

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:01CR151

UNITED STATES OF AMERICA,)
)
)
)
vs.)
)
LAMAR REDFERN,)
)
Defendant.)
_____)

**UNITED STATES' RESPONSE OPPOSING MOTION FOR
COMPASSIONATE RELEASE**

Defendant Lamar Redfern moves this Court to grant him compassionate release under 18 U.S.C. § 3582(c)(1)(A). Although this Court has the discretion to grant Redfern's motion, the United States opposes his compassionate release.

BACKGROUND AND PROCEDURAL HISTORY

Between July and September of 2001, Redfern committed the armed robbery of three banks in Charlotte, North Carolina. WDNC Case No. 3:01CR151, Doc. 189 ¶¶ 9–12. Redfern brandished a handgun during each of the robberies. *Id.* Redfern and his associates stole more than \$55,000. *Id.*, Doc. 189 ¶ 18. At the time Redfern committed these robberies, he had previously been convicted of robbery with a deadly weapon of a local hotel. *Id.*, Doc. 189 ¶ 62. Redfern was 21 years old when he committed the bank robberies. *Id.*, Doc. 189 at 2.

A federal grand jury indicted Redfern and charged him with three counts of bank robbery, 18 U.S.C. § 2113(a); three counts of armed bank robbery, 18 U.S.C. § 2113(d); three counts of brandishing a firearm during and in relation to a crime of violence, 18 U.S.C. § 924(c)(1); and one count of possessing a firearm as a convicted felon, 18 U.S.C. § 922(g)(1). *Id.*, Doc. 32. The United States moved to dismiss without prejudice the felon-in-possession charge. *Id.*, Doc. 83.

Redfern's case was tried by a jury, and the jury found Redfern guilty of all nine offenses. *Id.*, Doc. 109. The jury also found that Redfern brandished a firearm during each of the armed bank robberies. *Id.*

This Court's probation office submitted a presentence report and calculated a total offense level of 26 for the bank-robbery offenses. *Id.*, Doc. 189 ¶ 58. When this offense level was combined with a criminal-history category of IV, the Sentencing Guidelines advised a sentence of between 92 and 115 months in prison for the bank-robbery offenses. *Id.*, Doc. 189 ¶¶ 91. This Court was required to sentence Redfern to a consecutive term of 7 years in prison for the first section 924(c) conviction and to consecutive terms of 25 years in prison for each of the remaining two section 924(c) convictions, for an aggregate *consecutive* term of 57 years in prison. *Id.*, Doc. 189 ¶¶ 90–91. This Court sentenced Redfern to concurrent terms of 12 months in prison for the bank robberies and to a consecutive aggregate term of 684 months in prison for the firearm offenses — for an aggregate sentence of 696 months in prison. *Id.*, Doc. 170 at 2.

The probation office reports that Redfern has 262 months of credited time in the Bureau of Prisons. Exhibit 1 attached hereto. Redfern has incurred 27 disciplinary citations between 2004 and August of 2018, including eight citations for possessing drugs/alcohol or intoxicants, four citations for fighting, two citations for assaulting without serious injury, and two citations for possessing a dangerous weapon. four citations for possessing intoxicants and one citation for possessing a dangerous weapon. *Id.* Redfern has completed 65 educational or work programs. *Id.*

Earlier this year, Redfern submitted a request for compassionate release. *Id.*, Doc. 243-9. The warden denied Refern's request. *Id.*, Doc. 243-10. Redfern now asks this Court to grant him compassionate release and to reduce his sentence to time served. *Id.*, Doc. 243 at 18.

ARGUMENT

This Court has the discretion to grant Redfern's motion for compassionate release, but because the grounds he asserts do not fall within the Sentencing Guidelines policy statement or amount to extraordinary and compelling reasons warranting his immediate release, the United States opposes his request.

Section 603(b) of The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018), amended 18 U.S.C. § 3582(c)(1)(A) to permit a defendant to seek a modification of his sentence for "extraordinary and compelling reasons," if 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,

whichever is earlier.” Before the First Step Act amended § 3582(c)(1)(A), a court could only act to reduce a defendant’s sentence for extraordinary and compelling reasons if the Bureau of Prisons filed a motion seeking that relief.

The First Step Act also amended 18 U.S.C. § 924(c), removing the possibility that a defendant will receive “stacked” section 924(c) sentences by requiring that the 25-year mandatory-minimum sentence that applies for a second or successive section 924(c) conviction applies only “when a prior § 924(c) conviction arises from a separate case and already “has become final.” First Step Act § 403(a), 132 Stat. at 5222. That change does not apply retroactively to sentences, like Redfern’s, that was imposed before December 21, 2018, the effective date of the First Step Act. *Id.* § 403(b).

Although not binding on this Court, *see United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020), the commentary to Sentencing Guidelines § 1B1.13 provides specific and limited grounds for release under § 3582(c)(1)(A). These include (1) a terminal illness; or (2) a serious physical or medical condition, a serious functional or cognitive impairment, or 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 is not expected to recover.” U.S.S.G. § 1B1.13 cmt. n.1(A). A defendant’s age may also warrant compassionate release, if (1) the defendant is at least 65 years old, (2) is experiencing a serious deterioration in physical or mental health because of the aging process, and (3) has served at least 10 years or 75% of his term of

imprisonment, whichever is less. *Id.*, § 1B1.13 cmt. n.1(B). Congress has made clear that rehabilitation of the defendant alone “shall not be considered an extraordinary and compelling reason” for a modification. 28 U.S.C. § 994(t).

Redfern has not alleged that he satisfies any of the criteria for compassionate release authorized in section 1B1.13. Instead, he asks this Court to exercise its discretion to grant him compassionate release because he is serving stacked 25-year sentences for section 924(c) convictions arising out of a spree of three armed bank robberies. In *McCoy*, the Fourth Circuit held that district courts are not limited to the grounds for compassionate release identified in section 1B1.13 and that a district court may “treat[] as [an] ‘extraordinary and compelling reason[]’ for compassionate release the severity of the [defendant’s] § 924(c) sentences and the extent of the disparity between the [defendant’s] sentences and those provided for under the First Step Act.” 981 F.3d at 286. The court must make an individualized determination that the defendant has identified an extraordinary and compelling reason for compassionate release, considering, for example, the length of time already served, any rehabilitative efforts made during the defendant’s time in the Bureau of Prisons, the defendant’s prior criminal history, and the defendant’s age at the time he committed his offenses. *See id.*

Were section 403 of the First Step Act in effect when Redfern was sentenced, he would have received a sentence of no more than 7 years in prison for each of his section 924(c) sentences. *See* 18 U.S.C. § 924(c)(1)(A)(ii). Combined with a 12-month term for Redfern’s bank-robbery offenses, Redfern’s firearm convictions

likely would have resulted in an aggregate sentence of 264 months in prison.

Redfern's prior criminal history consists of one prior armed robbery, and Redfern was only 21 years old when he committed the bank robberies. Redfern also appears to have significant family support.

On the other hand, Redfern committed three armed bank robberies, and as importantly with respect to the likelihood that he does not pose a danger to the public, he has 27 disciplinary infractions during his time in the Bureau of Prisons, including multiple citations for fighting, assault, and possessing a dangerous weapon. While Redfern has not committed any infractions since 2018, his earlier misconduct weighs against his immediate release.

It is the Department of Justice's position that while this Court is authorized to find that Redfern has shown extraordinary and compelling reasons for his release, for the sake of consistency, this Court should generally adhere to the reasons identified in Sentencing Guidelines § 1B1.13 — reasons that Redfern has not satisfied. Additionally, because of the nature and circumstances of Redfern's offense, the need to protect the public, and the need for deterrence and because Redfern has not performed well in prison, the United States opposes his release.

The United States notes that if this Court decides to grant Redfern compassionate release, this Court has the discretion to reduce Redfern to a term greater than time served. *See, e.g., United States v. Haynes*, 2021 WL 406595, at *7 (C.D. Ill. Feb. 5, 2021) (reducing defendant's sentence to 30 years and one day in prison, the sentence he would have received based on sentence he received for non-

section 924(c) firearm offenses plus sentence he would receive for section 924(c) offenses if sentenced today). The United States requests that if this Court reduces Redfern's sentence, it reduce his sentence to a term no lower than 264 months in prison — the term he likely would have received had section 403 of the First Step Act been in effect at the time Redfern committed his offenses.

CONCLUSION

This Court has discretion to grant Redfern's motion for compassionate release, but for the reasons set forth above, the United States respectfully requests that this Court deny Redfern's motion.

RESPECTFULLY SUBMITTED, this the 29th day of November, 2021.

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