NONPRECEDENTIAL DISPOSITION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 June 15, 2023*
Decided June 22, 2023

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2971

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JEREMIAH P. CORBIN,
Defendant-Appellant.

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

No. 2:08-cr-14-JPH-CMM-08

James Patrick Hanlon,
Judge.

O R D E R

Jeremiah Corbin seeks compassionate release from prison based on new caselaw under which, he says, his sentence would be lower. Following our decision in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), the district judge concluded that new

* 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).

caselaw is not an "extraordinary and compelling" reason for compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A). That conclusion is correct even when, as here, a prisoner has already unsuccessfully attempted a direct appeal and collateral attack. Thus, we affirm.

Corbin pleaded guilty to conspiring to distribute methamphetamine, 21 U.S.C. §§ 841(a)(1), 846, and to possessing a firearm unlawfully, 18 U.S.C. § 922(g)(1). In the plea deal, the parties recommended a sentencing range of 262 to 327 months in prison based in part on their assumption that a prior felony drug conviction from Indiana was a predicate offense requiring a 20-year mandatory minimum sentence. *See* 21 U.S.C. § 841(b)(1)(A)(viii). (With no prior conviction, his mandatory minimum sentence would have been 10 years. *See id.*) The judge sentenced Corbin to 262 months on the conspiracy count and concurrent, 120-month terms on the firearm-possession counts.

Corbin has since made several attempts to reduce his sentence. He filed a direct appeal in 2010, which we dismissed because he had waived his right to appeal in his plea deal. Five years later he unsuccessfully collaterally attacked his sentence. Later, Corbin filed his first motion for compassionate release, arguing that his risk of contracting COVID-19 warranted early release. Finding that Corbin had failed to exhaust his administrative remedies, the judge denied that motion too.

This appeal concerns Corbin's second motion for compassionate release. *See* § 3582(c)(1)(A). He bears the burden of establishing an extraordinary and compelling reason for early release. *See United States v. Newton*, 996 F.3d 485, 488 (7th Cir. 2021). We will reverse a denial of relief only for abuse of discretion. *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020).

Corbin argues that by not applying our decision in *United States v. De La Torre*, 940 F.3d 938, 951–53 (7th Cir. 2019), the judge abused his discretion. In *De La Torre* we ordered resentencing after ruling in a direct appeal that a conviction under the same Indiana law as in Corbin's case was not a predicate offense and wrongly increased a defendant's sentence. *Id.* Corbin contends that because we decided *De La Torre* after he lost his direct appeal and collateral attack, he should receive its benefit—a shorter sentence.

The judge did not abuse his discretion in rejecting Corbin's argument. Changes in caselaw, without more, are not extraordinary and compelling reasons for early release. *United States v. Brock*, 39 F.4th 462, 466 (7th Cir. 2022). The time for Corbin to

seek the benefit of a ruling like the one in *De La Torre* was on direct appeal or collateral review. *See United States v. King*, 40 F.4th 594, 595 (7th Cir. 2022) (citing *United States v. Martin*, 21 F.4th 944, 946 (7th Cir. 2021)). Corbin replies that these options are no longer available to him. But the defendant in *De La Torre* also did not have the benefit of the holding in that case until he urged us to establish it during his direct appeal. Similarly, Corbin could have sought to raise on direct appeal the argument that he now advances. It is true that Corbin waived his right to a direct appeal, but that was his choice, and he received other sentencing benefits for doing so. His failure to raise a potentially successful argument on direct appeal, even if that failure resulted from waiving his right to do so, is not extraordinary and does not compel relief. *See Brock*, 39 F.4th at 465. To conclude otherwise "would circumvent the normal process for challenging potential sentencing errors." *Martin*, 21 F.4th at 946 (citing *Thacker*, 4 F.4th at 574).

AFFIRMED