

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10152

Plaintiff-Appellee,

D.C. No. 1:16-cr-00475-SOM-1

v.

CHRISTOPHER ABEL NIETO,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

Christopher Abel Nieto appeals from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291. Reviewing for abuse of discretion, *see United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021), we affirm.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Nieto contends that the district court abused its discretion because it failed to recognize its discretion to reduce his sentence to a lower term of imprisonment, believing instead that it was limited to considering only whether Nieto should be immediately released. We disagree. The record reflects that the district court determined—after thoroughly considering Nieto’s medical conditions and the risks posed by COVID-19, his mitigating arguments, and the relevant 18 U.S.C. § 3553(a) factors—that Nieto had not demonstrated extraordinary and compelling circumstances warranting any reduction in his sentence. *See* 18 U.S.C. § 3582(c)(1)(A)(i). To the extent the court discussed whether Nieto was entitled to immediate release, it was properly responding to Nieto’s argument that the then-existing circumstances of the COVID-19 pandemic warranted a sentence reduction to time served. The district court applied the proper legal standard and its decision to deny relief was both reasonable and supported by the record. Accordingly, it did not abuse its discretion by denying Nieto’s motion. *See United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018) (a district court abuses its discretion only if its application of the correct legal rule was illogical, implausible, or without support in the record).

AFFIRMED.