In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1212

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TROY C. WILLIAMS,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:00-CR-00242 — **Brett H. Ludwig**, *Judge.*

ARGUED SEPTEMBER 30, 2022 — DECIDED APRIL 13, 2023

Before WOOD, ST. EVE, and KIRSCH, *Circuit Judges*.

WOOD, *Circuit Judge*. Troy Williams appeals the denial of his motion under 18 U.S.C. § 3582(c)(1)(A) for a reduced sentence. He argues that the district court erred in holding that it was not permitted to consider whether Williams's unconstitutionally imposed mandatory life sentence contributed to "extraordinary and compelling reasons" for the reduction of his sentence. § 3582(c)(1)(A)(i). In so doing, the court relied on

our decision in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021). Williams wants us to reconsider that holding.

We decline the invitation for several reasons. First, it would make no difference to Williams's case. The district court held in the alternative that even if Williams was eligible for a reduction in his sentence, this relief was not warranted in light of the factors spelled out in 18 U.S.C. § 3553(a). Second, we see no reason to change our analysis at this time. We are aware that different approaches have arisen among the circuits regarding the bounds of district court discretion to find extraordinary and compelling reasons for early release—specifically, whether the two-step process we use is the correct one, or if a more holistic approach is called for. The United States Sentencing Commission is in the process of studying the issue, and recently it has proposed defining "extraordinary and compelling reasons" to include circumstances in which "[t]he defendant is serving a sentence that is inequitable in light of changes in the law." Sentencing Guidelines for United States Courts, 88 Fed. Reg. 7180, 7184 (proposed Feb. 2, 2023). But this effort is still at an early stage—so early that we see no value in speculating on what such a change would mean. Until the Commission definitively says otherwise, we will not deviate from our current understanding. We therefore affirm the judgment of the district court.

I

Williams was a key facilitator in a years-long cocaine trafficking scheme. In 2001, a jury convicted him of federal drug and conspiracy charges. See 18 U.S.C. §§ 841(a)(1), 846. At sentencing, Williams faced a statutory 20-year mandatory minimum sentence; his Guidelines "range" (then mandatory) was life. The district court accordingly imposed two concurrent

life sentences, one per count, and we affirmed. *United States v. Knight*, 342 F.3d 697 (7th Cir. 2003).

After Williams exhausted his avenues for postconviction relief, two major shifts in criminal sentencing occurred. First, in 2005 the Supreme Court ruled that the mandatory sentencing structure of the Guidelines violated the Sixth Amendment. *United States v. Booker*, 543 U.S. 220 (2005). It cured that problem by making the Guidelines advisory only. Second, in 2018 the First Step Act amended sentencing provisions for felony drug offenses in a manner that would have reduced Williams's statutory mandatory minimum, had it been in effect at the time of his crimes. Pub. L. No. 115-391, § 401(a)(2)(i), 132 Stat. 5194, 5220. Neither of these changes helped Williams, however, because neither *Booker* nor the relevant provisions of the First Step Act provided relief for defendants whose sentences were already final. See *McReynolds v. United States*, 397 F.3d 479, 480 (7th Cir. 2005) (holding that *Booker* does not apply retroactively); First Step Act § 401(c) (amendments apply "to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment").

In 2021, Williams moved for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), commonly known as the compassionate release statute. Williams argued that his pre-*Booker* mandatory life sentences, combined with his exemplary prison record, constituted "extraordinary and compelling reasons" for early release. While his motion was pending, we decided *Thacker*, which explained that district courts had to break down the compassionate release process into two steps. 4 F.4th at 573. At Step 1, where a defendant's eligibility for sentencing relief is determined, the district court may not

circumvent the nonretroactive nature of the First Step Act by characterizing the very changes to the sentencing ranges made by that Act as extraordinary and compelling reasons. *Id.* Step 2 is relevant only for those prisoners who can show extraordinary and compelling reasons in some other way. At that point, the court has wide discretion to consider anything relevant, including changes in the sentencing regime. *Id.*

The district court denied Williams's motion, reasoning that "under the rationale of *Thacker*, the fact that Williams would not face a mandatory life sentence if sentenced today is not an extraordinary and compelling reason for a lower sentence." The court also found "for the sake of completeness" that a sentence reduction would be inappropriate under the section 3553(a) sentencing factors.

