

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

United States of America,

v.

Case No. 4:05-cr-57-MLB

Josh Smith (8),

Defendant.

_____/

OPINION & ORDER

Defendant Josh Smith moves for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Dkt. 1645.) The United States opposes his motion. (Dkt. 1651.) The Court denies Defendant Smith's request.

I. The Background Facts

In 2006, the United States indicted Smith and others, charging him with participating in a racketeering conspiracy whose members committed related criminal acts, including murder, attempted murder, kidnapping, arson, and trafficking in illegal narcotics. (Dkt. 1.) Three weeks into trial, Defendant Smith pled guilty to one count of racketeering conspiracy and two counts of carrying a firearm (or aiding and abetting

a co-defendant's possession of a firearm) during two murders. (Dkts. 1067, 1068; PSR ¶¶ 3, 4.) The facts established that Smith was an upper-level member of the RICO enterprise that distributed methamphetamine, cocaine, and marijuana in northwest Georgia from at least 2000 until 2006. (PSR at ¶ 26.) Smith was one of the largest redistributors in the conspiracy from 2002 until his arrest in 2004 and admitted selling more than \$500,000 worth of methamphetamine annually. (*Id.*) The enterprise was extremely violent. Defendant Smith was, too. In his plea agreement, he took responsibility for participating in the murder of two men who owed the organization money. (*Id.* at ¶ 5(e).) During the trial of co-defendant Shane Rosser (and in a statement detailed in the Presentence Report), Smith explained that he, Rosser, and a woman identified as E.S. drove to a trailer to collect a drug debt from T.J.A. and C.F. (*Id.* at ¶ 17.) Smith and Rosser carried shotguns. (*Id.*) When T.J.A. and C.F. could not pay, Rosser shot and killed T.J.A. (*Id.*) Smith was supposed to kill C.F. but got scared. (*Id.*) Rosser then executed the man. (*Id.*)

Rosser (and the others) were convicted at trial. The Court sentenced Rosser (and the others) to life imprisonment (with each

receiving additional decades imprisonment beyond that sentence). (Dkts. 1302, 1425, 1329, 1426, 1299, 1427.) Because Smith cooperated with law enforcement, the Court sentenced him to 30 years imprisonment on each count of conviction, with each term running concurrently. (Dkt. 1178.)

Smith already filed a prior motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Dkt. 1624.) The Court denied that motion for several reasons. (Dkt. 1630.) Smith now claims he should be released because of his rehabilitation, health conditions, and Sentencing Guidelines Amendments 821 and 814. (Dkt. 1645.)¹

II. The Law

Previously, compassionate release was only available to an inmate if the Bureau of Prisons (“BOP”) filed a motion requesting it. *See* 18 U.S.C. § 3582 (as effective Nov. 2, 2002 to Dec. 20, 2018). The First Step Act of 2018 changed that by allowing a defendant to file a motion for compassionate release directly with the sentencing court, provided he or she has “fully exhausted all administrative rights to appeal a failure of

¹ Defendant Smith argues Assistant United States Attorney William Traynor supports his request for compassionate release but that is not correct as Mr. Traynor filed the United States’s opposition. (Dkts. 1645 at 3; 1651.)

the Bureau of Prisons to bring a motion on [his or her] behalf or the lapse of 30 days from the receipt of such a request by the warden of [his or her] facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A). A court may then modify a term of imprisonment “if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable,” the court finds “extraordinary and compelling reasons warrant the reduction” and that the reduction is “consistent with applicable policy statements issued by the Sentencing Commission.” *Id.*

Section 1B1.13 of the Sentencing Guidelines identifies “extraordinary and compelling reasons.” It states that such reasons include medical conditions like a terminal illness; some other serious physical, medical, or cognitive impairment that prevents a defendant from providing self-care within the prison; or a life-threatening or serious health-threatening medical condition that requires long-term or specialized medical care that the Bureau of Prisons is not providing. *See* U.S.S.G. § 1B1.13(b). It also lists certain family situations, including “the incapacitation of the defendant’s parent when the defendant would be the only available caregiver” or the incapacitation or death of a sole-caregiver to a dependent child. *Id.* The Sentencing Guideline also lists sexual

assault by an employee of the Bureau of Prisons or incarceration during an infectious disease outbreak that poses a specialized, unmitigable risk of death to an inmate. *Id.* It states a Court can find extraordinary and compelling reasons when an inmate “presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the [other reasons listed above] are similar in gravity to those [other reasons]. *Id.* Finally, section 1B1.13 states a court may find extraordinary and compelling circumstances exists if a defendant received “an unusually long sentence,” has served at least 10 years of the that sentence, and a change in the law “would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant’s individualized circumstances.” *See* U.S.S.G. § 1B1.13(b)(6)

A defendant has the burden of showing extraordinary and compelling reasons warrant his or her early release under 18 U.S.C. § 3582(c)(1)(A)(i). *United States v. Cochran*, 851 Fed. App’x. 163, 166 (11th Cir. 2021) (defendant’s “vague claims that he is vulnerable to COVID-19 because of unspecified health conditions do not satisfy his burden of showing that ‘extraordinary and compelling reasons’ warrant his early

release from prison under § 3582(c)(1)(A)(i)"). Even if the Court determines extraordinary circumstances exist it cannot order a defendant's release unless it also determines "[t]he defendant is not a danger to the safety of any other person or to the community." See U.S.S.G. § 1B1.13(b).

III. The Legal Analysis

Smith contends he has "chosen a road of self-betterment," has "completed numerous rehabilitation programs," and "[h]is record of rehabilitation can be considered extraordinary." (Dkt. 1645 at 5-6.) He further argues his rehabilitation efforts should be considered in the light of his young age at the time he committed the offense. (*Id.* at 7.) Unfortunately for Smith, the Sentencing Guidelines do not identify rehabilitation (or even exceptional rehabilitation) as an extraordinary and compelling basis for compassionate release. Had the sentencing commission intended for exceptional rehabilitation to warrant early release, it would have said that.

The "other reasons" category in section 1B1.13 of the Sentencing Guidelines does not give a court unfettered discretion to grant compassionate release. It provides clear guidance, saying the "other

reasons”—either themselves or in combination with the enumerated reasons—must be “similar in gravity” to the enumerated reasons. So Smith must show some “other” situation similar to a terminal illness, an uncurable physical or medical condition that “substantially diminishes” his ability to take care of himself while incarcerated, a medical condition that requires long-term or specialized medicine to prevent death or “serious deterioration in health,” old age and physical or mental deterioration, the death of a sole caregiver for a child, parent, or spouse, or sexual assault from a correctional officer while incarcerated. *See* U.S.S.C. 1B1.13(B)(1)-(4). The equivalent situations involve questions of life or death, the need to provide care for someone else, or horrible victimization. While the Court acknowledges Smith’s record while incarcerated, rehabilitation does not rise to that level.

Smith also contends his health problems justify compassionate release and that Amendment 821 to the Sentencing Guidelines might also do so. (Dkt. 1645 at 13, 20-22.) The Court previously considered his medical conditions and determined they do not. Amendment 821, which altered a provision adding criminal history points if a defendant committed an offense while on probation also does not matter as Smith

received no such points. *See* Presentence Report ¶¶ 54-56. He was not on probation at the time he committed the offense at issue in this case. (*Id.*)

Finally, Smith argues he is eligible for relief under the “exceptionally long sentence” provision.² Defendant, however, does not argue or show any change in the law since his conviction would produce a great disparity between the sentence he received and the one he would receive today. Moreover, in his plea agreement, the United States agreed that, if Smith cooperated and that cooperation was complete before sentencing, it would recommend the Court sentence Smith to imprisonment for 30 to 35 years and “in no event” would the United States seek a sentence below 30 years. (PSR at ¶ 5.) In other words, he received the exact sentence he bargained for given the crimes he committed and his cooperation with the United States. The Court thus concludes Smith has not shown extraordinary or compelling reasons for a sentence reduction. Indeed, even considering all the different arguments Smith

² The Court refuses to address the United States’s contention that the Sentencing Commission violated its statutory duty in adopting this provision as doing so is unnecessary to resolution of this matter.

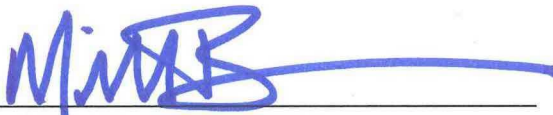
asserts in combination with one another, the Court reaches the same conclusion.

Finally, the Court has previously determined that (1) it could not conclude Smith poses no danger to the safety of any other person or to the community as required by 18 U.S.C. § 3142(g) given the nature of his conduct in this case and (2) consideration of the factors set forth in 18 U.S.C. § 3553(a) do not support Smith's request for compassionate release. (Dkt. 1630 at 7-8.) Nothing in Smith's recent filing changes that conclusion. The Court reaffirms its analysis from Smith's prior motion for compassionate release.

IV. Conclusion

For these reasons, the Court **DENIES** Defendant Smith's most recent motion for compassionate release. (Dkt. 1645.)

SO ORDERED this 1st day of May, 2024.



MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE