION

We affirm the district court’s judgment.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge