

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10303

Plaintiff-Appellee,

D.C. No. 2:91-cr-00264-SRB-4

v.

MARKLIN CHRISTOPHER MANUEL,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Marklin Christopher Manuel 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).

Manuel contends that the district court abused its discretion by denying his motion because his medical conditions, considered either individually or collectively, provided an extraordinary and compelling reason for his immediate release. The district court specifically acknowledged each of Manuel’s “serious chronic” medical conditions and agreed with Manuel that they put him at heightened risk from COVID-19. The court explained, however, that these conditions were not extraordinary and compelling because they could be managed in Bureau of Prisons’ custody and the risks posed by COVID-19 were mitigated by the low infection rate at his facility, his vaccination, as well as vaccine efficacy and the anticipated availability of booster shots.¹ We cannot say that the court abused its discretion in reaching this conclusion, which it amply explained and supported. Moreover, contrary to Manuel’s claim, the court applied the correct legal standard under the applicable statute and this court’s decision in *Aruda*; the court acknowledged that it was not constrained in the reasons it could consider for release, and properly treated U.S.S.G. § 1B1.13 as informative. *See Aruda*, 993 F.3d at 802.

Because we conclude that the district court did not abuse its discretion in

¹ Manuel’s contention that the district court should not have considered information from the Centers for Disease Control and Prevention regarding vaccine efficacy is unpersuasive. The sources Manuel cites, to the extent they have any relevance to this issue, postdate the district court’s decision and thus are not part of the record.

finding that Manuel did not have extraordinary and compelling reasons for compassionate release, we need not reach Manuel's argument that the court erred in its analysis of the 18 U.S.C. § 3553(a) factors. *See United States v. Wright*, 46 F.4th 938, 947 (9th Cir. 2022) (holding that when a district court properly denies compassionate release on one ground, any error at another step of the analysis is harmless).

AFFIRMED.