On appeal, Williams argues that (1) the district court erred in concluding that it was barred from considering the fact that today he would not be subject to the pre-*Booker* mandatory life sentence at the eligibility stage of its compassionate release analysis, and (2) the district court's section 3553(a) analysis was an insufficient alternative basis for denying his motion.

II

We review the denial of a motion for compassionate release for abuse of discretion; we consider any underlying questions of law *de novo*. *United States v. McSwain*, 25 F.4th 533, 537 (7th Cir. 2022); *United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021). "A decision based on a mistake of law is itself an abuse of discretion." *United States v. Kurzynowski*, 17 F.4th 756, 759 (7th Cir. 2021).

A

A district court may grant a motion for a reduced sentence if (1) "extraordinary and compelling reasons warrant such a reduction," (2) the reduction is "consistent with applicable policy statements issued by the Sentencing Commission," and (3) the reduction is appropriate in light of the section 3553(a) sentencing factors. § 3582(c)(1)(A). Although the Sentencing Commission is in the process of updating its compassionate release guidance, there is currently no binding policy statement defining "extraordinary and compelling reasons" for early release. See *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020). And Congress has provided little statutory guidance on how district courts should interpret the term, apart from the stipulation that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *United States v. Peoples*, 41 F.4th 837, 841 (7th Cir. 2022) (quoting 28 U.S.C. § 994(t)).

But we have found significance in the fact that Congress did not make its changes in sentences for violations of section 841 retroactive. We reasoned in *Thacker* that a nonretroactive statutory sentencing change cannot be transformed into one that is retroactive by the device of compassionate release. 4 F.4th at 574. And we have stuck to that decision, in the face of numerous appeals that have challenged our position. See, *e.g.*, *United States v. Brock*, 39 F.4th 462 (7th Cir. 2022); *United States v. King*, 40 F.4th 594 (7th Cir. 2022). At the same time, we consistently have said that the district courts may consider the retroactively more lenient punishment for people who can demonstrate the necessary extraordinary and compelling reasons for relief.

Starting with *Thacker*, we examined whether an inmate who was sentenced to so-called stacked penalties under 18 U.S.C. § 924(c) could request compassionate release after the First Step Act amended section 924(c) to limit the convictions that qualify as "second or subsequent" to the crime of conviction. 4 F.4th at 571; First Step Act § 402(a). Our conclusion was that "the discretionary sentencing reduction authority conferred by § 3582(c)(1)(A) does not permit—without a district court finding some independent 'extraordinary or compelling' reason—the reduction of sentences lawfully imposed before the effective date of the First Step Act's amendment to § 924(c)." *Thacker*, 4 F.4th at 575. We did so in reliance on Congress's deliberate choice to give the amendments to section 924(c) only prospective effect. *Id.* at 573. There was simply not enough daylight, we thought, between retroactive application of the First Step Act's reforms and a sentence reduction under section 3582(c)(1)(A) made in reliance on the First Step Act's reforms. We made clear, however, that if the extraordinary and compelling threshold is met on other, independent grounds, then district courts may consider contemporary sentencing law in determining the appropriate length of a sentence reduction. *Id*. at 575.

