

NONPRECEDENTIAL DISPOSITION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 October 16, 2023*
Decided October 17, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1276

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NOAH ALLEN,
Defendant-Appellant.

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

No. 18-30021-001

Sue E. Myerscough,
Judge.

ORDER

Noah Allen, a federal prisoner, appeals the denial of his request to amend his motion for compassionate release. But the district court permissibly concluded that its reasons for having denied compassionate release obviated any justification for amendment. Therefore, 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).

Allen pleaded guilty to a conspiracy to distribute methamphetamine, 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and the district court later sentenced him to 15 years' imprisonment, well below his guidelines range of 30 years to life. Allen had an appointed lawyer during his plea and sentencing.

Two years later, Allen filed a motion for compassionate release based on his chronic health conditions and the associated risk of developing severe illness if he contracted COVID-19 in prison. In this motion, Allen stated that he did not have an attorney and requested that one be appointed to assist him. Nevertheless, the court directed "defense counsel" to "file an amended motion for compassionate release, if appropriate, within ten days." The court also asked for a recommendation from the United States Probation Office and a response from the government. The attorney who had represented Allen through sentencing, and whose appearance was still on file, did not file an amended motion. (The record shows that multiple people at the attorney's firm received electronic notice of the court's order.) The Probation Office and the government submitted their materials on the court's timeline.

About ten days after the government filed its response opposing Allen's motion, Allen, pro se, filed what he labeled a "motion for extension of time," in which he asked to file an amended motion for compassionate release. He explained that he had "no idea" who his attorney was and had "no address or phone number" at which to contact the attorney about his grounds for compassionate release. Allen also asked the court to appoint a "different attorney." He did not say how he would amend his motion.

On the same day Allen's request to amend was entered on the docket, the district court denied his pro se motion for compassionate release. First, the court ruled that Allen's risk of illness from COVID-19 was not an extraordinary and compelling reason for release because Allen was vaccinated. *See United States v. Vaughn*, 62 F.4th 1071, 1071–72 (7th Cir. 2023); *United States v. Broadfield*, 5 F.4th 801 (7th Cir. 2021). The court also concluded that releasing Allen just 2 years into his 15-year sentence would not "reflect the seriousness of the offense," "promote respect for the law," or "provide just punishment." *See* 18 U.S.C. § 3553(a)(2)(A). But the court stated that its decision did "not preclude a future motion for compassionate release."

A week later, the court denied Allen's request to amend his motion as "moot" and informed Allen that its decision did not preclude him from filing a future motion for compassionate release. Allen next filed a motion to reconsider (which was timely under the prison mailbox rule) and a notice of appeal, which, as we explained in a

previous order, became effective when the district court later denied the motion for reconsideration. See *United States v. Rollins*, 607 F.3d 500, 504 (7th Cir. 2010).

On appeal, Allen challenges only the court's decision denying his request to amend. We review that decision, as we would the denial of a motion to reconsider a compassionate-release ruling, for an abuse of discretion. *United States v. Sarno*, 37 F.4th 1249, 1253 (7th Cir. 2022). Allen argues that because his lawyer failed to comply with the directive to file an amended motion, the court should have allowed him to supplement the motion himself with additional reasons for release.

The district court did not abuse its discretion. It had directed Allen's attorney to file an amended motion *if appropriate*; therefore, counsel's inaction might simply reflect an assessment that amending the motion was unwarranted. We cannot know that, but we do know that Allen was not prejudiced by the absence of an amended motion—counsel's or his own. The district court ultimately denied compassionate release in part because Allen had served just 2 years of his 15-year sentence, and thus releasing him would be inconsistent with the sentencing factors under 18 U.S.C. § 3553(a). No supplementation of Allen's motion could have changed that § 3553(a) analysis, which was an independent and sufficient basis for resolving Allen's motion. *United States v. Williams*, 65 F.4th 343, 349 (7th Cir. 2023). Further, Allen does not argue that he could have supplemented his motion to demonstrate that he is "at greater risk of a dire outcome inside prison than he would be outside," and that differential risk is what we consider now that vaccines have been available for years. *Vaughn*, 62 F.4th at 1071.

One final point: If there are further proceedings in the district court, the court—before directing more orders to "defense counsel"—should ascertain whether Allen's previously appointed lawyer is still representing him. The government states in its brief that "Allen was not represented by counsel at the time of" the court's order allowing counsel to file an amended motion, but the district court thought otherwise, and there is no record of defense counsel withdrawing nor of the court terminating the appointment administratively. Allen's assertion that he has not had recent contact with the attorney, who has not been involved in any filings since sentencing, suggests that the attorney believes the representation came to end. Allen is not entitled to appointed counsel in seeking post-judgment recourse, *United States v. Blake*, 986 F.3d 756, 758 (7th Cir. 2021), but both he and the district court should be aware of Allen's status.

AFFIRMED