

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	
)	1:19-cr-133 (LMB)
TIMMIE THOMAS CHATELAIN, JR.,)	
)	
Defendant.)	

ORDER

Defendant Timmie Thomas Chatelain, Jr. (“Chatelain” or “defendant”) has filed his Second Emergency Motion for Compassionate Release, in which he seeks compassionate release under 18 U.S.C. § 3582(c)(1)(A) due to the “extraordinary and compelling” circumstances stemming from the outbreak of the coronavirus at his correctional facility, his age and serious underlying health conditions, his record of compliance with conditions of release, and the Bureau of Prisons’ (“BOP”) cursory denial of his request for release. The government opposes the motion. For the reasons stated below, given the unique combination of circumstances present in this case, Chatelain’s motion will be granted in part.

I.

On April 15, 2020, defendant filed his first Emergency Motion for Compassionate Release. The motion reported that on April 13, 2020, defendant filed a request for compassionate release with the warden of the Federal Correctional Institution Forrest City Low (“FCI Forrest City”), where Chatelain is incarcerated. On April 24, 2020, the Court denied the motion without prejudice because defendant had not yet exhausted his administrative remedies under § 3582(c)(1)(A); however, the Court also strongly recommended that the BOP place Chatelain in home confinement, detailed the extraordinary and compelling reasons supporting that recommendation, and ordered defense counsel to ensure that the BOP received a copy of the Court’s Order and Recommendation.

Despite this recommendation, Chatelain's counsel received the warden's denial of Chatelain's request on April 28, 2020.¹ The denial letter appears to be pro forma because it did not address any of the compelling, specific details about Chatelain's situation. Instead, it simply described the general standards the BOP follows when determining whether extraordinary and compelling reasons are present, and stated that Chatelain's concerns about contracting the coronavirus did not meet those standards.

Based on this denial, Chatelain has renewed his request for compassionate release. Although Chatelain would ordinarily be required to appeal the warden's decision through the BOP's administrative remedy program, the Court finds that the BOP's issuance of a pro forma denial of his request, which ignores the many compelling factors that support release, demonstrates that requiring Chatelain to undergo that lengthy appeals process² or wait until the expiration of the statutory 30-day period would be futile and inadequate and would subject Chatelain to undue prejudice.³ See

¹ Although the warden's letter is dated April 16, 2020, defense counsel reports that she did not receive it until April 28, 2020. The reason for this nearly two-week delay in delivery of the letter is not clear; however, that the warden resolved defendant's request within three days further supports the conclusion that the review of defendant's request was cursory and pro forma.

² See United States v. Scparta, No. 18-cr-578, 2020 WL 1910481, at *7 (S.D.N.Y. Apr. 20, 2020) ("The BOP's internal administrative process is lengthy. First, an inmate must request the warden of h[is] facility to file a compassionate-release motion on h[is] behalf. 28 C.F.R. § 571.61(a). Second, if the warden denies the prisoner's request, [h]e has 20 days to appeal to the BOP's Regional Director. Id. § 571.63(a) (providing that denials of compassionate-release requests are governed by the BOP's general Administrative Remedy Program, contained in 28 C.F.R. §§ 542.10 - 542.19); id. § 542.15(a) ('An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP-10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the response.'). Third, if the Regional Director denies the prisoner's request, [h]e then has 30 days to appeal to the BOP General Counsel. Id. § 542.15(a). A decision from the General Counsel is the final step in the BOP's Administrative Remedy Program, id., and therefore 'constitutes a final administrative decision,' id. § 571.63(b). This administrative exhaustion regime could take weeks, if not months." (emphasis in original)).

³ Although the government argues that Chatelain should be required to undergo the administrative appeals process to give the BOP a chance to consider the Court's recommendation, the Court finds that subjecting Chatelain to additional delays and hurdles would be futile and prejudicial,

Poulios v. United States, No. 2:09-cr-109, 2020 WL 1922775, at *1-*3 (E.D. Va. Apr. 21, 2020) (finding that the exhaustion requirement may be waived if “(1) the relief sought would be futile upon exhaustion; (2) exhaustion via the agency review process would result in inadequate relief; or (3) pursuit of agency review would subject the petitioner to undue prejudice,” and waiving the exhaustion requirement for a 65-year old petitioner who had a history of severe cardiac issues); United States v. Jones, No. 3:11-cr-249, ECF No. 47 (E.D. Va. Apr. 3, 2020) (finding that the defendant’s “unique circumstances and the exigency of a rapidly advancing pandemic” justified waiver of the exhaustion requirement).

II.

