

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	CASE NO. 4:18-CR-19-CDL-MSH
	:	
WATKINS BROWN,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION

Pending before the Court is Defendant Watkins Brown's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) (ECF No. 91). For the reasons stated below, it is recommended that Brown's motion be denied.

BACKGROUND

On April 12, 2018, a federal grand jury returned a two-count indictment, charging Brown with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) (Count I) and possession of a stolen firearm in violation of 18 U.S.C. § 922(j) (Count II). Indictment 1-2, ECF No. 1. On June 13, 2018, following a jury trial, Brown was convicted on Count I, possession of a firearm by a convicted felon. Verdict Sheet 1, ECF No. 28. On September 7, 2018, Brown was sentenced to 103 months' imprisonment, three years' supervised release, and a \$100.00 mandatory assessment. Judgment 1-7, ECF No. 39.

After an unsuccessful appeal (ECF No. 54), Brown filed a motion to vacate under 28 U.S.C. § 2255 (ECF No. 62) and an amended motion through appointed counsel (ECF

No. 75). The Court denied that motion on June 21, 2021. Order, ECF No. 84; Judgment, ECF No. 85. Brown appealed that judgment (ECF No. 86), and that appeal was denied on November 4, 2021. Order, ECF No. 90.

The Court received Brown's *pro se* motion for compassionate release (ECF No. 91) on January 27, 2023.¹ The Government responded (ECF No. 94) on March 1, 2023. Brown replied to the Government's response on March 16, 2023 (ECF No. 95). Brown's motion for compassionate release is ripe for review.

DISCUSSION

A district court “‘may not modify a term of imprisonment once it has been imposed except’ under certain circumstances.” *United States v. Harris*, 989 F.3d 908, 909 (11th Cir. 2021) (quoting 18 U.S.C. § 3582(c)). One circumstance is the compassionate release exception provided in 18 U.S.C. § 3582(c)(1)(A). *Id.* at 909-10. Under that section, a prisoner may obtain compassionate release if, “after considering the factors set forth in [18 U.S.C. § 3553(a)],” the district court finds that “extraordinary and compelling reasons warrant such reduction . . . and that such reduction is consistent with applicable policy statements issued by the Sentencing Commission.”² 18 U.S.C. § 3582(c)(1)(A)(i).

I. Exhaustion

¹ In ordering the Government to respond, the Court incorrectly referred to the pending motion as a second § 2255 motion (ECF No. 92). While this is, in fact, Brown's first motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), his motion is like a second § 2255 motion in that he offers little more than a list of alleged errors that led to his conviction.

² In addition to extraordinary and compelling reasons warranting a reduction, compassionate release may also be granted to a defendant who is over 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c). 18 U.S.C. § 3582(c)(1)(A)(ii). This provision is inapplicable to Brown.

Prior to enactment of the First Step Act of 2018 (“First Step Act”), Pub. L. No. 115-391, 132 Stat. 5194 (2018), compassionate release was available only upon a motion from the Director of the Bureau of Prisons (“BOP”). The First Step Act authorized prisoners to move directly for a sentence reduction in district court after exhausting all administrative remedies. Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239; *Harris*, 989 F.3d at 909-10. Prisoners are permitted to bring such motions “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility.” *See* 18 U.S.C. § 3582(c)(1)(A). Notably the exhaustion requirement is not a jurisdictional rule, but rather a claim processing rule which is “mandatory, in the sense that a court must enforce the rule if a party properly raises it[.]” *Harris*, 989 F.3d at 910-11; *United States v. Lopez*, 562 F.3d 1309, 1312-14 (11th Cir. 2009) (finding that a claims processing rule must be enforced if properly raised by the Government).

In his initial motion, Brown did not provide any evidence that he attempted to exhaust his administrative remedies by filing a request for compassionate release with the Warden. *See generally* Mot. for Compassionate Release, ECF No. 91. After the Government responded and pointed out that fact, Brown replied and attached an “Inmate Request to Staff” form he purports to have submitted to prison officials. The form is dated January 1, 2023, and states the following:

I Watkins Brown, request compassionate release under 18 U.S.C. (c)(1)(A).
For the ongoing threat posed by Covid-19 and monkey pox. Also due to the

evidence at trial was insufficient to show that Mr. Brown had possession of a firearm and to convict him of possession of a firearm by a convicted felon.

