

NONPRECEDENTIAL DISPOSITION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 September 18, 2023*

Decided September 18, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-3023

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

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

v.

No. 12-CR-20025

JERRY L. HENDRICKS,
Defendant-Appellant.

Sue E. Myerscough,
Judge.

ORDER

Jerry Hendricks, a federal prisoner, appeals the denial of his motion under 18 U.S.C. § 3582(c)(1)(A)(i) for compassionate release. Because the district court did not

* 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).

abuse its discretion in concluding that the sentencing factors in 18 U.S.C. § 3553(a) weigh against his release, we affirm.

A jury found Hendricks guilty of sexual exploitation of a minor, *see* 18 U.S.C. §§ 2251(a), 3559(e)(1), possession of child pornography, *see id.* § 2252(a)(4)(B), (b)(2), and committing a felony offense involving a minor, *see id.* § 2260A. Hendricks has a long history, since 1988, of committing sex offenses involving minors, including taking nude pictures of and having sexual intercourse with two 15-year-old girls and having sexual intercourse with a 13-year-old. In 2011, Hendricks, who at the time of his arrest was wanted for violating a sex-offender-registration requirement, photographed a seven-year-old's genitals and the sexual contact he had with the child—the daughter of his former girlfriend, with whom he resided.

In June 2014, the district court sentenced Hendricks to life imprisonment plus thirty years. Life imprisonment was mandatory for the sexual-exploitation count, *see* 18 U.S.C. § 3559(e)(1); the statutory minimum of 10 years for the § 2260A count had to be consecutive, *see id.* § 2260A; and the judge chose to make consecutive the statutory-maximum 20-year sentence for possession of child pornography, *see id.* § 2252(b)(2). We affirmed Hendricks's conviction on direct appeal. *See United States v. Hendricks*, 615 F. App'x 383 (7th Cir. 2015). His motion under 28 U.S.C. § 2255 also was unsuccessful, *see Hendricks v. United States*, No. 16-CV-03261, 2019 WL 4666318, at *1 (C.D. Ill. Sept. 24, 2019), and we denied his request for a certificate of appealability. *Hendricks v. United States*, No. 19-2997 (7th Cir. June 30, 2020).

In June 2022, eight years into his life sentence, Hendricks moved for compassionate release in the district court after first seeking relief from his warden. *See* 18 U.S.C. § 3582(c)(1)(A)(i). The court recruited counsel, who filed an amended motion asserting that Hendricks qualified for a reduced sentence because of his age (75 years old), clean disciplinary history in prison, and health conditions. The latter included chronic obstructive pulmonary disease, chronic airway obstruction, coronary artery disease, hypertension, hypothyroidism, stage three chronic kidney disease, essential tremors, gastroesophageal reflux disease, hyperlipidemia, osteoarthritis of the hip and knee, and memory and cognitive dysfunction after a bout of COVID-19.

The district court denied the motion. It noted that Hendricks did not raise his lack of disciplinary history in his request to the warden and therefore did not exhaust this ground for relief. Still, it concluded that Hendricks's medical problems were, in combination, extraordinary and compelling. But it went on to determine that several factors set out in 18 U.S.C. § 3553(a) weighed against a sentence reduction: Because of the gravity of Hendricks's actions and his extensive record of sexually exploiting

progressively younger victims, early release would not provide adequate deterrence or just punishment and would endanger the public.

On appeal, Hendricks, who is incarcerated in the United States Medical Center for Federal Prisoners in Springfield, Missouri, does not challenge the district court's weighing of the § 3553(a) factors. He briefly challenges the court's evaluation of his health conditions, but the court ultimately accepted Hendricks's contention that his poor health was an extraordinary and compelling reason for release. And to grant compassionate release, a district court must determine not only that there is an extraordinary and compelling reason for release but also that release is appropriate under § 3553(a). *See United States v. Sarno*, 37 F.4th 1249, 1253 (7th Cir. 2022). Because Hendricks does not make any argument about the § 3553(a) factors in his opening brief, he has waived the issue. *See United States v. Webster*, 775 F.3d 897, 904 (7th Cir. 2015).

Even without the waiver, any challenge to the district court's decision would lack merit. The court reasonably concluded that early release was not justified because of the seriousness of Hendricks's criminal conduct—including the fact that he “exploited progressively younger child victims,” including one he had been entrusted to reside with—and because a reduced sentence would not protect the public, promote respect for the law, or provide just punishment or adequate deterrence. *See United States v. Kurzynowski*, 17 F.4th 756, 760 (7th Cir. 2021). The court therefore did not abuse its discretion by denying Hendricks's motions. *See United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021).

Hendricks also challenges the validity of his conviction on several grounds. He contends, for example, that detectives fabricated evidence. A compassionate release motion, however, is not the proper way to challenge a conviction or sentence. *See United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023).

AFFIRMED