

**NONPRECEDENTIAL DISPOSITION**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 February 16, 2024\*

Decided March 7, 2024

**Before**

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2310

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

CLACY WATSON HERRERA,  
*Defendant-Appellant.*

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

No. 01 CR 01098-1

Rebecca R. Pallmeyer,  
*Chief Judge.*

**ORDER**

Clacy Herrera, a federal prisoner, moved for compassionate release based on his prostate cancer and the heightened risk of severe illness from COVID-19. *See* 18 U.S.C.

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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).

§ 3582(c)(1). The district court denied his motion, concluding that Herrera had not demonstrated an “extraordinary and compelling” reason for an early release and that the relevant factors under 18 U.S.C. § 3553(a) weighed against it. We affirm.

In 2010, a jury found Herrera guilty of multiple offenses for his role in a conspiracy to import and export cocaine and heroin. *See* 21 U.S.C. §§ 952, 963. His offense conduct included directing women who brought liquified cocaine concealed in cans of baby formula into the United States. The women had babies with them while they did this; some brought their own children, while others brought children who were “rented” from parents in Chicago.

The district court sentenced Herrera, in 2011, to 340 months’ imprisonment. He appealed his conviction, and we affirmed. *See United States v. Herrera*, 704 F.3d 480 (7th Cir. 2013). In 2022, the district court granted Herrera’s motion for a sentence reduction based on retroactive changes to the Sentencing Guidelines; the court reduced his sentence to 258 months’ imprisonment. *See* 18 U.S.C. § 3582(c)(2).

Before that ruling, Herrera also filed an emergency motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) and asked the district court to appoint counsel for him. He argued that his prostate cancer and risk of serious illness from COVID because of the cancer and other conditions were extraordinary and compelling reasons for release. He further asserted that he could not access adequate medical care in prison and that the conditions there increased his likelihood of contracting COVID. He also emphasized that his drug offenses were nonviolent.

The government opposed the motion, asserting that Herrera’s medical records showed that he had received the COVID vaccine and that he had declined treatment for his prostate cancer. The government also argued that the § 3553(a) factors—especially the seriousness of the offense conduct—counseled against Herrera’s release.

The district court ordered the government to produce Herrera’s most recent medical records, in part to verify the assertion that Herrera had declined treatment. The records trickled in slowly, and more than a year after ordering their production, the court held a status hearing. When discussing his release plan during this hearing, Herrera mentioned that he would seek legitimate employment outside prison.

Once it had complete medical records, the district court denied Herrera’s motion. The court explained that Herrera’s risk of severe illness from COVID was not extraordinary and compelling because he had received a vaccine in 2021. And although his prostate cancer was concerning, it was “not so grave as to suggest he is near the end of life,” and he was by now receiving treatment. The court added, citing Herrera’s

statement about seeking employment, that Herrera himself did not seem to think his condition was incapacitating. Regardless, the court said, the factors under § 3553(a), particularly the nature of his offense, weighed against his early release. The court then observed that if Herrera's condition changed, he could file a new motion. We review the court's decision for an abuse of discretion. *United States v. Rucker*, 27 F.4th 560, 562 (7th Cir. 2022).

On appeal, many of Herrera's arguments target the district court's conclusion that he did not present an extraordinary and compelling reason for release. But even if Herrera had met his burden on that point, he cannot succeed because the court did not abuse its broad discretion in concluding that the § 3553(a) factors weighed against release. *Id.* at 563. This is an independent and sufficient ground for denying a request for early release. *See id.*

Herrera's contention that the district court failed to explain or properly weigh some of the factors it considered in the § 3553(a) analysis, such as his risk of recidivism and the quality of his release plan, is unavailing. Though the court did not elaborate on every factor it listed as relevant, it went on to explain those it found most significant. It acknowledged Herrera's good conduct in prison, including a clean disciplinary record and rehabilitative efforts. But it ultimately concluded that the "very troubling" nature of his offenses nevertheless called for his continued imprisonment. The court emphasized the drug conspiracy's high level of sophistication and characterized recruiting young women and "renting" babies as "conduct that genuinely shocks the conscience." This reasonable weighing of aggravating and mitigating factors was not an abuse of discretion. *See United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021).

Herrera's arguments about the status hearing at which he made statements that the court cited when denying his motion do not alter our conclusion. He asserts that he was unsure of his rights at the hearing and that he was entitled to counsel. First, to the extent that he suggests that he had a right to a full evidentiary hearing, no hearing is required by statute. *See Rucker*, 27 F.4th at 562–63. Second, Herrera does not support his assertion that he was entitled to counsel at the hearing or otherwise. He states that a standing order establishes an entitlement to counsel. But he quotes an order from an out-of-circuit district court. Neither this court, nor the Northern District of Illinois, had a standing or general order requiring counsel to be assigned to prisoners seeking compassionate release. Nor have we issued any decision suggesting that a district court must consider appointing counsel before adjudicating a compassionate-release motion.

Further, Herrera has not shown any prejudice. He suggests that because he represented himself, he could not "present important documentary evidence,"

seemingly about his release plan, or make an allocution. But he has not explained how this could have altered the court's conclusion that the seriousness of his offense weighed against release. And to the extent that Herrera complains of the court relying on his statements at the hearing about his desire for employment, this was not part of the court's § 3553(a) analysis; it was a comment on his medical outlook.

Additionally, Herrera argues that the district court's statement that he may file a new compassionate-release motion should his condition "materially worsen" is unclear and suggests he must wait until he is in imminent danger before filing a new motion. We disagree. The court cannot, and did not, proscribe when or on what grounds Herrera could file a second motion; it suggested what changed circumstances might, in its judgment, merit relief in the future.

Finally, Herrera argues that the Bureau of Prisons erred in calculating his new release date after the reduction of his sentence under 18 U.S.C. § 3582(c)(2). The Bureau previously gave him credit for time he spent awaiting extradition in Panama (about 20 months), but after his sentence reduction, the Bureau eliminated that credit, seemingly in reliance on the district court's order. In his reply brief, Herrera asserts that he attempted to amend his compassionate-release motion to argue that the miscalculation was an extraordinary and compelling reason for release. But this issue is generally within the Bureau's purview, *see* 18 U.S.C. § 3624; *Manuel v. Terris*, 803 F.3d 826, 828 (7th Cir. 2015), and a § 2241 petition is the way to challenge the Bureau's determination. *See United States v. Walker*, 917 F.3d 989, 994 (7th Cir. 2019). Herrera's challenge to the duration of the sentence from which he seeks relief is not within the scope of his compassionate-release motion, the only subject of this appeal.

AFFIRMED