Def.'s Reply, Ex. 1, ECF No. 95-1. Notably, the request was not signed or dated by a prison staff member, and it is dated less than thirty days prior to Brown filing his motion for compassionate release on January 27, 2023.

Brown has failed to show he exhausted his administrative remedies prior to filing his motion for compassionate release. First, the request he attached to his reply was not sufficient to discharge his obligations under 18 U.S.C. § 3582(c)(1)(A). *See United States v. Lee*, 848 F. App'x 872, 873-74 (11th Cir. 2021). It was not signed or dated by a member of the prison staff, and Brown has not submitted any evidence showing he ever sent the document to the Warden or that anyone at the prison ever saw the request. *See United States v. Pertil*, No. 21-12652, 2022 WL 28666684, at *1-2 (11th Cir. July 21, 2022) (affirming district court's finding that plaintiff did not exhaust his remedies when "the one-page 'Inmate Request to Staff' that [plaintiff] submitted does not indicate that he ever sent this document to the warden or that the warden ever received it"). Thus, because Brown has not shown that he exhausted his remedies, his motion should be dismissed on that ground alone. *See United States v. Berry*, No. 21-12404, 2022 WL 194811, at *1 (11th Cir. June 6, 2022) (finding that a district court can dismiss an inmate's motion *sua sponte* when they fail to show they have exhausted their administrative remedies).

Further, even if Brown's request did comply with the prison's processes and he exhausted his remedies, his minimal request does not include any "extraordinary or compelling circumstances that the inmate believes warrant consideration" or any

“[p]roposed release plans,” as required by the applicable regulations. 28 C.F.R. § 571.61(a). The only reasons he provides for his release are the supposed “ongoing threat posed by Covid-19 and monkey pox” and that “the evidence at trial was insufficient” to convict him. Courts in the Eleventh Circuit and across the country have repeatedly held that the threat of Covid-19 and monkey pox do not constitute “extraordinary and compelling circumstances” for release. *See, e.g., United States v. Bryant*, No. 5:91-cr-11-MTT, 2023 WL 2868932, at *2 (M.D. Ga. Apr. 10, 2023) (“in this circuit, the mere increased likelihood of harm from COVID-19 does not qualify as an extraordinary and compelling reason”) (citing *United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021)).

Moreover, Brown’s assertion that the evidence at trial was insufficient to convict him does not warrant his release. Brown raises the same argument here that he did in his direct appeal of his conviction and sentence to the Eleventh Circuit Court of Appeals. He asserts that a witness testified that it was him—not Brown—who possessed the firearm, therefore there was insufficient evidence for the jury to convict him of that crime. *See United States v. Brown*, 782 F. App’x 850 (11th Cir. 2019) (per curiam). In denying his appeal and affirming his conviction, the Eleventh Circuit found that “the fact that a witness testified that he, not Brown, possessed the weapon does not mean there was insufficient evidence to support the jury’s verdict.” *Id.* at 852. The Court agrees with the Eleventh Circuit’s assessment and Brown does not present any new evidence that warrants reconsideration of this claim.

II. Policy Considerations

Finally, even if Brown met the exhaustion requirements and could show there were exceptional circumstances warranting his release, a sentence reduction is inconsistent with the policy considerations listed in U.S.S.G. § 1B1.13. The Sentencing Commission’s policy statement for compassionate release is found at U.S.S.G. § 1B1.13. Under that policy statement, a defendant must show that he “is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C § 3142(g).” U.S.S.G. § 1B1.13(2). Further, a defendant must show that “extraordinary and compelling reasons warrant the reduction.” U.S.S.G. § 1B1.13(1)(A). A defendant bears the burden of proving entitlement to compassionate release. *See United States v. Mantack*, 833 F. App’x 819, 819-20 (11th Cir. 2021) (per curiam) (citing *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014)).