For the reasons stated above, there are no procedural hurdles to evaluating Chatelain’s motion, and an evaluation of the merits of the motion demonstrates that granting partial relief is appropriate. 18 U.S.C. § 3582(c)(1)(A) provides that a sentencing court “may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--(i) extraordinary and compelling reasons warrant such a reduction” “and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” Id. Chatelain satisfies these requirements because of his unique history and because he has shown “both a particularized susceptibility to the disease and a particularized risk of contracting the [coronavirus] at his prison facility.” United States v. Feiling, No. 3:19-cr-112, 2020 WL 1821457, at *7 (E.D. Va. Apr. 10, 2020).

particularly given that the warden should have been aware of Chatelain’s medical conditions and of the spread of the coronavirus in FCI Forrest City when he issued the denial letter.

The United States Sentencing Guidelines § 1B1.13 defines extraordinary and compelling reasons. To the extent this provision applies to Chatelain's motion,⁴ two portions of the definition are relevant. First, extraordinary and compelling reasons exist where the defendant is "suffering from a serious physical or medical condition . . . 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). Chatelain satisfies this requirement. He will turn 70 years old within 10 days and suffers from a variety of conditions from which he is not expected to recover, including Type II diabetes, fatty liver, and a heart murmur. The World Health Organization has indicated that "[o]lder people, and those with underlying medical problems like cardiovascular disease [and] diabetes . . . are more likely to develop serious illness" if they contract the coronavirus, see World Health Organization, Coronavirus, available at https://www.who.int/health-topics/coronavirus/coronavirus#tab=tab_1. Moreover, because the coronavirus has spread widely throughout FCI Forrest City, where there are 37 diagnosed cases, Chatelain "cannot provide self-care because he cannot protect himself from the spread of a dangerous and highly contagious virus." United States v. Perez, No. 17-cr-513-3, 2020 WL 1546422, at *4 (S.D.N.Y. Apr. 1, 2020).

Second, U.S.S.G. § 1B1.13 cmt. n.1(D) authorizes release based on "an extraordinary and compelling reason other than, or in combination with, the [other] reasons described."⁵ Even if

⁴ Before the enactment of the First Step Act ("Act") in 2018, only the Director of the BOP could move for compassionate release in federal court, and U.S.S.G. § 1B1.13 was the "applicable policy statement" that courts considered in evaluating motions from the BOP. The Act amended § 3582(c) to provide that a defendant himself may move for compassionate release in certain circumstances. Since that time, courts have debated whether U.S.S.G. § 1B1.13 applies to such motions, because that provision has not been amended since the passage of the Act, and only refers to "motion[s] of the Director of the Bureau of Prisons," not motions filed by defendants.

⁵ In applying this provision, the Court joins the many other district courts that have concluded that "a court may find, independent of any motion, determination or recommendation by the BOP Director, that extraordinary and compelling reasons exist based on facts and circumstances other

Chatelain did not satisfy the specific requirements of U.S.S.G. § 1B1.13 cmt. n.1(A)(ii), release would nonetheless be appropriate because extraordinary and compelling circumstances are clearly present in this case. Chatelain is a veteran who served over 20 years in the United States Army. During his service, he was stationed in multiple dangerous locations, including two tours of duty during the Vietnam War, in which he “was a ‘tunnel rat,’ forging ahead of the platoon to clear tunnels of explosives and dead bodies, which included the bodies of children.” [Dkt. No. 45] at 20. Chatelain received a purple heart and multiple medals for his military service. After his retirement from the military, Chatelain worked for the State Department for over 20 years, serving in hardship locations including South Sudan and the Central African Republic. After having devoted most of his life to serving his country, Chatelain finds himself at significant risk of serious illness or death if he is not released from prison. Unlike other defendants who have sought compassionate release from institutions without any infections, the coronavirus has already spread within Chatelain’s facility. Although the government asserts that the BOP is taking measures to protect inmates from the virus, these efforts have evidently been insufficient to prevent widespread infection at FCI Forrest City. These factors, coupled with Chatelain’s unique combination of advanced age and chronic health conditions, all of which were corroborated in his Presentence Investigation Report issued in 2019, render his situation extraordinary and compelling.

U.S.S.G. § 1B1.13 also states that before reducing a defendant’s term of imprisonment, a court should conclude that “[t]he defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” *Id.* The Court finds that Chatelain does not present such a danger. Although he pleaded guilty to transportation of child pornography in violation of 18 U.S.C. § 2252(a)(1) and (b)(1), Chatelain, who had the lowest possible criminal

than those set forth in U.S.S.G. § 1B1.13 cmt. n.1(A)-(C).” United States v. Redd, No. 1:97-cr-6, 2020 WL 1248493, at *8 (E.D. Va. Mar. 16, 2020) (collecting cases).

history category, was allowed to remain on bond throughout his proceedings in this court and to self-surrender to the facility where he is incarcerated. While on bond, he resided with his brother and sister-in-law in Hardin, Kentucky, and there were no issues whatsoever with his compliance with the conditions of release. The United States Probation Officer who supervised Chatelain reported that he “remained compliant with all aspects of bond release.” [Dkt. No. 45] ¶ 7. He also diligently attended weekly mental health counseling sessions which exceeded the requirements of supervised release, and his doctor concluded that he was “a low risk of recidivism for viewing, transporting or otherwise distributing child pornography, as well as a low risk for sexually offending against a child.” [Dkt. No. 45] ¶¶ 7, 77. After release, defendant will be required to comply with all conditions of supervised release, including registering as a sex offender under the Adam Walsh Child Protection and Safety Act of 2006.

