

NONPRECEDENTIAL DISPOSITION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 February 26, 2024*
Decided February 26, 2024

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-2136

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT L. HERTZBERGER,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Evansville Division.

No. 3:03-cr-020-RLY-CMM-1

Richard L. Young,
Judge.

ORDER

Robert Hertzberger, who has served more than half of his 30-year prison sentence for knowingly distributing a controlled substance that resulted in death, appeals the denial of his third motion for compassionate release under 18 U.S.C.

* 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).

§ 3582(c)(1)(A). He argues that his serious health concerns, combined with his demonstrated rehabilitation and limited time remaining on his sentence, provide extraordinary and compelling reasons for release. We affirm.

In 2004, Hertzberger pleaded guilty to knowingly distributing oxycodone, a Schedule II controlled substance, that resulted in the death of another. *See* 21 U.S.C. § 841(a)(1), (b)(1)(C). The previous year, Hertzberger had provided his ex-wife with an injectable form of the opioid (from a prescription under his name), and she died of an overdose. He was sentenced to 30 years' imprisonment and 3 years' supervised release.

In 2023, Hertzberger filed his third motion for compassionate release. (In 2021 and 2022, the district judge had denied similar motions asserting severe health conditions, including heart failure; his susceptibility to grave consequences from COVID-19, given his inability to receive a vaccine because of neurological reasons; his evidence of rehabilitation in prison, reflected by his work history, educational accomplishments, and near-perfect disciplinary record; and limited time remaining on his sentence.) In his third motion, Hertzberger provided updated medical records showing he was diagnosed with long COVID (which he argued the prison inadequately treated) and still had not received a COVID vaccine. He also explained that he had completed every program available at his prison, and that the prison warden and medical staff supported his release. And he asserted that if sentenced today, he would receive a lower sentence based on (unspecified) intervening changes of law.

The district judge denied his motion. As he had in denying Hertzberger's two prior motions, the judge determined that the sentencing factors under 28 U.S.C. § 3553 "strongly" counseled against release. The judge acknowledged Hertzberger's commendable work history, disciplinary record (only two tickets over 18 years), educational achievement, and efforts to reconcile with the victim's family but found these factors outweighed by his extensive criminal history (including prior felony convictions as well as his commission of the instant offense while on parole) and the time remaining on his sentence (at least four more years, in Hertzberger's estimation).

On appeal, Hertzberger generally challenges the district judge's decision, asserting that the 20 years he has spent in prison are enough to reflect the seriousness of his offense and promote respect for the law given his rehabilitation. But we will not reverse a district judge's denial of compassionate release unless the judge abused his considerable discretion. *United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021). Here, the judge appropriately exercised his discretion, determining that the § 3553(a) factors—specifically, Hertzberger's serious crime and extensive criminal history—did

not favor early release. And a judge need provide only one good reason for denying a motion for compassionate release. *See United States v. Ugbah*, 4 F.4th 595, 598 (7th Cir. 2021).

AFFIRMED