

NONPRECEDENTIAL DISPOSITION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 April 5, 2023*
Decided April 6, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2417

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Southern District of
Indiana, Evansville Division.

v.

No. 3:15-cr-5-RLY-CMM-05

EVA BUCK,
Defendant-Appellant.

Richard L. Young,
Judge.

ORDER

Eva Buck, who is currently serving a 240-month sentence in federal prison, appeals the denial of her third motion for relief under 18 U.S.C. § 3582(c)(1)(A)(i). She primarily argued that she would receive a shorter sentence if sentenced today because

* 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).

of non-retroactive changes to Indiana and federal law. The district court determined that Buck did not establish an extraordinary or compelling reason for a sentence reduction. We affirm.

In 2016, Buck pleaded guilty to conspiring to possess with the intent to distribute and to distribute 500 grams or more of methamphetamine, 21 U.S.C. §§ 841(a)(1), 846, and was sentenced to 240 months in prison, the statutory minimum at the time. *See* 21 U.S.C. § 841(b) (2016).

In July 2022, Buck filed her most recent motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). (The district court previously had denied her requests for compassionate release and a sentence reduction under the First Step Act.) In this motion, Buck invoked *Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022), which held that “the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence pursuant to the First Step Act.” Buck argued that developments in Indiana law and a non-retroactive statutory change to § 841(b) no longer would subject her to the statutory minimum 240-month sentence. She also highlighted disparities among districts across the country in how compassionate-release motions were decided, as well as her own efforts at rehabilitation, including her training to become a nursing assistant and her good conduct in prison.

The district court denied Buck’s motion. The court explained that non-retroactive changes to sentencing statutory minimums, perceived disparities, and rehabilitation were not extraordinary and compelling reasons for compassionate release, either before or after *Concepcion*.

On appeal, Buck maintains that *Concepcion* allowed the district court to reduce her sentence and insists that she presented extraordinary and compelling reasons for release. But we have rejected arguments that *Concepcion* called into question our understanding that non-retroactive sentencing changes alone—including the changes to § 841(b)—cannot establish an extraordinary or compelling reason for release under § 3582(c)(1)(A)(i). *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022); *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023). Our discretion is confined by the limits set by Congress, and we decline to interpret § 3582(c)(1)(A)(i) inconsistently with Congress’s decision to make its amendments to § 841(b) apply only prospectively. *See United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022). *Concepcion* concerned the factors a court may consider when resentencing but not “the threshold question whether any given prisoner has established an ‘extraordinary and compelling’ reason

for release.” *King*, 40 F.4th at 596. The district court rightly determined that a non-retroactive change to the statutory minimum applicable to Buck’s offense did not support release.

Buck’s other arguments for release fare no better. She maintains, for instance, that the denial of her motion illustrates the wide disparities across the country in the number of defendants who get released. But we have acknowledged the differing rulings among courts on such matters and reiterate that the proper analysis when evaluating a motion for compassionate release involves two steps: first, whether the defendant presents an extraordinary and compelling reason for release, and second, whether release would be consistent with the factors under 18 U.S.C. § 3553(a). *See, e.g., United States v. Thacker*, 4 F.4th 569, 573, 575 (7th Cir. 2021). Because Buck fell short at the first step, the court did not need to address the second. *See United States v. Ugbah*, 4 F.4th 595, 598 (7th Cir. 2021). Buck also relies on her rehabilitative efforts, but rehabilitation is not a stand-alone ground for relief. *Peoples*, 41 F.4th at 842.

AFFIRMED