

NONPRECEDENTIAL DISPOSITION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 March 28, 2024*

Decided March 29, 2024

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-1502

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FERNANDO DE LA TORRE,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 03-cr-90-1

Steven C. Seeger,
Judge.

ORDER

Fernando de la Torre, a federal prisoner, appeals the denial of his combined motion for sentence modification under the First Step Act and for compassionate release. Because the district judge reasonably denied the motion, we affirm.

* 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).

In 2008, a jury convicted de la Torre of crimes connected to his membership in a street gang. These included two counts that involved distribution of crack cocaine and three counts of murder in aid of racketeering. For the drug convictions, de la Torre faced a minimum of 10 years and a maximum of life in prison. *See* 21 U.S.C. § 841(b)(1)(A)(iii) (2009). His three murder convictions carried mandatory life sentences. *See* 18 U.S.C. § 1959(a)(1) (2009). The remaining three charges (including assault with a dangerous weapon in aid of racketeering) carried maximum penalties of 5 years, 20 years, and life. *See* 18 U.S.C. §§ 922(k), 924(a)(1)(B), 1959(a)(3), 1962(d), 1963(a) (2009).

De la Torre was sentenced to six concurrent life terms (three for the murder convictions, two for the crack-cocaine convictions, and one for racketeering conspiracy), a concurrent 20-year sentence, and a concurrent 5-year sentence. We affirmed de la Torre's convictions and sentence, and we affirmed the denial of a post-conviction motion. *See United States v. Benabe*, 654 F.3d 753 (7th Cir. 2011); *United States v. Benabe*, 436 F. App'x 639 (7th Cir. Aug. 18, 2011); *Delatorre v. United States*, 847 F.3d 837 (7th Cir. 2017).

About 15 years into his life sentence, de la Torre moved to modify his sentence under the First Step Act and for compassionate release. *See* First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194; 18 U.S.C. § 3582(c)(1)(A)(i). First, he argued that relief under § 404 was appropriate because his aggregate sentence included offenses covered by the Act. Second, he argued that his age when he offended (before and at 18), traumatic childhood, and "tremendous rehabilitation" were extraordinary and compelling reasons for compassionate release, and that the sentencing factors in 18 U.S.C. § 3553(a) warranted release. The government countered that de la Torre's murder convictions yielded mandatory life sentences that the Act did not cover, leaving "no room" for the judge to reduce the aggregate sentence under § 404. The government further argued that de la Torre offered no extraordinary and compelling reasons for release and, highlighting the seriousness of his "organized and systematic killings," that the § 3553(a) factors also did not support relief.

The district judge denied de la Torre's motion. First, the judge explained, he had no authority to reduce de la Torre's sentence under § 404 of the First Step Act: Even though de la Torre was eligible for relief based on his crack-cocaine convictions, the Act does not cover his murder convictions, which carry mandatory life sentences. Second, the judge concluded that relief under § 3582(c)(1)(A)(i) was not appropriate because de la Torre's young age at the time of the offenses, his childhood trauma, and his rehabilitation efforts in prison were not extraordinary and compelling reasons for

release. In any event, the judge reasoned, the factors outlined in § 3553(a)—namely, the seriousness of de la Torre’s conduct, the need to promote respect for the law, and the need to deter similar conduct—did not warrant release.

On appeal, de la Torre first argues that the district judge erred in concluding that he had no discretion to grant relief under § 404 of the First Step Act, but the judge was correct. It is true that § 404 permits a judge to revise the “entire sentencing package” when a defendant has been sentenced for some offenses that are affected by the Act and some that are not. *United States v. Hible*, 13 F.4th 647, 652 (7th Cir. 2021). But de la Torre’s sentence includes at least one statutory minimum penalty (a mandatory life sentence), which judges have no discretion to alter. *See id.*

De la Torre responds that he was not—as the district judge stated—subject to three mandatory life sentences, only one. He contends that one life term is vulnerable under *Miller v. Alabama*, 567 U.S. 460, 465 (2012), because he committed the murder before he turned 18, and a second is undermined by *United States v. Harris*, 51 F.4th 705, 720 (7th Cir. 2022), because of a discrepancy between the written judgment (life in prison) and the oral pronouncement (five years of supervised release).

We need not evaluate the merits of this argument because de la Torre still faces the mandatory life sentence for the third murder conviction. The presence of an intact life sentence obviates any need to evaluate other concurrent life terms. *See Ruiz v. United States*, 990 F.3d 1025, 1033 (7th Cir. 2021). And de la Torre does not contest that the third murder conviction carries a mandatory life sentence. Still, he insists that the district judge had discretion to lower that mandatory life term. He cites out-of-circuit, district-level cases in which judges reduced mandatory life sentences through motions for compassionate release, and he asserts that the district judge had to address these cases. But motions for compassionate release come under § 3582(c)(1)(A)(i), and that statute involves factors different from those under § 404 of the First Step Act. *Compare United States v. Peoples*, 41 F.4th 837, 840 (7th Cir. 2022) (evaluating compassionate-release motion), *with United States v. McSwain*, 25 F.4th 533, 537 (7th Cir. 2022) (evaluating § 404 motion). Thus, the cases he cited were not those that the judge was required to discuss or apply under § 404. *See Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022).

That brings us to de la Torre’s challenge to the denial of his motion for compassionate release, which we review for an abuse of discretion. *United States v. Williams*, 65 F.4th 343, 346 (7th Cir. 2023). We can bypass discussing whether de la Torre

presents an extraordinary and compelling reason for release because the district judge properly denied the motion for an independent reason: The judge did not abuse his discretion in deciding that the § 3553(a) factors weighed against release. “[J]ust one good reason” for denying a compassionate-release motion is enough. *United States v. Rucker*, 27 F.4th 560, 563 (7th Cir. 2022). The judge considered de la Torre’s “tragic upbringing,” his age at the time of the offenses, his “large and meaningful support group,” and his “commendable” rehabilitation efforts in prison. But the judge reasonably concluded that a life sentence was nonetheless necessary because of ample counterbalancing factors. These included the seriousness of murder, racketeering, and extensive drug distribution; de la Torre’s lack of respect for the law as reflected in his extensive participation in organized, illegal gang activity; and the need to deter him and others from similar misconduct.

AFFIRMED