

NONPRECEDENTIAL DISPOSITION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 23, 2023*

Decided July 6, 2023

Before

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2195

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FERNANDO GODINEZ,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 16 CR 554-2

Jorge L. Alonso,
Judge.

ORDER

Fernando Godinez, a federal prisoner, moved for compassionate release, citing as his reasons his elevated risk from COVID-19 and his rehabilitative efforts while incarcerated. *See* 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied the motion after concluding that Godinez had not presented an “extraordinary and compelling” reason,

*We have agreed to decide the case without oral argument because the briefs and the 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).

id., and, regardless, the sentencing factors under 18 U.S.C. § 3553(a) weighed against early release. Because the court did not abuse its discretion, we affirm.

In 2016, Godinez and his brother were arrested when attempting to sell two kilograms of cocaine to an undercover federal agent, and in February 2018 Godinez pleaded guilty to a drug trafficking conspiracy. 21 U.S.C. §§ 841(b)(1)(B), 846. He also pleaded guilty to possessing a firearm during and in furtherance of a drug crime, 18 U.S.C. § 924(c)(1)(A)(i), because he had a loaded pistol in his waistband during the attempted transaction. We vacated Godinez’s sentence of 204 months’ imprisonment because an earlier drug possession conviction used to enhance his sentence was not a “serious drug felony” under 21 U.S.C. § 841(b)(1)(B) and 18 U.S.C. §924(e)(2)(A). *See United States v. Godinez*, 955 F.3d 651, 661–62 (7th Cir. 2020). The district court then resentenced Godinez to 131 months’ imprisonment.

In January 2022—just four months after his resentencing and roughly halfway through his sentence—Godinez moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), contending that the combined risk from his preexisting medical conditions (diabetes, asthma, and obesity) and the COVID-19 pandemic created an extraordinary and compelling reason for his release. He emphasized new COVID-19 variants and his Hispanic ethnicity, which Godinez believes places him in a higher-risk demographic. Then 49 years old, he also argued that his age and efforts at rehabilitation—he participated in classes and had an “above average” disciplinary record—showed that he was at low risk of recidivism. Additionally, he observed that, as a citizen of Mexico, he would be removed immediately upon his release from prison and so presented no danger to the local community.

The district court denied the motion, concluding that, because Godinez had been vaccinated, his risk from COVID-19 was not an extraordinary and compelling reason for release. Nor were his disciplinary record or inevitable deportation. (In imposing sentence originally, the court noted Godinez had already re-entered the country illegally after a previous removal.) The court further explained that, because of Godinez’s felony convictions and criminal history, releasing him “would not reflect the seriousness of the offenses, would not promote respect for the law, would not protect the public, would not provide just punishment and would not provide adequate deterrence.” *See* 18 U.S.C. § 3553(a). Godinez now appeals the decision, which we review for abuse of discretion. *United States v. Rucker*, 27 F.4th 560, 562 (7th Cir. 2022).

On appeal, Godinez first argues that, in combination, his rehabilitation and health risks provide an extraordinary and compelling reason for compassionate release. But he has not presented individualized evidence that he is unable to benefit from the vaccine or any data suggesting he is less safe from COVID-19 inside the prison than he would be if released, so his risk of infection is not an extraordinary and compelling reason for release. *See United States v. Vaughn*, 62 F.4th 1071, 1071–72 (7th Cir. 2023). And, as the district court noted about his rehabilitation, attending classes and avoiding disciplinary infractions are “expected...not extraordinary.” *See id.* at 1072. The district court therefore did not abuse its discretion in concluding that these “common” reasons for release fell short. *Id.* at 1073.

Next, Godinez argues that the district court abused its discretion in its evaluation of the § 3553(a) factors, emphasizing that, because he will be removed to Mexico, he will not be a danger to any community in the United States. But the district court discussed his eventual removal when imposing the current sentence, *see United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021), and his danger to the community was just one of the court’s concerns with the seriousness of Godinez’s offenses and his potential recidivism. The court also discussed the need for the sentence to provide just punishment, promote respect for the law, and deter further criminal activity. This reasoning suffices, and we do not reweigh the sentencing factors. *Rucker*, 27 F.4th at 563 (citing *Ugbah*, 4 F.4th at 598); *see United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021).

AFFIRMED