NONPRECEDENTIAL DISPOSITION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 December 2, 2022*
Decided December 5, 2022

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1554

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 12-30019
SYLVESTER PURHAM, *Defendant-Appellant*.	Sue E. Myerscough, *Judge*.

O R D E R

Sylvester Purham appeals the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), arguing that, based on recent caselaw, his sentencing judge applied an incorrect mandatory minimum sentence to him. The district court concluded that new caselaw is not an "extraordinary and compelling reason" for a reduction. We agree and thus affirm.

* We have agreed to decide the case without oral argument because the issues have been authoritatively decided. FED. R. APP. P. 34(a)(2)(B).

Purham pleaded guilty in 2012 to conspiring to distribute cocaine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. He had a prior Illinois conviction for unlawfully delivering cocaine. *See* 720 ILCS 570/401. That prior "felony drug offense" increased his federal mandatory minimum sentence from 10 to 20 years. *See* 21 U.S.C. § 841(b)(1)(A) (2010). After Purham appealed his sentence successfully, the district court resentenced him to 324 months in prison. Purham again appealed, but we granted his attorney's motion to withdraw and dismissed the appeal as frivolous. *See United States v. Purham*, 667 F. App'x. 552 (7th Cir. 2016) (citing *Anders v. California*, 386 U.S. 738 (1967)).

We then decided *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020). There, we held that, because Illinois law defines "cocaine" more broadly than federal law, Ruth's Illinois conviction for possessing cocaine with intent to distribute did not qualify as a prior felony drug offense and thus could not increase the mandatory minimum sentence under § 841(b). *Id.* at 647, 649–50.

Seizing on *Ruth,* in 2021 Purham moved for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). He argued that under *Ruth* his Illinois cocaine-trafficking conviction should not have increased his mandatory minimum sentence. That new caselaw, Purham continued, created an "extraordinary and compelling reason" for a sentence reduction. *See* 18 U.S.C. § 3582(c)(1)(A)(i).

The district court denied the motion. At first, it decided that *Ruth* supplied an extraordinary and compelling reason to consider reducing Purham's sentence, but the sentencing factors of 18 U.S.C. § 3553(a) weighed against the reduction. Upon reconsideration, though, the court ruled that Purham had not shown an extraordinary and compelling reason for a reduction because *United States v. Martin*, 21 F.4th 944, 946 (7th Cir. 2021), held that a potential error in a sentence is not such a reason.

Purham appeals, maintaining that *Ruth* creates an extraordinary and compelling reason for a sentence reduction. But even if under *Ruth* Purham's criminal history would yield a lower mandatory minimum sentence today, we have rejected Purham's argument: "*Ruth*—even if viewed as announcing new law or a new interpretation of an existing statutory provision—cannot alone constitute an 'extraordinary and compelling' reason" for a sentence reduction. *United States v. Brock*, 39 F.4th 462, 465 (7th Cir. 2022). More broadly, a potential error in a sentence is not an extraordinary and compelling reason to reduce the sentence under § 3582(c)(1)(A). *Id.*; *Martin*, 21 F.4th at 946.

In response, Purham argues that our caselaw on this issue runs afoul of *Concepcion v. United States*, 142 S. Ct. 2389 (2022), which, he contends, says that nothing

limits what a judge may consider "in deciding whether to impose a lower sentence." But our caselaw is consistent with *Concepcion*. In deciding a motion for a sentence reduction, our circuit follows a two-step approach: (1) did the prisoner show an extraordinary and compelling reason for a reduction and, if so, (2), is a reduction appropriate under the sentencing factors of 18 U.S.C. § 3553(a)? *United States v. Kurzynowski*, 17 F.4th 756, 759 (7th Cir. 2021). *Concepcion* reasoned that judges have "broad discretion to consider all relevant information" when considering the § 3553(a) factors, whether at the initial sentencing or when later modifying the sentence. 142 S. Ct. at 2398. But *Concepcion* does not address how a judge may decide the preliminary question whether the prisoner showed an extraordinary and compelling reason and is thus eligible for sentence reduction and application of the § 3553(a) factors. *See United States v. King*, 40 F.4th 594, 595–96 (7th Cir. 2022). Therefore our view that errors at sentencing do not satisfy step one of the sentence-reduction process is consistent with *Concepcion*'s requirement for broad discretion at step two. *See id.*

AFFIRMED