Regardless of whether Brown continues to be a danger to the community, he fails to demonstrate extraordinary and compelling reasons warranting compassionate release. The Sentencing Commission policy statement provides four circumstances that constitute extraordinary and compelling reasons for a sentence reduction. U.S.S.G. § 1B1.13 cmt. n.1. The first is a qualifying medical condition. U.S.S.G. § 1B1.13 cmt. n.1(A). A medical condition qualifies if “[t]he defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory).” U.S.S.G. § 1B1.13 cmt. n.1(A)(i). A defendant need not show a “probability of death within a specific time period,” and “[e]xamples include a metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.” *Id.* In the alternative, a defendant’s medical condition qualifies if he or she is:

(I) suffering from a serious physical or medical condition, (II) suffering from a serious functional or cognitive impairment, or (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

U.S.S.G. § 1B1.13 cmt. n.1(A)(ii).

Brown fails to show that he has a qualifying medical condition as defined by U.S.S.G. § 1B1.13 cmt. n.1(A). He vaguely states he should be granted a sentence reduction “for the ongoing threat posed by Covid-19 and monkey pox.” Mot. for Compassionate Release 1, ECF No. 91. As discussed above, the threat of contracting these illnesses alone does not warrant release. Beyond that, Brown does not divulge any underlying conditions or special circumstances that place him more at risk, and the mere possibility of contracting Covid-19 alone is insufficient to warrant his release. *See, e.g., United States v. Sanders*, No. CR417-011, 2021 WL 8321874, at *3 (S.D. Ga. May 6, 2021) (citing *United States v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020) (“[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive professional efforts to curtail the virus’s spread.”)).

The second and third circumstances qualifying as extraordinary and compelling reasons are the defendant’s age and family circumstances. U.S.S.G. § 1B1.13 cmt. n.1(B), (C). Brown is twenty-nine years old and does not reference any family circumstances that might warrant a reduction of his sentence. *See Revised Final Presentence Report (“PSR”)* 2, ECF No. 37. Thus, these circumstances are inapplicable to him.

The fourth circumstance is “other reasons,” which is where “[a]s determined by the Director of the [BOP], there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).” U.S.S.G. § 1B1.13 cmt. n.1(D). “[O]ther reasons’ are limited to those determined by the [BOP], not by the courts.” *Lee*, 857 F. App’x at 558 (citing *United States v. Bryant*, 996 F.3d 1243, 1246-49 (11th Cir. 2021)). Therefore, a district court lacks the authority to determine if a defendant’s circumstances, such as his fear of contracting Covid-19, qualify as an “other reason” under U.S.S.G. § 1B1.13 cmt. n.1(D). *Bryant*, 996 F.3d at 1247-48, 1263. There is no evidence that the BOP has determined that Brown presents any extraordinary and compelling reasons for compassionate release. Therefore, the fourth circumstance also does not apply to Brown.

Moreover, compassionate release is inappropriate in light of the factors set forth in 18 U.S.C. § 3553(a). These factors include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims.

United States v. Macli, 842 F. App’x 549, 552 n.1 (11th Cir. 2021) (per curiam) (citing 18 U.S.C. § 3553(a)).

The first three factors listed above—which are codified at 18 U.S.C. § 3553(a)(1), (2)(A), and (2)(B)—weigh against Brown. Before sentencing, the United States Probation Office (“USPO”) prepared a PSR on Brown (ECF No. 37). The PSR shows Brown has an extensive criminal history despite being only twenty-four years old when he began his sentence. PSR 2. From the age of fifteen until the time he was sentenced in 2018, Brown had several juvenile adjudications and adult criminal convictions for crimes including burglary, robbery by snatching, sale of marijuana, and possession of marijuana with intent to distribute. PSR ¶¶ 22-27. Moreover, Brown has served only roughly half of his sentence. Compassionate release or a sentence reduction would not reflect the seriousness of the crime or Brown’s criminal history, promote respect for the law, provide just punishment, or deter future criminal conduct.

The Court has considered the remaining factors listed in § 3553(a) and, to the extent they are applicable, finds that none of them provide sufficient weight to justify Brown’s release. Thus, as an additional and alternative ground for denial of Brown’s motion for compassionate release, the Court finds that even if Brown established extraordinary and compelling reasons, release is not warranted after consideration of the § 3553(a) factors.

CONCLUSION

For the foregoing reasons, it is recommended that Brown’s motion for compassionate release (ECF No. 91) be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the

Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 24th day of April, 2023.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE