

**NONPRECEDENTIAL DISPOSITION**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 May 4, 2023\*

Decided May 8, 2023

**Before**

ILANA DIAMOND ROVNER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2518

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

KIMBERLY GASKINS,  
*Defendant-Appellant.*

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

No. 1:16-cr-00249-JMS-MJD-03

Jane Magnus-Stinson,  
*Judge.*

**ORDER**

Kimberly Gaskins, a federal prisoner, appeals the denial of her third motion for compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A). The district court reasonably ruled that Gaskins's proposed grounds—nonretroactive changes in law and rehabilitation—were not extraordinary and compelling reasons for release; we therefore affirm.

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\* 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).

Gaskins is serving 276 months in prison for a drug conviction, 21 U.S.C. §§ 841(a)(1), 846, 851, and she has moved for compassionate release three times. In her first motion, Gaskins argued that her risk from COVID-19 was an extraordinary and compelling reason for release; the district court denied that motion. In her second motion, Gaskins argued that nonretroactive changes to her statute of conviction under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, and her rehabilitation, warranted compassionate release. Again, the district court denied the motion. It relied, first, on *United States v. Thacker*, 4 F.4th 569, 571 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 1363 (2022), which held that nonretroactive statutory amendments affecting the penalties for a statute of conviction “cannot constitute an ‘extraordinary and compelling’ reason to authorize a sentencing reduction.” And, the court explained, rehabilitation alone is not an extraordinary and compelling reason for a sentence reduction. *See United States v. Peoples*, 41 F.4th 837, 841–42 (7th Cir. 2022).

Gaskins filed her third motion, the subject of this appeal, repeating that changes to the law and her rehabilitation warranted a sentence reduction. She argued that the Supreme Court, in *Concepcion v. United States*, 142 S. Ct. 2389 (2022), had overruled *Thacker*. *Concepcion* held that district courts may consider changes of law when exercising their discretion to reduce sentences for eligible defendants under the First Step Act. *Id.* at 2404. The district court denied the motion, explaining that *Concepcion* did not alter *Thacker*.

Gaskins presents two arguments in her appeal of that decision. First, Gaskins argues that the district court erred in relying on *Thacker* because, she continues to insist, the Supreme Court overruled *Thacker* in *Concepcion*. But as the district court aptly noted, we have repeatedly affirmed *Thacker* since *Concepcion* because *Concepcion* did not address the “threshold question” whether a prisoner has established extraordinary and compelling reasons that warrant an exercise of discretion for release. *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022), *cert. denied* 2023 WL 3046170 (Apr. 24, 2023); *Peoples*, 41 F.4th at 842. Gaskins provides no compelling reason to overturn our precedent holding that nonretroactive changes in law are not extraordinary and compelling reasons for compassionate release. *See Campbell v. Kallas*, 936 F.3d 536, 544 (7th Cir. 2019). Instead, she cites *United States v. Newbern*, 51 F.4th 230, 233 (7th Cir. 2022). But *Newbern* does not involve an extraordinary and compelling reason for release or a nonretroactive change in law. Thus, it does not alter our holding in *Thacker*.

Next, Gaskins argues that the district court erred by failing to consider all her “distinct grounds” for relief “in the conjunctive.” District courts must consider factors

in the aggregate to determine if a prisoner has identified extraordinary and compelling reasons for compassionate release. *United States v. Vaughn*, 62 F.4th 1071, 1073 (7th Cir. 2023). The district court adequately did so. It considered Gaskins's arguments that she deserved a sentence reduction based on nonretroactive changes in criminal law and her rehabilitation. But it reasonably explained that, in considering compassionate-release motions, courts "must not" rely on nonretroactive changes of law. *King*, 40 F.4th at 595. That left only her rehabilitation, and the district court further correctly explained that rehabilitation alone is not an extraordinary and compelling reason for release. *Peoples*, 41 F. 4th at 841–42. No more explanation was required. See *United States v. Sarno*, 37 F.4th 1249, 1253–54 (7th Cir. 2022).

AFFIRMED