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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SHAUN ROBERTS,

Defendant-Appellant.

No. 20-10411

D.C. No.
4:05-cr-00567-JSW-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Argued and Submitted November 17, 2021
San Francisco, California

Before: SCHROEDER, W. FLETCHER, and MILLER, Circuit Judges.

Shaun Roberts appeals the district court's denial of his motion under 18 U.S.C. § 3582(c)(1)(A)(i) for reduction of sentence and compassionate release pursuant to the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. He is serving a 67-year sentence on multiple counts of armed robbery and use of a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

firearm during a crime of violence. The district court denied his motion, holding that even if there were extraordinary and compelling reasons, the motion would have to be denied because Roberts is a danger to the community under 18 U.S.C. § 3142(g).

The district court appears to have viewed the provision of the U.S. Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.13, which requires consideration of Section 3142(g), to be a binding policy statement. The court therefore did not analyze the factors in 18 U.S.C. § 3553(a), although Section 3582(c)(1)(A) calls for such review. Nor did the court weigh Roberts’s risk of severe illness from COVID-19 against the other Section 3553(a) factors.

Since the district court’s decision, however, this court has held that U.S.S.G. § 1B1.13 is not a binding policy statement for purposes of a Section 3582(c)(1)(A) motion. *United States v. Aruda*, 993 F.3d 797, 798 (9th Cir. 2021).

We therefore **VACATE** the district court’s order and **REMAND** for consideration of Roberts’ contentions and application of the appropriate factors.