

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-10102

Plaintiff-Appellee,

D.C. No. 1:00-cr-05339-JLT-1

v.

ROY ALLEN GREEN,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Jennifer L. Thurston, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Roy Allen Green appeals pro se from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Green argues that the district court erred in denying his motion because it

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

did not consider his age, rehabilitation, or alternatives to immediate release. He also argues that the court should not have considered his vaccination status because vaccination does not prevent all COVID-19 infections and the Bureau of Prisons has refused to provide him a second booster shot and is not adequately treating his underlying conditions. Finally, he argues that he received ineffective assistance of counsel in connection with his compassionate release motion and that this circumstance, in combination with the change to 18 U.S.C. § 924(c)'s stacking provision under the First Step Act, justifies compassionate release. Having considered these arguments, we see no basis to conclude that the district court abused its discretion in denying relief. *See United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir. 2021) (stating standard of review).

The record reflects that the court considered all of Green's arguments, including those concerning his age, medical conditions, rehabilitation, and recent changes in sentencing law. It did not abuse its discretion by concluding that, given the substantial time remaining on Green's sentence and his vaccination against COVID-19, none justified compassionate release. The record does not support Green's claim that he has been denied a second booster or that he is otherwise receiving substandard care. Lastly, Green's claim that he received ineffective assistance of counsel is unavailing because he is not entitled to counsel in § 3582(c) proceedings. *See United States v. Townsend*, 98 F.3d 510, 512-13 (9th Cir. 1996). In any event, he has not shown that counsel's representation was

deficient.

Green's motion to grant his appeal is denied.

AFFIRMED.