

NONPRECEDENTIAL DISPOSITION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 June 30, 2023*

Decided July 5, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2091

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MILES MUSGRAVES,
Defendant-Appellant.

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

No. 3:13-cr-30276-NJR-1

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Miles Musgraves, a federal prisoner, appeals the denial of his second motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). Because the district court correctly concluded that a witness recanting his testimony was not a ground for compassionate release, we affirm.

* 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).

Musgraves is serving a 20-year prison sentence. In 2015, a jury found him guilty of five drug and firearm offenses. On appeal, we vacated three convictions but affirmed two. See *United States v. Musgraves*, 831 F.3d 454 (7th Cir. 2016). He received the same sentence on remand, and we upheld it in his second appeal. *United States v. Musgraves*, 883 F.3d 709 (7th Cir. 2018).

Since then, Musgraves has repeatedly challenged his criminal convictions and sentence. In a motion under 28 U.S.C. § 2255, Musgraves asserted that the search warrant for his home (which he had challenged in a pretrial suppression motion in 2014) was based on false information from a witness, Kenneth Boner, whose statements supported the search-warrant application. Musgraves stated that Boner admitted in a new affidavit that police had coerced his previous statement that he witnessed a drug transaction at Musgraves's house; Boner's mother stated the same in an affidavit of her own. *Musgraves v. United States*, No. 19-548-NJR, Doc. 1 (N.D. Ill. May 28, 2019). Musgraves did not submit the affidavits, and the district court denied the motion, concluding that his search-warrant claim was procedurally defaulted and that the unsupported statements about the recantation were insufficient to excuse the default. The court also denied Musgraves's two motions to reconsider, explaining that the Boners' affidavits, which Musgraves had by then submitted, were from 2016 and 2018 and could have been raised either in Musgraves' direct appeals or in the § 2255 motion. The court further decided that the recantation, if believed, could not affect the other facts that supported the probable-cause determination. *Musgraves v. United States*, No. 19-548-NJR, Doc. 26. We denied Musgraves's request for a certificate of appealability. *Musgraves v. United States*, No. 20-3098 (7th Cir. Aug. 2, 2021).

In May 2020, Musgraves moved for compassionate release, asserting, in part, that the new affidavits demonstrate that he was convicted based on evidence obtained through an invalid search warrant, which, he argued, was an extraordinary and compelling reason for a reduced sentence under 18 U.S.C. § 3582(c)(1)(A)(i). The court denied the motion, and we affirmed, noting that Musgraves's challenge "plainly speaks to the validity of his conviction." *United States v. Musgraves*, 840 F. App'x 11, 13 (7th Cir. 2021). And because "the correct vehicle to challenge a conviction or sentence is 28 U.S.C. § 2255 or, in rare circumstances, 28 U.S.C. § 2241," a compassionate-release motion could not be used to raise this argument. *Id.*

In November 2021, Musgraves filed a second motion for compassionate release. He argued, in relevant part, that the district court should "revisit" his sentence because the sentencing judge (since retired) would have imposed a lower prison term if the Boners' affidavits had been available. Denying the motion, the district court again stated that this evidence was not grounds for a motion for compassionate release.

On appeal, Musgraves once again argues that Kenneth Boner's recantation is an extraordinary and compelling reason for compassionate release. But the district court properly denied Musgraves's motion because, despite his insistence to the contrary, his argument necessarily implicates the validity of his conviction. See *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023); *United States v. Brock*, 39 F.4th 462, 466 (7th Cir. 2022); *United States v. King*, 40 F.4th 594, 595 (7th Cir. 2022). True, these decisions refer to "purely legal" contentions that arise after sentencing, and the development here is factual. But a recantation is not akin to "some new fact about an inmate's health or family status." See *Von Vader*, 58 F.4th at 371. It still falls within the purview of § 2255, which creates an avenue of relief with distinct requirements, including time limits. See *United States v. Williams*, 62 F.4th 391, 392 (7th Cir. 2023).

Musgraves has now raised his argument about the recanted testimony in a half-dozen motions seeking relief from his sentence. Repeating the argument yet again in the future will not lead to a different result, and so future motions on the same grounds may be summarily denied.

AFFIRMED