

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 29, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MELVIN EDWARD JEFFERSON,

Defendant - Appellant.

No. 22-8067
(D.C. No. 2:18-CR-00008-SWS-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **HARTZ, TYMKOVICH, and MATHESON**, Circuit Judges.

Melvin Edward Jefferson moved under 18 U.S.C. § 3582(c)(1)(A)(i) for compassionate release from his federal prison sentence based on (1) vulnerability to COVID-19 and (2) errors underlying one of his convictions and his sentence. The district court denied relief, and Mr. Jefferson appeals.¹

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Mr. Jefferson represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Exercising jurisdiction under 28 U.S.C. § 1291, we hold that (1) the district court did not abuse its discretion in deciding that Mr. Jefferson’s medical concerns did not warrant relief, and (2) his attacks against one of his convictions and his sentence fall outside the jurisdiction of a compassionate-release motion. We thus affirm the district court’s order in part, vacate it in part, and remand with directions to dismiss Mr. Jefferson’s motion to the extent it challenges his conviction and sentence.

I. BACKGROUND

A. *Compassionate Release*

A district court may grant compassionate release if it finds that:

1. “extraordinary and compelling reasons warrant” a reduced sentence;
2. a “reduction is consistent with applicable policy statements” from the Sentencing Commission; and
3. a reduction is warranted after considering the applicable sentencing factors listed in 18 U.S.C. § 3553(a).

18 U.S.C. § 3582(c)(1)(A)(i); *accord United States v. Maumau*, 993 F.3d 821, 831 (10th Cir. 2021). A court may deny compassionate release if it finds that any of these requirements is lacking. *See Maumau*, 993 F.3d at 831 n.4. The court here addressed only the first requirement.

A federal prisoner must file a 28 U.S.C. § 2255 motion to attack the validity of a conviction or sentence, *see Sandusky v. Goetz*, 944 F.3d 1240, 1246 (10th Cir. 2019), and may not raise claims governed by § 2255 to obtain compassionate release, *see United States v. Wesley*, 60 F.4th 1277, 1289 (10th Cir. 2023). A district court

must treat a § 2255 claim appearing in a compassionate-release motion as if it had been raised under § 2255. *Wesley*, 60 F.4th at 1288.

A prisoner may generally seek § 2255 relief only once. *See Hale v. Fox*, 829 F.3d 1162, 1165 (10th Cir. 2016). A district court lacks jurisdiction over a successive § 2255 motion unless the court of appeals has authorized it. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008).

B. *Procedural History*

Mr. Jefferson pled guilty to (1) interfering with interstate commerce by means of robbery (Hobbs Act robbery) and aiding and abetting, (2) brandishing a firearm during a crime of violence, and (3) possessing a firearm as a felon. His prison sentence totaled 150 months. His § 2255 motion was unsuccessful.²

He has since filed three compassionate-release motions. The first two emphasized medical problems—a coagulation defect and a history of blood clots resulting in pulmonary embolisms—that increased his risk of serious complications from COVID-19. His third motion, the one at issue here, repeated these concerns but also challenged his conviction for brandishing a firearm during a crime of violence and his sentence. He relied on *United States v. Taylor*, 142 S. Ct. 2015 (2022), and *Borden v. United States*, 141 S. Ct. 1817 (2021).

² Mr. Jefferson filed a § 2255 motion in 2019, which the district court denied. We take judicial notice of these facts, as they appear in publicly filed records, *Jefferson v. United States*, No. 1:19-cv-00054-SWS (D. Wyo. July 20, 2020). *See United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007).

The district court found that Mr. Jefferson failed to show extraordinary and compelling circumstances. On COVID-19 vulnerability, it found that the only change since it had last rejected those concerns was that Mr. Jefferson had received the COVID-19 vaccine, which decreased his risk. On his other claim, the court said a compassionate-release motion “is not a vehicle for challenging the legality of a prior conviction and sentence.” ROA at 127. It also said neither *Taylor* nor *Borden* undermined Mr. Jefferson’s conviction. The court denied the motion, and Mr. Jefferson appeals.³

II. DISCUSSION

We review for an abuse of discretion, *see United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021), which occurs when a district court relies on an incorrect legal conclusion or a clearly erroneous factual finding, *id.*

A. COVID-19

Mr. Jefferson argues the district court improperly downplayed his vulnerability to COVID-19. He says that although he received a vaccine, he has not received a booster. And he questions the vaccine’s efficacy. He further contends that prison officials have deprived him of adequate medical care. Despite these points, he has not shown the district court abused its discretion in finding that his COVID-19 concern did not amount to an extraordinary and compelling reason to reduce his

³ Mr. Jefferson moved this court for an extension to file his notice of appeal. He filed the same motion in the district court, which granted it, making his notice of appeal timely. We deny his motion here as moot.

sentence. *See United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021) (agreeing “that a defendant’s incarceration during the COVID-19 pandemic—when the defendant has access to the COVID-19 vaccine—does not present an ‘extraordinary and compelling reason’ warranting a sentence reduction”); *see also United States v. Hald*, 8 F.4th 932, 939 n.5 (10th Cir. 2021) (recognizing that “access to vaccination . . . would presumably weigh against a finding of extraordinary and compelling reasons”); *United States v. Duran*, No. 21-4104, 2022 WL 4391880, at *2 (10th Cir. Sept. 23, 2022) (unpublished) (recognizing that courts have held “that vaccination will generally prevent a showing of an extraordinary and compelling reason for release related to the pandemic”); *United States v. Gunkel*, No. 22-5055, 2022 WL 17543489, at *2 (10th Cir. Dec. 9, 2022) (unpublished) (affirming the denial of compassionate release where the district court found vaccination prevented the prisoner “from being at ‘undue risk’ of a serious COVID-19 case”).⁴

Mr. Jefferson briefly argues that restrictive prison conditions during the COVID-19 pandemic constituted extraordinary and compelling circumstances. But he did not develop that argument in the district court. He instead attempted to “incorporate by reference all of the previous pleadings [he] submitted to the [district] court for compassionate release”—that is, materials submitted with the motions that the district court had previously denied and had not been appealed. ROA at 95. The

⁴ *See* 10th Cir. R. 32.1 (“Unpublished decisions are not precedential, but may be cited for their persuasive value.”); *see also* Fed. R. App. P. 32.1.

district court thus did not address this issue, and Mr. Jefferson does not argue here that the district court erred by not addressing it.

B. *Section 2255 Claims*

Mr. Jefferson devotes most of his briefing to attacking his sentence and his conviction for brandishing. But these are § 2255 challenges that are not appropriate for a compassionate-release motion. *See Wesley*, 60 F.4th at 1289. Because Mr. Jefferson had previously sought § 2255 relief, the district court lacked jurisdiction to address these challenges without authorization from this court. We must therefore vacate the portion of the district court’s order addressing the merits of Mr. Jefferson’s attacks against his conviction and sentence.

III. CONCLUSION

We affirm the district court’s denial of compassionate release based on COVID-19 concerns. We vacate the remaining part of the order addressing the merits of Mr. Jefferson’s challenges to his conviction and sentence and remand for the district court to dismiss that part of the motion for lack of jurisdiction.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge