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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHAEL EDWARD OTTINGER, JR.
(1),
Defendant.

Case No.: 10-cr-05016-H-1

**ORDER DENYING DEFENDANT'S
SECOND MOTION FOR
COMPASSIONATE RELEASE
UNDER 18 U.S.C. § 3582(c)(1)(A)**

[Doc. No. 1768.]

On October 6, 2023, Defendant Michael Edward Ottinger, Jr., proceeding pro se, filed a second motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).¹ (Doc. No. 1768.) On December 15, 2023, the Government filed a response in opposition to Defendant's second motion for compassionate release. (Doc. No. 1774.) For the reasons set forth below, the Court denies Defendant's second motion for compassionate release.

¹ Defendant previously filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) on September 22, 2022, (Doc. No. 1739), which the Court denied on April 17, 2023. (Doc. No. 1764.)

Background

On October 6, 2011, the Government filed a second superseding indictment charging Defendant, among others, with one count of conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. (Doc. No. 46.) On June 4, 2012, Defendant, pursuant to a plea agreement, pled guilty before the Magistrate Judge to the single count of conspiracy to distribute methamphetamine charged in the second superseding indictment. (Doc. Nos. 641, 647, 652.) On June 7, 2012, the Magistrate Judge issued her findings and recommendation, finding that Defendant's plea of guilty was made knowingly and voluntarily; Defendant was competent to enter a plea; and there was a factual basis for Defendant's plea, and recommending that this Court accept Defendant's guilty plea. (Doc. No. 643). On June 21, 2012, this Court adopted the findings and recommendation of the Magistrate Judge and accepted the Defendant's guilty plea to count 1 of the second superseding indictment. (Doc. No. 701.)

On December 3, 2012, the Court sentenced Defendant to a custodial term of 262 months (21 years and 10 months) followed by five years of supervised release. (Doc. Nos. 998, 1018.) The Court entered a judgment on December 5, 2012. (Doc. No. 1018.)

On November 18, 2013, Defendant filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 on the grounds of ineffective assistance of counsel. (Doc. No. 1254.) On July 7, 2014, the Court denied Defendant's § 2255 motion, and the Court denied Defendant a certificate of appealability. (Doc. No. 1450.) Defendant appealed the Court's July 7, 2014 order to the United States Court of Appeals for the Ninth Circuit. (Doc. No. 1455.) On March 13, 2015, the Ninth Circuit denied Defendant's request for a certificate of appealability. (Doc. No. 1535.) On December 15, 2020, the Court granted Defendant's motion to compel U.S. Probation to amend his presentence report ("PSR"). (Doc. No. 1681.)

On September 22, 2022, Defendant filed his first motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). (Doc. No. 1739.) In support of his September 22, 2022 motion for compassionate release, Defendant argued that two "extraordinary and

1 compelling reasons” were present in his case. (Doc. No. 1739-1 at 1-2; Doc. No. 1761 at
2 1.) First, Defendant contended that the sentence he received containing a “career offender”
3 enhancement is grossly disproportionate to the sentence he would have received had he
4 been sentenced today following the passage of the First Step Act. (Id.) Second, Defendant
5 argued that his age and pre-existing medical conditions place him at an increased risk of
6 serious illness or death should he contract COVID-19. (Id. at 2.)

7 On April 17, 2023, the Court denied Defendant’s September 22, 2022 motion for
8 compassionate release. (Doc. No. 1764.) In the order, the Court concluded that there are
9 no “extraordinary and compelling reasons” that would warrant a sentencing reduction.
10 (See id. at 5-11, 14.) As to Defendant’s argument regarding the First Step Act, the Court
11 explained that the argument failed because “even if the Court had sentenced Defendant
12 after the passage of the First Step Act in 2018, he still would have qualified for a “career
13 offender” enhancement under § 4B1.1(b)(1) resulting in an adjusted offense level of 37,
14 and, therefore, the Court would have made the exact same sentencing calculations that it
15 did in determining his sentence. (See id. at 5-11.) As to Defendant’s argument regarding
16 the COVID-19 pandemic, the Court noted that Defendant has received consistent treatment
17 for his medical conditions, received both doses of the Pfizer COVID-19 vaccine along with
18 the Moderna booster, and that Defendant had contracted and recovered from COVID-19.
19 (Id. at 11.) Thus, the Court concluded that Defendant’s pre-existing medical conditions
20 coupled with the COVID-19 pandemic are not an extraordinary and compelling reason to
21 reduce his sentence. (Id.) In addition, the Court denied Defendant’s September 22, 2022
22 motion for compassionate release on the additional ground that after considering and
23 weighing the § 3553(a) factors, the requested sentencing reduction is not warranted under
24 the particular circumstances of Defendant’s case. (See id. at 12-14.)

25 On May 8, 2023, Defendant appealed the Court’s denial of his September 22, 2022
26 motion for compassionate release to the Ninth Circuit. (Doc. No. 1765.) Defendant’s
27 appeal of his September 22, 2022 motion for compassionate release is currently pending
28

before the Ninth Circuit. By the present motion, Defendant moves a second time pursuant to 18 U.S.C. § 3582(c)(1)(A) to reduce his sentence of imprisonment. (Doc. No. 1768.)

Discussion

I. Legal Standards

“‘A federal court generally “may not modify a term of imprisonment once it has been imposed.”’” United States v. Aruda, 993 F.3d 797, 799 (9th Cir. 2021) (quoting Dillon v. United States, 560 U.S. 817, 819 (2010); 18 U.S.C. § 3582(c)); accord United States v. Tadio, 663 F.3d 1042, 1046 (9th Cir. 2011); see also United States v. Barragan-Mendoza, 174 F.3d 1024, 1028 (9th Cir. 1999) (“[D]istrict courts do not have ‘inherent authority’ to reconsider sentencing orders.”). “But this general rule is subject to several exceptions.” United States v. Keller, 2 F.4th 1278, 1281 (9th Cir. 2021). One of those exceptions is the compassionate release provision in 18 U.S.C. § 3582(c)(1)(A). See Aruda, 993 F.3d at 799; United States v. Wright, 46 F.4th 938, 944 (9th Cir. 2022).

Section 3582(c)(1)(A) provides:

(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant 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, whichever is earlier, 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; or

...

1 and that such a reduction is consistent with applicable policy
2 statements issued by the Sentencing Commission

3 18 U.S.C. § 3582(c)(1)(A); accord Aruda, 993 F.3d at 799–800.

4 When as here a defendant moves for compassionate release under §
5 3582(c)(1)(A)(i), a district court “may reduce his term of imprisonment if four conditions
6 are met: (1) the defendant exhausted administrative remedies; (2) ‘extraordinary and
7 compelling reasons’ warrant a sentence reduction; (3) a sentence reduction is ‘consistent
8 with applicable policy statements’ issued by the U.S. Sentencing Commission; and (4) the
9 district court considered the factors set forth in 18 U.S.C. § 3553(a).” United States v.
10 Chen, 48 F.4th 1092, 1094–95 (9th Cir. 2022); see Wright, 46 F.4th at 945. “Although a
11 district court must conclude that a defendant satisfies all [these] predicates before granting
12 a motion for compassionate release, it may deny compassionate release if a defendant fails
13 to satisfy any of these grounds.” Wright, 46 F.4th at 945 (citing Keller, 2 F.4th at 1284).

14 The Ninth Circuit has explained that because “compassionate release derogates from
15 the principle of finality, it is a ‘narrow’ remedy.” Id. at 944 (citing Freeman v. United
16 States, 564 U.S. 522, 526 (2011)). Further, a district court’s “disposition of a
17 compassionate release motion ‘is discretionary, not mandatory.’” Id. at 945 (quoting
18 United States v. Jones, 980 F.3d 1098, 1106 (6th Cir. 2020)). In addition, “[a]s the movant,
19 Defendant bears the burden of establishing that he is eligible for a sentence reduction.”
20 United States v. Grummer, 519 F. Supp. 3d 760, 762 (S.D. Cal. 2021) (citing United States
21 v. Jones, 836 F.3d 896, 899 (8th Cir. 2016)); see, e.g., Wright, 46 F.4th at 951 (“it was
22 [defendant]’s burden to establish his eligibility for compassionate release”).

23 **II. Analysis**

24 **A. Section 3553(a) Factors**

25 In considering a motion for compassionate release, a district court “must consider
26 and weigh the factors set forth in 18 U.S.C. § 3553(a) to decide whether the requested
27 sentence reduction is warranted ‘under the particular circumstances of the case.’” Wright,
28 46 F.4th at 945. The § 3553(a) factors “include, among other things: (1) the defendant’s

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