

NONPRECEDENTIAL DISPOSITION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 7, 2023

Before

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2408

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KEVIN W. PAGE,
Defendant-Appellant.

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

No. 18-cr-40050-SMY

Staci M. Yandle,
Judge.

ORDER

Kevin Page, a federal prisoner, appeals the denial of his motion for compassionate release, which was based both on health conditions that, allegedly, increase his risk of severe complications from COVID-19, and on his rehabilitation while in prison. See 18 U.S.C. § 3582(c)(1)(A)(i). He also contends that the district court

* 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).

violated his due-process rights by ruling on his motion without awaiting his reply brief. But Page did not present any extraordinary and compelling reasons for early release under our precedent, and the district court permissibly exercised its broad discretion over case management by ruling before he filed a reply. Therefore, we affirm.

Beginning in 2016, law enforcement officers investigated Page for selling methamphetamine in southern Illinois. He was arrested on multiple occasions after being caught with drugs, including after he led officers on a high-speed chase in a recreational vehicle in early 2018. Numerous associates also provided information about Page's drug trafficking. Page pleaded guilty to one count of conspiracy to distribute methamphetamine, see 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 846, with enhanced penalties because of a previous conviction for a serious drug felony, see *id.* § 851. In January 2020, the district court sentenced him to 180 months' imprisonment, which was below the applicable range under the Sentencing Guidelines, and eight years' supervised release. He was sent to the federal penitentiary in Lewisburg, Pennsylvania.

About two years into his sentence, Page, then 42 years old, moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). He argued primarily that his medical conditions—hypertension, obesity, anemia, neurological problems, mental-health issues, and a weakened immune system from a past bout of skin cancer—increased his risk of severe complications if he were infected with COVID-19. He further contended that his “extraordinary” rehabilitation while in prison—completing an “unprecedented” number of recidivism-reduction programs and avoiding major disciplinary infractions—and the sentencing factors under 18 U.S.C. § 3553(a) merited his early release.

After being ordered to respond, the government opposed the motion. Attaching Page's relevant medical records, it argued that Page was fully vaccinated against COVID-19, had not demonstrated that he was medically unable to benefit from the vaccine, and was housed in a facility where nearly everyone was vaccinated and no one currently had the disease. The government also attached Page's disciplinary record and argued that he had not demonstrated rehabilitation, stating that he “has a horrible disciplinary history record and he has been found to be at a medium risk to recidivate.” The district court denied Page's motion. It summarized the state of our case law on the effect of vaccines on requests for compassionate release—citing *United States v. Ugbah*, 4 F.4th 595 (7th Cir. 2021), and *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021)—and then explained in full:

While Page alleges that he is at an increased risk of contracting COVID-19 and suffering severe illness or death due to preexisting medical conditions, he has not established that he is unable to receive or benefit from the vaccines. In fact, he was vaccinated on September 14, 2021, and received a booster shot on December 6, 2021. As such, he is at no higher risk for severe illness or death from the virus in prison than he would be if he were to be released. See *United States v. Barbee*, 25 F.4th 531, 533 (7th Cir. 2022); *United States v. Clinton*, 22-1005, 2022 WL 2298178, at *1 (7th Cir. June 27, 2022).

The court issued this decision denying relief and terminating the case on July 25, 2022. Days earlier, Page had submitted into the prison legal mail system a notice of intent to file a reply brief, which asked for 30 days to submit one. Page asserted that he had received the government's response brief seven days earlier, and that he intended to file a reply "to clear up erroneous claims and misstatements of facts" in the government's brief. Page's submission was docketed as a motion for extension of time to file a reply brief. By then, the court had issued its decision on the merits, which mooted Page's request for more briefing. Page filed a timely notice of appeal on August 8, 2022.

On appeal, Page first argues that the district court's ruling is inconsistent with the Supreme Court's decision in *Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022), which requires district courts to respond to each nonfrivolous argument in a defendant's motion for a sentence reduction under § 404 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). See also *United States v. Newbern*, 51 F.4th 230, 233 (7th Cir. 2022) (noting that *Concepcion* imposes this requirement). Page contends that the district court therefore erred by failing to even mention his arguments about his rehabilitation and the § 3553(a) factors.

Page's argument fails because we are not reviewing a request for resentencing under the First Step Act, but rather the denial of a motion for a reduced sentence under § 3582(c)(1)(A). *Concepcion* did not address, and is therefore irrelevant to, what a district court must do when resolving the threshold question of whether a defendant has an extraordinary and compelling reason for compassionate release. *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022). On that question, we look for "reasonable assurance" that a district court "at least considered the prisoner's principal arguments." *United States v. Newton*, 996 F.3d 485, 489 (7th Cir. 2021). Here, the district court could have said

more to provide that assurance, but it said enough. Only one good reason is needed to support a denial of relief. See *Ugbah*, 4 F.4th at 598.

Page next contends that his arguments should have succeeded on the merits: His risk of severe illness from contracting COVID-19 and his extensive post-sentencing rehabilitation, he urges, constitute extraordinary and compelling reasons for compassionate release. But the district court acted within its discretion in concluding otherwise. The court acknowledged our statement in *Broadfield* that it is nearly impossible for a vaccinated prisoner to show that the risk of COVID-19 is an extraordinary and compelling reason for release unless he is “unable to ... benefit from a vaccine.” 5 F.4th at 803. And the court correctly explained that Page—who had received the initial vaccinations and a booster shot—had not shown with any evidence that he could not benefit from the vaccine and therefore had a greater risk of an adverse outcome in prison than if released. See *Barbee*, 25 F.4th at 533.

True, the district court did not address the argument that Page had been rehabilitated in his three years of incarceration. But rehabilitation alone is not a reason for release under § 3582(c)(1)(A). *United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022). And though district courts should consider prisoners’ reasons cumulatively in determining whether there are extraordinary and compelling grounds for relief, *United States v. Vaughn*, 62 F.4th 1071, 1072–73 (7th Cir. 2023), Page does not persuade us that this reason could have tipped the scales given the information before the court about his disciplinary record. See *United States v. Sarno*, 37 F.4th 1249, 1254 (7th Cir. 2022). Further, the district court was not required to address the § 3553(a) factors because it determined that Page had not met the threshold requirement of establishing an extraordinary and compelling reason for compassionate release. See *United States v. Thacker*, 4 F.4th 569, 573 (7th Cir. 2021); *Ugbah*, 4 F.4th at 598.

Finally, Page contends that the district court violated his due-process rights by denying his motion without giving him the opportunity to file a reply brief. But district courts have “considerable discretion to manage their dockets” and are “entitled to take reasonable steps to keep the case moving forward.” *Stevens v. U.S. Dep’t of State*, 20 F.4th 337, 341–42 (7th Cir. 2021). Further, the court acted in accordance with the local procedural rules, which state that reply briefs are “not favored” and “should be filed only in exceptional circumstances.” SDIL-LR 7.1(g). District courts are afforded significant discretion in applying their own local rules, *United States v. Sanders*, 992 F.3d 583, 586 (7th Cir. 2021), and Page identified no “exceptional circumstances” when he requested time to reply. Nor does he tell us on appeal how a reply brief would have

made a difference—for instance, he does not contend that he would have provided evidence that he could not benefit from the vaccine. The medical and disciplinary records that the government attached to its response were known to Page, and the district court did not rely upon evidence or arguments that could be considered new, such that fairness would dictate giving Page the chance to weigh in again. See *id.* at 586–87. Thus, the court did not abuse its discretion by ruling before Page filed a reply brief.

AFFIRMED