NONPRECEDENTIAL DISPOSITION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 28, 2023*
Decided April 28, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-2465

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JERRY L. BROWN,
Defendant-Appellant.

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

No. 4:12-cr-40031-SLD-JEH

Sara Darrow,
Chief Judge.

O R D E R

Jerry Brown, who is serving a term of life imprisonment for conspiring to distribute crack cocaine, appeals the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). He argues that a change in the law under which he was

* 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).

sentenced provides an extraordinary and compelling reason for his release, and that we should overrule our existing precedent holding that it does not. We affirm.

Brown was sentenced in 2014 after he was convicted of one count of conspiracy to distribute crack cocaine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. Because of his multiple prior convictions for felony drug offenses, he faced a statutory minimum sentence of life in prison, which the Sentencing Guidelines also recommended. The district court imposed that sentence, plus ten years of supervised release.

This appeal involves Brown's second motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). In his first in 2021, he argued, among other things, that his life sentence was not proportional to the seriousness of the offense. The district court denied the motion because Brown had not exhausted his administrative remedies. His second motion came a year later. This time, Brown relied primarily on an amendment to § 841(b) enacted in the First Step Act of 2018 that non-retroactively reduced the statutory minimum sentence for an offender in Brown's position from life in prison to 25 years. *See* Pub. L. No. 115-391, § 401(a)(2)(A)(ii), 132 Stat. 5194, 5220 (2018). Brown argued that the non-retroactive change to § 841(b) was an extraordinary and compelling reason for a sentence reduction. He added that our precedent in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), which undermined his argument, was "on questionable ground" after *Concepcion v. United States*, 142 S. Ct. 2389 (2022). *Concepcion* 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." *Id.* at 2404. Finally, Brown urged that his rehabilitative efforts in prison were also an extraordinary and compelling reason for release.

The district court denied Brown's motion. Applying our precedent in *Thacker*, the court first found relief unwarranted because non-retroactive sentencing changes cannot establish an extraordinary and compelling reason for release under § 3582(c)(1)(A)(i). *Thacker*, 4 F.4th at 575–76. The court also cited our decision in *United States v. King*, 40 F.4th 594 (7th Cir. 2022), which explained that "*Concepcion* is irrelevant to the threshold question whether any given prisoner has established an 'extraordinary and compelling' reason for release." *Id.* at 596. Finally, the court concluded that Brown's rehabilitative efforts alone could not be an extraordinary and compelling reason for release. *See United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022).

On appeal, Brown maintains that he qualifies for compassionate release based on the First Step Act and urges us to reconsider *Thacker* in light of *Concepcion*. (He does not

revive his argument about rehabilitation.) In support, he points to a 4-3 circuit split and asks that we adopt the Ninth Circuit's reasoning in *United States v. Chen*, 48 F.4th 1092 (9th Cir. 2022). That case—contrary to *Thacker*—permitted district courts in the Ninth Circuit to consider the First Step Act's non-retroactive changes to sentencing laws, in combination with other factors, in assessing whether extraordinary and compelling reasons exist under § 3582(c)(1)(A)(i). *Chen*, 48 F.4th at 1098. Brown urges us to accept *Chen*'s rationale that Congress did not in the compassionate-release statute expressly limit a court's ability to consider the First Step Act's non-retroactive statutory changes. *See id.* at 1098–99. In addition to *Chen*, Brown cites decisions of the First, Fourth, and Tenth Circuits adopting similar reasoning. *See United States v. Ruvalcaba*, 26 F.4th 14 (1st Cir. 2022); *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020). On the other side of the split, the Third and Eighth Circuits have ruled in alignment with *Thacker*. *See United States v. Andrews*, 12 F.4th 255 (3d Cir. 2021); *United States v. Crandall*, 25 F.4th 582 (8th Cir. 2022).

We will not overturn our precedent without a "compelling reason." *Sotelo v. United States*, 922 F.3d 848, 851–52 (7th Cir. 2019). Principles of stare decisis require that we give considerable weight to prior decisions unless their rationale has been undermined by a higher court or a supervening statutory development. *Id.* at 852. Moreover, "the mere existence of a circuit split does not justify overturning precedent." *United States v. Lamon*, 893 F.3d 369, 371 (7th Cir. 2018) (citation omitted); *see also Buchmeier v. United States*, 581 F.3d 561, 566 (7th Cir. 2009) (en banc) ("Any one circuit's restless movement from one side of a conflict to another won't reduce the workload of the Supreme Court.").

Brown has not identified a "compelling reason" to overrule *Thacker*. As we explained in that case, Congress confines resentencing discretion and it decided to make the sentence reductions of the First Step Act apply only prospectively. *Thacker*, 4 F.4th at 574–75. Brown points to no higher-court decision or statutory development that would require us to reconsider this reasoning. And we have repeatedly rejected Brown's argument that *Concepcion* called *Thacker*'s holding into question. *See Peoples*, 41 F.4th at 842. "We take the Supreme Court at its word that *Concepcion* is about the matters that district judges may consider when they resentence defendants … [and not] the threshold question whether any given prisoner has established an 'extraordinary and compelling' reason for release." *King*, 40 F.4th at 596.

We thus apply that precedent to Brown's appeal. The non-retroactive sentencing changes enacted in the First Step Act alone—including the changes to § 841(b)—cannot

establish an extraordinary and compelling release for Brown's release under § 3582(c)(1)(A)(i). *See Thacker*, 4 F.4th at 575; *Peoples*, 41 F.4th at 842.

AFFIRMED