

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit**

**Chicago, Illinois 60604**

Submitted December 13, 2022\*

Decided December 13, 2022

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1068

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Central District of Illinois.

*v.*

No. 18-CR-20046

MARCUS MCKINNEY,  
*Defendant-Appellant.*

Colin S. Bruce,  
*Judge.*

**ORDER**

Marcus McKinney, a federal prisoner, appeals the denial of his second motion for compassionate release. McKinney, who has high blood pressure and asthma, sought release based on his heightened vulnerability to COVID-19 and his need to care for his disabled son. *See* 18 U.S.C. § 3582(c)(1)(A)(i). Because the district court appropriately exercised its discretion by concluding that McKinney did not establish an extraordinary and compelling reason for release, we affirm.

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\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In 2020, less than a year after being sentenced to 96 months in prison for distributing methamphetamine, *see* 21 U.S.C. § 841(a)(1), (b)(1)(B), McKinney sought compassionate release. He argued that he was susceptible to severe illness if he contracted COVID-19 because of his high blood pressure and asthma. He also argued that he needed to be at home to care for his son with cerebral palsy because his son's mother—the current caretaker—was physically limited by her own health issues.

The district court denied McKinney's motion, finding that neither reason for release was extraordinary and compelling. The district court acknowledged the Centers for Disease Control and Prevention's listing of asthma and high blood pressure as factors that could increase the risk of complications from COVID-19, but concluded that McKinney's conditions were well-controlled by medication and did not justify release. Regarding his family circumstances, the court ruled that he provided insufficient evidence to show that the mother's health issues prevented her from adequately caring for their son. And even if McKinney had presented an extraordinary and compelling reason, the court also pointed out that the factors described in 18 U.S.C. § 3553(a) counseled against release, for the reasons it recently had articulated when sentencing McKinney.

The following year, McKinney moved a second time for compassionate release, raising the same two arguments and submitting no evidence. The court denied this motion along the lines of its previous order, adding that McKinney's recent COVID-19 vaccinations further undermined his argument for release. *See United States v. Broadfield*, 5 F.4th 801, 802–03 (7th Cir. 2021).

On appeal, McKinney challenges the district court's denial of his second motion and, principally, the court's conclusion that his risk of serious illness from COVID-19, including the Omicron variant of the virus, was not an extraordinary and compelling reason for release. But the court reasonably concluded that he did not meet his burden of establishing that his medical risks were extraordinary and compelling. In *Broadfield*, we explained that “for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an ‘extraordinary and compelling’ reason for immediate release.” *Broadfield*, 5 F.4th at 803; *see also United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021). And although *Broadfield* included a safety valve for prisoners to show they are unable to benefit from the vaccine, *see United States v. Rucker*, 27 F.4th 560, 563 (7th Cir. 2022), McKinney provided no individualized facts or argument to show that he remains vulnerable to severe infection notwithstanding the vaccine, *see United States v. Newton*, 37 F.4th 1207, 1210 (7th Cir. 2022).

McKinney also generally contests the district court's finding that his son's need for a caretaker did not justify release. But McKinney bears the burden of establishing an extraordinary and compelling reason, *see United States v. Newton*, 996 F.3d 485, 488 (7th Cir. 2021), and he offered insufficient evidence to show that the mother (or others) cannot care for his son.

In any event, the district court's § 3553(a) analysis provides an independent basis for us to affirm. The court alluded to McKinney's "extensive adult criminal history" as well as the need to protect the public and provide just punishment, and just one good reason suffices to deny a compassionate-release motion. *See Ugbah*, 4 F.4th at 598.

AFFIRMED