Our decisions in *United States v. Brock* and *United States v. King* applied the *Thacker* principle to other settings. In those cases, we considered whether inmates could base a request for compassionate release on the ground that they received statutory sentencing enhancements for which, after our decision in *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2021), they would no longer be eligible if sentenced today. Unlike in *Thacker*, this was not a situation in which Congress had spoken directly to the retroactivity question, but we reasoned that defendants should not be permitted to "circumvent the

normal process for challenging potential sentencing errors, either through the direct appeal process or collaterally through a 28 U.S.C. § 2255 motion." *Brock*, 39 F.4th at 465 (quoting *Thacker*, 4 F.4th at 574). We held that "judges must not rely on non-retroactive statutory changes or new judicial decisions" when deciding whether an inmate has shown extraordinary and compelling reasons for relief. *King*, 40 F.4th at 595; accord *Brock*, 39 F.4th at 466.

The district court concluded that these principles apply with equal force to Williams, who was given a mandatory life sentence under the mandatory Guidelines framework, which *Booker* later found to be unconstitutional. The district court's reasoning parallels that of the Sixth Circuit, the only circuit that has directly addressed whether pre-*Booker* sentences can establish extraordinary and compelling circumstances. See *United States v. Hunter*, 12 F.4th 555 (6th Cir. 2021). Like us, the Sixth Circuit had previously decided that the First Step Act's nonretroactive amendments could not supply the basis for compassionate release. See *United States v. Jarvis*, 999 F.3d 442, 445–46 (6th Cir. 2021). It concluded that "[t]he holding and reasoning in *Jarvis* apply with equal force" to the context of pre-*Booker* sentences. *Hunter*, 12 F.4th at 564. The Eighth and D.C. Circuits likewise have declined to consider subsequent changes in sentencing law as extraordinary and compelling reasons for relief, though they have not considered the pre-*Booker* sentence issue specifically. See *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022) ("[A] non-retroactive change in law, whether offered alone or in combination with other factors, cannot contribute to a finding of 'extraordinary and compelling reasons' for a reduction in sentence under § 3582(c)(1)(A)."); *United States v. Jenkins*, 50 F.4th 1185, 1200 (D.C. Cir. 2022) ("[W]e conclude that legal errors at

sentencing—including those established by the retroactive application of intervening judicial decisions—cannot support a grant of compassionate release.").

The wrinkle that deserves acknowledgement is that our view does not appear to be shared by several of our sister circuits. Though they have not squarely ruled on the issue presented in this case, the First, Second, Fourth, and Ninth Circuits have all kept the door open to motions like Williams's. These circuits have declined to impose a categorical limit on a district court's discretion to determine what constitutes extraordinary and compelling reasons for compassionate release.[1]

Similarly, the First, Fourth, and Ninth Circuits have held that in the absence of binding guidance from the Sentencing Commission, "district courts may consider non-retroactive

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[1] See *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022) ("[U]ntil the Sentencing Commission speaks, the only limitation on what can be considered an extraordinary and compelling reason to grant a prisoner-initiated motion is rehabilitation." (citing *United States v. Ruvalcaba*, 26 F.4th 14, 25–26 (1st Cir. 2022))); *United States v. Brooker*, 976 F.3d 228, 237–38 (2d Cir. 2020) ("The only statutory limit on what a court may consider to be extraordinary and compelling is that '[r]ehabilitation … *alone* shall not be considered an extraordinary and compelling reason.'" (quoting 28 U.S.C. § 994(t))); *United States v. McCoy*, 981 F.3d 271, 284 (4th Cir. 2020) ("District courts are empowered to consider *any* extraordinary and compelling reason for release that a defendant might raise." (cleaned up)); *United States v. Chen*, 48 F.4th 1092, 1099 (9th Cir. 2022) ("Through § 3582(c)(1)(A) and § 994(t), Congress has demonstrated that it can, and will, directly limit what constitutes extraordinary and compelling reasons. It is therefore hard to reconcile the argument that we should infer a categorical bar on extraordinary and compelling reasons with Congress's prior decisions not to create such stark limitations on a district court's discretion.").

changes in sentencing law, in combination with other factors particular to the individual defendant, when analyzing extraordinary and compelling reasons for purposes of § 3582(c)(1)(A)." *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022).[2] The Second Circuit has held even more broadly that district courts are not barred from considering, in combination with other factors, lawfully imposed but arguably "unjust" or "unusually long" sentences. See *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020) (holding that a district court would not abuse its discretion by granting a sentence reduction based on a combination of an inmate's extensive rehabilitation, young age at the time of the crime, and "the sentencing court's statements about the injustice of his lengthy sentence").

