

NONPRECEDENTIAL DISPOSITION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 21, 2022*

Decided December 29, 2022

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1980

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NICHOLAS T. MOORE,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 3:95-cr-30024-SLD

Sara Darrow,
Chief Judge.

ORDER

Nicholas Moore, incarcerated in federal prison, unsuccessfully asked his warden to move for compassionate release on the ground that a change in law justified such release. In district court, Moore then stated that the court should grant release for

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

different reasons. The court denied the motion. Because Moore did not exhaust administrative remedies regarding his new reasons for release, we affirm.

A jury convicted Moore in 1995 on multiple charges of bank robbery, *see* 18 U.S.C. § 2113(a), (d), and using a firearm during a crime of violence, *see id.* § 924(c). Moore received an aggregate sentence of approximately 47 years' imprisonment, which included mandatory consecutive sentences for the § 924(c) violations. His tentative release date is in 2040.

In 2020, Moore asked the warden of his prison to move for compassionate release on his behalf. The only "extraordinary and compelling reasons" for a sentence reduction, *id.* § 3582(c)(1)(A)(i), that he identified were recent amendments to § 924(c). *See* First Step Act of 2018, Pub. L. No. 115-391, § 403(a), 132 Stat. 5194, 5221–22 (2018) (codified at 18 U.S.C. § 924(c)(1)(C)). He said that, because of the amendments, he would receive a shorter prison term if sentenced today. The warden never responded.

Over 30 days later, *see* 18 U.S.C. § 3582(c)(1)(A), and representing himself, Moore filed a compassionate-release motion in the district court. Initially, he repeated his argument in his request to the warden that the amendment to § 924(c) justified a reduced sentence.

The district court appointed counsel to represent Moore, and counsel amended the compassionate-release motion. This new motion, however, changed tack. Moore abandoned his § 924(c) argument and instead contended that (1) his health conditions and age put him at an increased risk of a severe COVID-19 infection, (2) he was young when he committed the offenses, and (3) he had made notable rehabilitative efforts. In response, the government invoked the administrative-exhaustion defense, *see* 18 U.S.C. § 3582(c)(1)(A), arguing that Moore's failure to ask the warden to move for a reduced sentence based on the reasons in his amended motion blocked him from making those arguments in court. The district court agreed and denied the amended motion. (Regarding the original motion, the court said (1) the amended motion mooted it, and (2) in any event, the § 924(c) argument lacked merit because of *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 1363 (2022)). Moore appeals.

The government is correct that Moore failed to exhaust his administrative remedies. Prisoners must exhaust a specific issue before they can move for compassionate release on that issue. *United States v. Williams*, 987 F.3d 700, 703–04 (7th Cir. 2021). If they do not, and if the government properly invokes exhaustion, the district court must deny the motion because exhaustion is a mandatory claim-

processing rule. *United States v. Sanford*, 986 F.3d 779, 782 (7th Cir. 2021). Moore never asked the warden to move for compassionate release based on the reasons in his amended motion (a fact pattern identical to *Williams*), and the government has invoked the exhaustion defense. The court thus correctly denied Moore's motion.

Moore does not seriously dispute this analysis; instead, he argues—for the first time on appeal—that the exhaustion requirement does not apply to him in this case. He states that the warden at his prison has never filed a compassionate-release motion on behalf of a prisoner. From this, Moore believes that administrative remedies were not available to him, which in turn, he says, excused him from the exhaustion requirement.

Moore arguably waived this contention by omitting it from his amended compassionate-release motion or his reply, *see United States v. Martin*, 21 F.4th 944, 945 (7th Cir. 2021); *United States v. Simon*, 952 F.3d 848, 852 (7th Cir. 2020), but we reject it on the merits. The compassionate-release statute does not excuse exhaustion even if a warden is “unavailable” because the warden categorically refuses to move for any prisoner's compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A). Congress knew how to create such an exception for situations where administrative remedies are not “available,” as it did with the Prison Litigation Reform Act's exhaustion requirement. *See* 42 U.S.C. § 1997e(a); *Ross v. Blake*, 578 U.S. 632, 643 (2016) (explaining that if prison officials never respond to grievances, then administrative remedies are not “available” under the PLRA, and exhaustion is not required). Instead, the compassionate-release statute has a different mechanism to deal with recalcitrant wardens: Prisoners can seek compassionate release themselves in federal court if a warden does not respond to their requests within 30 days. *See* 18 U.S.C. § 3582(c)(1)(A). But regarding his new reasons for release, Moore did not present them to his warden and wait the required 30 days. Therefore, he did not exhaust his administrative remedies.

We have considered Moore's other arguments regarding exhaustion, but none has merit. As such, Moore's failure to exhaust resolves this appeal, and we do not reach the merits of his motion. *See Sanford*, 986 F.3d at 782.

AFFIRMED