

NONPRECEDENTIAL DISPOSITION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 January 23, 2024*

Decided January 25, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2591

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL HENDERSON,
Defendant-Appellant.

Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 21-cr-20

James D. Peterson,
Chief Judge.

ORDER

In 2021, Michael Henderson pleaded guilty to conspiring to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), 846, and was sentenced to seven years' imprisonment and five years of supervised release. Slightly over one year later, he moved for

* 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).

compassionate release under 18 U.S.C. § 3582(c)(1)(A) arguing that his medical conditions and the prison's inadequate COVID-19 mitigation protocols put him at an increased risk of severe illness or death from COVID. Because the district court did not abuse its discretion in denying his motion, we affirm.

In his motion, Henderson, who is over 50 years old and African American, argued that his high blood pressure and cholesterol, plus lingering shortness of breath from a previous COVID infection, elevated his risk of severe illness from COVID. He asserted that his risk was heightened by the inadequate COVID protocols at the facility housing him, a federal minimum-security prison camp in Duluth, Minnesota. In advancing this claim, Henderson stated without evidence that the recent deaths of two prisoners and the severe illness of a third occurred because of COVID. Henderson acknowledged that he had received the COVID vaccine, but he argued that studies, which he did not cite, still left him at high risk given his health, age, and race.

The government opposed Henderson's motion, arguing that he had not shown the necessary extraordinary and compelling circumstances for release. According to the government, Henderson's medical records demonstrated that his blood pressure and cholesterol were well-controlled by medication and his shortness of breath was improving. The government also contested Henderson's characterizations of the deaths at his facility by pointing to the Bureau of Prison's online COVID dashboard, which reported no COVID deaths at that facility. Finally, it contended that because Henderson was vaccinated, any risk he faced from COVID was already managed.

The district court denied Henderson's motion. It reasoned that Henderson did not present an extraordinary and compelling reason warranting his release because his health was well controlled with treatment. Contrary to both parties' statements that Henderson was vaccinated, one medical document said that he had refused the vaccine; relying on that record, the court stated that Henderson's refusal meant that he could not cite COVID as a reason for his release.

Henderson timely moved for reconsideration raising three arguments: the court erred by concluding he was not vaccinated; the court should consider pending amendments to U.S.S.G. § 1B1.13, which adds public health emergencies as a ground for compassionate release; and the court should apply *United States v. Vaughn*, 62 F.4th 1071, 1073 (7th Cir. 2023), which holds that even if none of his risks individually warrant release, collectively they might. The district court denied the motion. It again stated that Henderson's medical records did not support his assertions about his

vaccine status, and, even if he were vaccinated, his controlled health conditions were not an extraordinary and compelling reason for his release.

Henderson appeals, maintaining that the district court wrongly denied his request for compassionate release. We review the district court's factual findings for clear error, *United States v. Gamble*, 969 F.3d 718, 722 (7th Cir. 2020), and its decision to deny Henderson's motions for an abuse of discretion, *United States v. Sarno*, 37 F.4th 1249, 1253 (7th Cir. 2022).

Before addressing the merits, we consider whether Henderson's request is moot, thereby depriving us of a live case or controversy. The Bureau of Prison's prisoner locator shows that Henderson was recently relocated from Duluth to a federal facility in Kentucky. Although some of his arguments for release (such as the recent deaths there) are unique to Duluth, others apply to any facility housing him—his health conditions and the difficulty of social distancing in prisons generally. These latter grounds for compassionate release remain live despite the transfer to Kentucky. Thus, this appeal is not moot. *See United States v. Black*, 999 F.3d 1071, 1073 (7th Cir. 2021). But the transfer does render irrelevant his arguments specific to the Duluth facility.

Turning to the merits, Henderson first argues that the district court clearly erred in concluding that he was not vaccinated, and he points to his vaccine records showing that he is vaccinated. But we need not decide whether the district court clearly erred, because even if it did, the error was harmless. *See United States v. Kurzynowski*, 17 F.4th 756, 760–61 (7th Cir. 2021). As an alternative ruling, the district court assumed that Henderson was vaccinated. It then reasonably found that his medications and improved breathing abated any elevated risk from COVID, and thus he lacked an extraordinary and compelling reason for release. To challenge this ruling, Henderson needed to show that he furnished evidence that his vaccination, coupled with his medications and other health protocols, would not protect him adequately from the virus and its variants. *See Vaughn*, 62 F.4th at 1072. But he never did.

Henderson also argues that the district court abused its discretion by not considering his risk factors collectively, even if they were insufficient independently. *See id.* at 1073. But the court did consider Henderson's risk factors together. It acknowledged that high blood pressure, high cholesterol, and periodic shortness of breath are all COVID risk factors. It then reasonably found that collectively they were not extraordinary and compelling because all were well-controlled or improving and adequately mitigated by the availability of COVID vaccines in federal prisons.

Henderson's two remaining arguments are also unsuccessful. He first contends that the district court addressed conditions at Duluth in its original ruling, but not in its order denying his motion for reconsideration; this, he concludes, is reversible error. We disagree. The district court could rely on the reasoning in its original order without repeating it in the order denying Henderson's motion to reconsider that order. *See Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014) (a motion to reconsider "is not to be used to 'rehash' previously rejected arguments"). Second, Henderson argues that the district court abused its discretion by not considering amendments to U.S.S.G. § 1B1.13, even though, at the time, they were not in effect. But even if we assume that the district court had such discretion (a question we need not decide today), no case law of which we are aware *required* the court to exercise that discretion. *See United States v. Stewart*, 86 F.4th 532, 535 n.2 (3d Cir. 2023).

AFFIRMED