The Supreme Court has not weighed in on this disagreement. There are serious arguments to be considered on both sides. On the one hand, the Court's decisions have repeatedly rejected categorical rules in the sentencing context and

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[2] Accord *Ruvalcaba*, 26 F.4th at 16 ("[A] court may consider the FSA's non-retroactive changes in sentencing law on an individualized basis, grounded in a defendant's particular circumstances, to determine whether an extraordinary and compelling reason exists for compassionate release."); *McCoy*, 981 F.3d at 288 ("We see no error in [the district court's] reliance on the length of the defendants' sentences, and the dramatic degree to which they exceed what Congress now deems appropriate, in finding 'extraordinary and compelling reasons' for potential sentence reductions."); *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021) (holding that Congress's choice not to mandate retroactive application of the First Step Act did not indicate that "Congress intended to prohibit district courts, on an individualized, case-by-case basis, from granting sentence reductions under § 3582(c)(1)(A)(i) to *some* of those defendants").

emphasized the importance of preserving the sentencing judge's discretion "to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Gall v. United States*, 552 U.S. 38, 52 (2007) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)).

Later Supreme Court decisions reflect this holistic approach; in different contexts, they have rejected judicially imposed categorical bars on what district courts may consider at sentencing. See, *e.g.*, *Kimbrough v. United States*, 552 U.S. 85 (2007); *Pepper v. United States*, 562 U.S. 476 (2011); *Dean v. United States*, 581 U.S. 62 (2017). Recently, the Court reminded us that "[i]t is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding whether, and to what extent, to modify a sentence, that a district court's discretion to consider information is restrained." *Concepcion v. United States*, 142 S. Ct. 2389, 2396 (2022).

On the other hand, these decisions do not necessarily foreclose the two-step framework we have employed in *Thacker* and its progeny—a framework that contemplates broad discretion at step two. The Court has never weighed in on what, if any, application the cases we just mentioned may have when it comes to "the threshold question whether any given prisoner has established an 'extraordinary and compelling' reason for release." *Peoples*, 41 F.4th at 842 (quoting *King*, 40 F.4th at 596).

We have no crystal ball, and so we do not know which path the Court is likely to take, should it decide to resolve this issue and not leave the ultimate choice up to the Sentencing

Commission. All we can say is that the issue is teed up, and either the Commission or the Court (we hope) will address it soon. This case, however, is not a suitable vehicle for tackling this problem, because the district court provided alternative grounds to affirm the denial of Williams's motion. We therefore turn to that aspect of the appeal.

B

The district court held in the alternative that the section 3553(a) factors weighed against Williams's release. Although it considered Williams's time served in prison, age, self-motivated rehabilitation, and family support, it ultimately concluded that Williams's life sentence remained appropriate and was not greater than necessary to comply with the purposes of sentencing. § 3553(a). Indeed, the court found that reducing Williams's sentence would fail "to reflect the seriousness of the offense" or "promote respect for the law" given the gravity of Williams's participation in a dangerous criminal enterprise. § 3553(a)(2)(A).

Williams argues that the district court's section 3553(a) analysis is an "advisory opinion" that we should disregard. But it is no such thing; it provides an independent basis for the court's resolution of his motion. The district court acted within its discretion in its section 3553(a) analysis, and "just one good reason for denying a compassionate-release motion suffices." *United States v. Rucker*, 27 F.4th 560, 563 (7th Cir. 2022).

We AFFIRM the district court's denial of Williams's compassionate release motion.