UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. DONNIE BRYANT, Defendant.	Case No.: 2:06-cr-00234-GMN-GWF-1 **ORDER DENYING MOTION FOR SENTENCE REDUCTION**

Pending before the Court is Defendant Donnie Bryant's Renewed Motion for Sentence Reduction ("MSR") under 18 U.S.C. § 3582(c)(1)(A)(i), (ECF No. 877). The Government filed a Response, (ECF No. 883), to which Defendant filed a Reply, (ECF No. 884).

For the reasons discussed below, the Court **DENIES** Defendant's Motion for Sentence Reduction because he has not met his burden of showing extraordinary and compelling reasons warranting such a reduction or that the 18 U.S.C. § 3553(a) factors favor a reduction.

I. BACKGROUND

The Court incorporates the background and procedural history of this case from its Order Granting in Part and Denying in Part Defendant's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255. (Order 1:15–4:5, ECF No. 838). In short, in 2008, Defendant was convicted on several counts of Violent Crimes in Aid of Racketeering Activity ("VICAR") in violation of 18 U.S.C. § 1959 and Use of a Firearm During a Crime of Violence in violation of 18 U.S.C. § 924(c) for acts he committed when he was 16. (J., ECF No. 18). Defendant was initially sentenced to life imprisonment for the VICAR murder counts, plus an additional 50 years for his firearm offenses. (*Id.*). Defendant's judgment of conviction has been amended several times following his sentence. (First Am. J., ECF No. 617); (Second Am. J.,

ECF No. 694); (Third Am. J., ECF No. 828); (Fourth Am. J., ECF No. 840). Defendant is now sentenced to 70 years imprisonment for his VICAR murder counts and firearm offenses. (*See generally* Fourth Am. J.). Defendant filed his First MSR, (ECF No. 849), which the Court denied without prejudice. (Order, ECF No. 865). The Court gave Defendant leave to file another motion for sentence reduction which remedied the deficiencies identified in its Order. (*Id.*). Defendant then filed the instant Renewed MSR, (ECF No. 877).

II. LEGAL STANDARD

Under 18 U.S.C. § 3582(c)(1)(A), a court may, in certain circumstances, grant a defendant's motion to modify his or her term of imprisonment. Before filing such a motion, the defendant must first petition the Bureau of Prisons ("BOP") for compassionate release. *Id.* A court may grant the defendant's motion for a modification in sentence only if the motion was filed "after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf" or after thirty (30) days have lapsed "from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." *Id.*

If the exhaustion requirement is met, a court may modify or reduce the defendant's term of imprisonment "after considering the factors set forth in [18 U.S.C.] section 3553(a)]" if the Court finds, as relevant here, that "extraordinary and compelling reasons warrant such a reduction" and "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.* As the movant, the defendant bears the burden to establish that he is eligible for compassionate release. *See United States v. Wright*, 46 F.4th 938, 951 (9th Cir. 2022) (explaining it is the "[defendant's] burden to establish his eligibility for compassionate release").

The Sentencing Commission has recently passed guidance as to when "extraordinary and compelling reasons" exist for compassionate release. U.S.S.G. § 1B1.13(b). Such circumstances include, among others: (1) the medical circumstances of the defendant, (2) the

advanced age of the defendant resulting in "a serious deterioration in physical or mental health," (3)"[t]he death or incapacitation of the caregiver of the defendant's minor child," (4) the defendant, while in custody was the victim of sexual or physical abuse, or (5) "other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4)." *Id.*

III. DISCUSSION

The Government does not dispute that Defendant has exhausted his administrative remedies. (*See generally* Resp., ECF No. 877). As such, the Court turns to whether Defendant has shown extraordinary and compelling reasons warranting a sentence reduction. Here, Defendant argues that a sentence reduction is warranted because: (1) there is a sentencing disparity between the sentence he received and the sentence he would likely receive under present sentencing law; (2) there is an impermissible sentencing disparity between his sentence and that of his codefendant Johnathon Toliver, especially when considering Defendant's juvenile status at the time of his offense; and (3) he received ineffective assistance of counsel.[1] (*See* Renewed MSR). The Court examines each reason in turn.

///

///

///

---

[1] Defendant also requests that the Court recalculate his criminal history score to remove two points that he contends were improperly added under U.S.S.G. § 4A1.1(d). (Renewed MSR 16:3–7). U.S.S.G. § 4A1.1(d) provides that two points should be added to the defendant's criminal history score "if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status." It is true that Defendant committed the instant offense while under supervised release for his 2004 conviction of Violent Crimes in Aid of Racketeering Activity (Murder and Conspiracy to Commit Murder). (ECF No. 878-1, SEALED PSR ¶ 85). However, in calculating Defendant's criminal history score, his PSR did not add any criminal history points for committing this offense while under supervised release. (*See generally* PSR ¶ 87). Instead, Defendant was assigned four criminal history points for three prior convictions. (*Id.*). Accordingly, the Court declines to recalculate his criminal history score.

A. Sentencing Disparity Following Passage of the First Step Act ("FSA")

First, Defendant argues that a sentence reduction is warranted because his sentence was impermissibly "stacked" as to his convictions under 18 U.S.C. § 924(c). (Renewed MSR 8:18–13:7). The Government counters Defendant's sentence was not stacked, as each of his § 924(c) convictions received only a ten-year mandatory minimum sentence under § 924(c)(1)(A)(iii) because he discharged a firearm during the commission of a crime of violence. (Resp. 4:3–24).

Prior to the FSA, prosecutors were permitted to "stack" multiple counts of § 924(c) firearm violations, which resulted in defendants without previous convictions being charged for both a first offense—carrying a five-year mandatory minimum—and a "second or subsequent offense" —carrying a mandatory 20 or 25-year sentence, to be served consecutively—in the same indictment. *United States v. Jones*, 482 F. Supp. 3d 969, 978 (N.D. Cal. 2020) (citing *Deal v. United States*, 508 U.S. 129, 132 (1993)). Thus, someone convicted of two § 924(c) counts in a single offense automatically faced a minimum sentence of 25 to 30 years.

In 2018, Congress enacted the FSA. Section 403(a) of the FSA revised § 924(c) by eliminating the 25-year stacking provision for a "second or subsequent count of conviction" under § 924(c). Now, the 25-year mandatory-minimum sentence applies for a second § 924(c) conviction only if the defendant has a prior § 924(c) conviction that has become final.

The FSA's amendments to "stacking" do not impact Defendant's sentence because he is not serving a "stacked" sentence. Defendant "was not convicted of violating § 924(c) once in three different ways, but of violating § 924(c) three times." *United States v. Charley*, 417 Fed. App'x 627, 629 (9th Cir. 2011). Specifically, Defendant's convictions include three separate violations of § 924(c)(1)(A)(iii) for discharging a firearm against three separate individuals. (PSR at 2). Each of the three violation were treated as a first offense, not a second or third offense, and the mandatory sentence for a first offense is a "term of imprisonment of not less than 10 years." 18 U.S.C. § 924(c)(1)(A)(iii). Thus, if the Court sentenced Defendant on the

same charges today, it would have no choice but to impose the same three ten-year terms, all consecutive to each other. *See* 18 U.S.C. § 924(c)(1)(D) (requiring the imposition of consecutive sentences). The Court recognizes the severity of Defendant's sentence, however its length is "largely driven not by outdated stacking laws, but by the plain language of [§] 924(c)." *United States v. Castillo*, No. 03-cr-979, 2021 WL 268638, at *4 (S.D.N.Y. Jan. 27, 2021). The statute requires today—as it did when Defendant was resentenced—a ten-year mandatory minimum on each of the charges. Accordingly, Defendant has not shown he is eligible for a sentence reduction on this basis. *See Wright*, 46 F.4th at 951.

B. Impermissible Sentencing Disparity Between Codefendants and Defendant's Juvenile Status

Second, Defendant argues a sentence reduction is warranted because his sentence is double that of his-codefendant Johnathon Toliver. (Renewed MSR 13:8–15:23). Specifically, Toliver was re-sentenced in 2018 to 420 months, or 35 years of imprisonment as opposed to Defendant's 70-year sentence. (*Id.*). Defendant contends that this disparity is especially unwarranted because he was juvenile at the time of his offense, while Toliver was an adult. (*Id.*).

At the outset, Defendant's arguments blur his juvenile status contention with the contention that a sentence reduction is warranted because of the sentencing disparity between him and Toliver. In the Court's view, these are two separate issues. The Court begins by examining whether the sentencing disparity between Defendant and Toliver warrants a reduction in Defendant's sentence.

1. Sentencing Disparity Between Defendant and Toliver

Defendant contends that the sentencing disparity exists between him and Toliver warrants a sentence reduction because "Toliver was convicted in the same jury trial" but "has half the sentence of [Defendant] . . . ." (Reply 5:3–5, ECF No. 884).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.