In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2427

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STANLEY E. VAUGHN,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois.
No. 3:10-cr-30006-SLD-KLM-2 — **Sara Darrow**, *Chief Judge*.

SUBMITTED MARCH 9, 2023 — DECIDED MARCH 15, 2023

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Serving a 262-month sentence for heroin-related crimes, Stanley Vaughn has repeatedly, and unsuccessfully, sought compassionate release under 18 U.S.C. §3582(c)(1). (Vaughn has a separate 240-month sentence, running consecutive to the 262-month sentence, imposed in a different district.) He contended in his latest effort that his health conditions (asthma, obesity, and hypertension) put him at

extra risk should he contract COVID-19; that he has completed classes demonstrating his rehabilitation; and that his sentence is excessive in light of current legal standards. The district judge deemed his arguments "generic" and denied his application. 2022 U.S. Dist. LEXIS 129808 (C.D. Ill. July 21, 2022).

COVID-19 has been a fact of life for more than three years. For prisoners who have received a vaccine, the risk of serious complications should they develop a breakthrough infection is modest. Vaughn has not provided or pointed to any medical data suggesting that his combination of conditions puts him at serious risk should he develop a breakthrough infection. Likewise he has not provided any data suggesting that he is at greater risk of a dire outcome inside prison than he would be outside—and if he would remain at comparable risk outside prison, the possibility of infection cannot be described as an "extraordinary and compelling" consideration supporting release. (The statute conditions compassionate release on "extraordinary and compelling reasons".)

The vaccination rate among federal prisoners and guards is substantial, and for all we can tell prisoners today are safer inside than they would be outside. Things were otherwise before the vaccine, when close confinement made prisons, nursing homes, and some other places centers for COVID-19 fatalities. We have not seen any data suggesting that this risk continues. See *United States v. Broadfield*, 5 F.4th 801 (7th Cir. 2021). New variants of the virus have been identified since *Broadfield*, but new vaccines have been released to combat them; Vaughn has not contended that the bivalent booster is unavailable to him or would be ineffective for someone with his combination of conditions.

Taking classes while incarcerated is common rather than extraordinary. If data showed that completion of particular classes reliably put prisoners on the path to a law-abiding life, that might satisfy the statutory requirement, but Vaughn has not supplied any information along these lines. The Bureau of Prisons or Sentencing Commission could have relevant information, or there might be academic studies, but Vaughn has not pointed to any.

As for the 262-month sentence: Vaughn insists that *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020), which post-dates his sentencing, would lead to a lower sentence today. That is far from clear. Vaughn's lengthy sentence stems from his classification as a career offender under the Sentencing Guidelines rather than from a statutory minimum sentence, and *Ruth* specified that its holding does not affect the career-offender calculation. 966 F.3d at 651–54. At all events, we have held that *Ruth* does not justify compassionate release as an indirect means to achieve retroactive application of that decision. *United States v. Brock*, 39 F.4th 462, 464–66 (7th Cir. 2022). (*White v. United States*, 8 F.4th 547, 556–57 (7th Cir. 2021), held that *Ruth* is not retroactive on collateral review under 28 U.S.C. §2255.)

Vaughn maintains that his arguments collectively identify "extraordinary and compelling reasons" even if none of them does so independently. At least two circuits have held that it is permissible to consider reasons jointly as well as severally. *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021). But one has gone the other way, remarking: "[W]hy would combining unrelated factors, each individually insufficient to justify a sentence reduction, amount to more than the sum of their

individual parts?" *United States v. McKinnie*, 24 F.4th 583, 588 (6th Cir. 2022). See also *United States v. McCall*, 56 F.4th 1048, 1066 (6th Cir. 2022).

The Sixth Circuit's rhetorical question has some intuitive appeal. Often 0 + 0 = 0. But not always. One persistent error in legal analysis is to ask whether a piece of evidence "by itself" passes some threshold—to put evidence in compartments and ask whether each compartment suffices. But when one court of appeals asked whether Fact A showed probable cause for an arrest, then whether Fact B did so, whether Fact C did so, and so forth, the Supreme Court reversed in a sharp opinion reminding all judges that evidence should *not* be compartmentalized.

> [T]he [court of appeals] viewed each fact "in isolation, rather than as a factor in the totality of the circumstances." This was "mistaken in light of our precedents." The "totality of the circumstances" requires courts to consider "the whole picture." Our precedents recognize that the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation. Instead of considering the facts as a whole, the [court of appeals] took them one by one. … The totality-of-the-circumstances test "precludes this sort of divide-and-conquer analysis."

District of Columbia v. Wesby, 138 S. Ct. 577, 588 (2018) (internal citations omitted). Similarly, we have held that in employment-discrimination cases a district court must consider the evidence as a whole, rather than sorting facts into boxes and asking whether each suffices.

> Evidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself—or whether just the "direct" evidence does so, or the "indirect" evidence. Evidence is evidence. Relevant evidence must be considered and irrelevant evidence disregarded, but no evidence should be treated differently from other evidence because it can

> be labeled "direct" or "indirect." … Instead, all evidence belongs in a single pile and must be evaluated as a whole.

Ortiz v. Werner Enterprises, Inc., 834 F.3d 760, 765–66 (7th Cir. 2016).

If we conceive of "extraordinary and compelling reasons" as those differentiating one prisoner's situation from 99% of other prisoners, it is easy to see how Circumstance X could be true of only 10% of prisoners, Circumstance Y of 10%, and Circumstance Z of 10%—each insufficient to meet the threshold, but if they are independent then collectively enough to place the applicant among only 0.1% of all federal prisoners. We do not say here that 99% *is* the threshold for "extraordinary and compelling reasons"; in the absence of guidance from the Sentencing Commission, identifying the threshold is committed to the discretion of district judges, with deferential appellate review. See *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020). Our point, rather, is that no matter how the threshold is defined, a combination of factors may move any given prisoner past it, even if one factor alone does not. This leads us to disagree with the Sixth Circuit's approach.

This does not help Vaughn in the end, however, because the discretion to evaluate multiple circumstances resides principally in the district courts. The district judge refused to consider the effect of *Ruth*, and properly so under this circuit's precedent. All of the other considerations that Vaughn advanced were taken into account, and we share the district judge's view that they are generic. Individually and collectively, they fall short of "extraordinary and compelling reasons"—or, at least, the district judge did not commit clear error or abuse her discretion in so ruling.

AFFIRMED