Moreover, the Court will modify Chatelain’s conditions of release to minimize any risk to public safety. For example, although Chatelain proposes to reside at his home in Hawaii, the Court will instead order that he initially reside in Kentucky with his brother, who was his third-party custodian while he was on pretrial release. Chatelain will also be confined to his brother and sister-in-law’s home and placed on electronic monitoring. Finally, the Court will order that before defendant is released from BOP custody, he be placed in a 14-day quarantine to ensure he does not infect his custodians or others upon release. These measures should be sufficient to ensure the safety of the community, and to the extent the Probation Officer believes additional conditions are necessary, such conditions will be added. These measures are also consistent with the government’s response, which objects to defendant’s motion but requests that if the Court concludes that release is warranted, “it order the Defendant to be placed on a lengthy period of home confinement with electronic monitoring as special conditions of his release” and “require defendant to submit to a 14-

day quarantine period, administered by BOP, to mitigate his unknowing exposure of others to the coronavirus.” [Dkt. No. 68] at 30.

Finally, the factors set forth in 18 U.S.C. § 3553(a) also support release. Defendant has already served over six months in prison. Although this is far less than the 60-month term of imprisonment imposed on September 13, 2019, given the defendant’s background and his excellent compliance while on pretrial release, the Court would have imposed a sentence well below 60 months had that not been the mandatory minimum sentence the Court had to impose. Chatelain’s first motion for compassionate release persuasively established that his sentence has already had meaningful punitive and deterrent effects and that he has undergone significant rehabilitation. As his doctors opined in an evaluation submitted before sentencing, Chatelain displayed “responsibility, accountability, and regret” for his behavior in a manner “virtually never seen in child sex offenders including those who regularly consume child pornography.” [Dkt. No. 66] at 21.

An evaluation of the § 3553(a) factors confirms that reducing defendant’s sentence to time served results in a sentence sufficient but not greater than necessary to serve the statutory purposes of sentencing under 18 U.S.C. § 3553(a). For all these reasons, defendant’s Second Emergency Motion for Compassionate Release [Dkt. No. 71] is GRANTED IN PART, and it is hereby

ORDERED that the 60-month sentence imposed in the September 13, 2019 Judgment [Dkt. No. 55] be and is REDUCED to time served, to be followed by the five years of supervised release imposed in that Judgment; and it is further

ORDERED that with the exception of that Judgment’s Special Condition of Supervision 12, which be and is VACATED without prejudice to reconsideration at a later date, defendant must fully comply with all the conditions and special conditions of supervised release imposed in that Judgment and with the following additional Special Condition of Supervision:

Until further order of the Court, defendant is required to serve his term of supervised release in home confinement with electronic monitoring in his brother Robert Chatelain's home in Hardin, Kentucky. Defendant is allowed out of that home only for the following reasons: (a) to comply with the testing, monitoring, and counseling requirements imposed in Special Conditions of Supervision 1, 2, and 3 of the Judgment; (b) to meet with his probation officer; (c) to seek employment or to work, as long as such employment is approved by his probation officer; (d) to attend to any of his medical needs; and (e) to participate in religious services. Any other time out of the home must be approved, in advance, by his probation officer. Defendant must pay the costs of the electronic monitoring to the extent he is able and must fully comply with the supervising probation office's policies governing electronic monitoring; and it is further

ORDERED that the BOP immediately place defendant in a 14-day quarantine, and upon completion of that 14-day quarantine, immediately release defendant from its custody into the custody of his brother, Robert Chatelain, who must transport the defendant directly to Hardin, Kentucky; and it is further

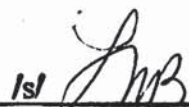
ORDERED that no later than two business days after being released from BOP custody, defendant contact the United States Probation Office in the Western District of Kentucky to arrange for the installation of the electronic monitoring device; and it is further

ORDERED that all other terms and conditions of the Judgment entered on September 13, 2019 remain in full force and effect.

The Clerk is directed to forward copies of this Order to counsel of record, the United States Probation Office, and the United States Marshals Service.

Entered this 1st day of May, 2020.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge