

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10750

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HASAN PEARSON,

a.k.a. Julio,

a.k.a. Hoov,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:17-cr-00507-WFJ-AEP-1

Before ROSENBAUM, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

In 2018, Hasan Pearson pled guilty to conspiracy to distribute heroin, fentanyl, and fentanyl analogues, the use of which resulted in the deaths of at least three individuals and the serious bodily injury of another. For this conduct, the district court sentenced him to serve 300 months in prison.

In June 2020, approximately 19 months into his sentence, Pearson requested early release under 18 U.S.C. § 3582(c)(1)(A), as amended by § 603(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018), alleging that he was at increased risk of becoming seriously ill from COVID-19 due to severe asthma and chronic obstructive pulmonary disease (“COPD”).¹ He also

¹ Pearson also sought transfer to home confinement under § 602 of the First Step Act and § 12003(b)(2) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (2020). Section 602 of the First Step Act amended 18 U.S.C. § 3624 to direct the Bureau of Prisons to place low-risk and low-need prisoners on “home confinement for the maximum amount of time permitted” by the statute, while § 12003(b)(2) of the CARES Act expanded the maximum amount of time permitted for

21-10750

Opinion of the Court

3

highlighted his efforts towards rehabilitation while in prison and the commitment by a nonprofit organization to house and look after him should he be released from prison.

The district court denied early release for several reasons: (1) it concluded neither Pearson's medical conditions nor his rehabilitation efforts were "extraordinary and compelling" reasons within the meaning of § 3582(c)(1)(A) and U.S.S.G. § 1B1.13; (2) it also determined the 18 U.S.C. § 3553(a) factors weighed heavily against granting early release given "the appalling nature of the deadly underlying criminal activity, and the need to protect the public and show respect for the law"; and (3) it was "unable to conclude that Movant is not a danger to the community," as required by § 1B1.13.

On appeal, Pearson argues that U.S.S.G. § 1B1.13 doesn't apply and so the district court erred in denying his motion for failure to meet its requirements. He also claims the court erred in finding that his medical conditions were not grounds for early release, given the COVID-19 pandemic, and abused its discretion by failing to consider supervised release as an alternative.

home confinement during the COVID-19 national emergency. Pearson doesn't appear to raise this issue on appeal and has therefore abandoned it. In any case, the district court lacked the authority to grant him relief under these provisions because they place home-confinement decisions exclusively within the discretion of the Attorney General and the Bureau of Prisons.

We review a district court’s denial of a prisoner’s § 3582(c)(1)(A) motion for an abuse of discretion. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021). A district court retains a “range of choice,” so long as it doesn’t apply an incorrect legal standard, rely on clearly erroneous facts, or commit a clear error of judgment. *Id.* at 911–12.

Under § 3582(c)(1)(A), a district court may grant a defendant’s motion for a sentence reduction, after considering the § 3553(a) factors, “if it finds that . . . extraordinary and compelling reasons warrant such a reduction” and that a “reduction is consistent with applicable policy statements” in the Sentencing Guidelines. 18 U.S.C. § 3582(c)(1)(A)(i). We have held that § 1B1.3 is “applicable” to all motions under § 3582(c)(1)(A), and, accordingly, “district courts may not reduce a sentence under Section 3582(c)(1)(A) unless a reduction would be consistent with [§] 1B1.13.” *United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021). Section 1B1.13, in turn, requires the court to find that “the defendant is not a danger to the safety of any other person or to the community.” U.S.S.G. § 1B1.13(2). *Bryant*, which came down after Pearson filed his brief in this case, forecloses his contention that § 1B1.13 and its requirements are not binding.

In this Circuit, therefore, a district court may not grant a sentence reduction under § 3582(c)(1)(A) unless it makes three findings: (1) an extraordinary and compelling reason exists; (2) the reduction is supported by the § 3553(a) factors; and (3) “doing so wouldn’t endanger any person or the community within the

21-10750

Opinion of the Court

5

meaning of § 1B1.13's policy statement." *United States v. Tinker*, ___ F.4th ___, No. 20-14474, 2021 WL 4434621, at *2 (11th Cir. Sept. 28, 2021); *see also United States v. Giron*, ___ F.4th ___, No. 20-14018, 2021 WL 4771621, at *2 (Oct. 13, 2021). "Because all three conditions . . . are necessary, the absence of even one would foreclose a sentence reduction." *Tinker*, 2021 WL 4434621, at *2.

In its January 28, 2021, order, the district court found against Pearson on each condition. First, it concluded that his medical conditions—asthma and COPD—were not extraordinary and compelling because they had been "under control to date" and didn't affect his ability to provide self-care in prison. It further noted that Pearson had so far avoided COVID-19 infection and that a vaccine would likely be available soon. Next, the court found that the § 3553(a) factors "weigh heavily against granting compassionate release, given the appalling nature of the deadly underlying criminal activity, and the need to protect the public and show respect for the law." It noted that Pearson still had "approximately 17 years to go" on his 300-month sentence, which was an upward variance imposed to account for the deaths of at least three individuals and the serious bodily injury of another caused by his trafficking of heroin and fentanyl. Finally, and for similar reasons, the court was "unable to conclude that Movant is not a danger to the community."

Because each condition is necessary, we need not decide whether Pearson presented extraordinary and compelling reasons for release or whether he posed a danger to the community. *See Tinker*, 2021 WL 4434621, at *2. Instead, we affirm the district

court's finding that a reduction in his term of imprisonment was not supported by the § 3553(a) factors. *See id.*

Here, the district court did not abuse its discretion in concluding that a reduction was not supported by the § 3553(a) factors. As the district court noted, when it denied the motion Pearson still had “approximately 17 years to go” on a 300-month sentence, which was imposed by the original sentencing court in part to account for the severe consequences of his drug-trafficking activity. The district court reasonably concluded that granting early release in these circumstances, notwithstanding Pearson's steps toward rehabilitation, would undermine “the need to protect the public and show respect for the law.” *See* 18 U.S.C. § 3553(a)(2). On this record, it was well within the court's range of choice to deny Pearson's request for early release from prison. *See Harris*, 989 F.3d at 911–12.

In sum, we affirm the denial of Pearson's request for early release under 18 U.S.C. § 3582(c)(1)(A).

AFFIRMED.