FILED
United States Court of Appeals
Tenth Circuit

August 11, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN MATA-SOTO,

Defendant - Appellant.

No. 20-3223
(D.C. No. 2:08-CR-20160-KHV-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **CARSON**, Circuit Judges.

Juan Mata-Soto appeals pro se[1] from the dismissal of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] We liberally construe Mata-Soto's pro se materials but do not act as his advocate.

I

In 2009, Mata-Soto pleaded guilty to conspiring to distribute and possess with intent to distribute 50 grams or more of methamphetamine. The statutory sentencing range was ten years to life in prison. 21 U.S.C. § 841(b)(1)(A)(viii). The district court attributed 78.93 kilograms of methamphetamine to Mata-Soto, and, based on a total offense level of 43 and a criminal history category of I, determined the recommended guideline range was life in prison. The district court sentenced Mata-Soto accordingly.

Since his sentencing, Mata-Soto has repeatedly and unsuccessfully challenged his conviction and sentence. Most recently, in the wake of the First Step Act of 2018, Pub. L. No., 115-391, 132 Stat. 5194, he filed a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). That provision authorizes the district court to reduce a defendant's sentence if, after considering the applicable 18 U.S.C. § 3553(a) factors, the court concludes that "extraordinary and compelling reasons warrant such a reduction" and the "reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i). Previously, only the Director of the Bureau of Prisons (BOP) could seek a sentence reduction under § 3582(c)(1)(A), but now the First Step Act authorizes defendants to file a motion on their own behalf. *See United States v. McGee*, 992 F.3d 1035, 1041-42 (10th Cir. 2021). A defendant may bring a § 3582(c) motion after he "has fully exhausted all administrative rights to appeal a failure of the [BOP] 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." 28 U.S.C. § 3582(c)(1)(A).[2] But because the Sentencing Commission promulgated the current version of the relevant policy statement, U.S.S.G. § 1B1.13, before the First Step Act was enacted and has not amended it since, § 1B1.13 is "applicable" only to motions filed by the BOP, not to motions brought by defendants.[3] *See McGee*, 992 F.3d at 1048-50.

Mata-Soto claimed his life sentence under 21 U.S.C. § 841(b)(1)(A) exceeded the 20-year statutory maximum term under 21 U.S.C. § 841(b)(1)(C). He also claimed he was rehabilitated and at risk of contracting COVID-19 in prison. Rejecting these arguments, the district recognized that U.S.S.G. § 1B1.13 had not been amended since the First Step Act was enacted. Nonetheless, the court evaluated Mata-Soto's proffered grounds for release under § 1B1.13 and concluded that none qualified for relief under that provision. Significantly, however, the court also determined that it had independent authority, apart from § 1B1.13, to decide for itself whether there were extraordinary and compelling reasons warranting release. The court proceeded to define "extraordinary and compelling reasons," and, based on its definition, concluded that Mata-Soto's proffered grounds for release were not, either

[2] The district court determined that Mata-Soto satisfied the exhaustion requirement.

[3] Under § 1B1.13, extraordinary and compelling reasons warranting release may exist based on a defendant's medical condition, age, family circumstances, or when the BOP finds other reasons, either alone or in combination with the foregoing reasons. *See* U.S. Sent'g Guidelines Manual § 1B1.13, cmt. n.1 (U.S. Sent'g Comm'n 2018).

individually or collectively, extraordinary and compelling reasons. Further, the court ruled that even if he had established such reasons for release, the court still would deny relief based on its consideration of the § 3553(a) factors. Consequently, the district court dismissed the motion, and Mata-Soto appealed.

II

A. Timeliness of Notice of Appeal

Before addressing the merits, we consider the timeliness of Mata-Soto's notice of appeal. The district court dismissed the § 3582(c) motion on October 8, 2020. Under Federal Rule of Appellate Procedure 4(b)(1)(A), Mata-Soto had 14 days, until October 22, 2020, to file his notice of appeal. *See United States v. Randall*, 666 F.3d 1238, 1240 (10th Cir. 2011) (recognizing the denial of a § 3582(c) motion involves a criminal matter governed by Rule 4(b)). Mata-Soto's notice of appeal was not filed until November 2, 2020, so it was late.

However, the 14-day deadline is not jurisdictional; it is an "inflexible claim-processing rule" that we must enforce when the government properly invokes it. *Id.* at 1241 (internal quotation marks omitted). Although we have discretion to invoke the rule *sua sponte*, "this power is limited and should not be invoked when judicial resources and administration are not implicated and the delay has not been inordinate." *Id.* (internal quotation marks omitted). In *Randall*, the defendant filed an untimely notice of appeal but stated he did not receive the order being appealed until the day his notice was due. *See id.* The government did not invoke Rule 4(b), and we reasoned that if the defendant truthfully stated when he received the order

being appealed, he might be able to show good cause for an extension under Rule 4(b)(4) on remand. *See id.* Under those circumstances, we elected to consider the appeal.

This case is similar to *Randall*. The district court dismissed the § 3582(c) motion on October 8, but Mata-Soto stated he did not receive the order until October 15. He therefore placed his notice of appeal in the prison mail system on October 27, and its envelope is post-marked October 28, which would be within 14 days of the date he said he received the court's order if his statement is truthful. The government has not invoked Rule 4(b) and instead has elected not to file a response brief. Given these circumstances, we decline to invoke Rule 4(b), and we proceed to the merits.

B. Merits

We review a district court's ruling on a motion under the First Step Act for an abuse of discretion. *See United States v. Mannie*, 971 F.3d 1145, 1147-48, 1154-55 (10th Cir. 2020) (reviewing disposition of a § 3582(c)(1)(B) motion for abuse of discretion); *United States v. Williams*, 848 F. App'x 810, 812 (10th Cir. 2021) (reviewing disposition of a § 3582(c)(1)(A)(i) motion for abuse of discretion).[4] "A district court abuses its discretion when it relies on an incorrect conclusion of law or a clearly erroneous finding of fact." *United States v. Piper*, 839 F.3d 1261, 1265 (10th Cir. 2016) (internal quotation marks omitted).

[4] We may cite unpublished decisions for their persuasive value. *See* 10th Cir. R. 32.1(A).

We recently outlined a three-step analysis for district courts to apply when evaluating motions for compassionate release under § 3582(c)(1)(A). At step one, the court must determine whether extraordinary and compelling reasons warrant a reduced sentence. *McGee*, 992 F.3d at 1042. At step two, the court must determine whether a reduction is consistent with any applicable policy statement issued by the Sentencing Commission. *Id.* And at step three, the court must determine, after considering applicable sentencing factors under § 3553(a), whether, in the court's discretion, a reduction authorized under steps one and two is warranted under the circumstances of the case. *Id.*

Consistent with step one, the district court determined that Mata-Soto failed to establish extraordinary and compelling reasons for reducing his sentence. Mata-Soto contends the district court incorrectly relied on U.S.S.G. § 1B1.13 to reach its conclusion. As explained above, the district court did consider § 1B1.13 as the relevant policy statement, and we have held that § 1B1.13 is "applicable" only to motions filed by the BOP, not to motions brought by defendants, due to the timing of its promulgation. *See McGee*, 992 F.3d at 1048-50. But notwithstanding the court's consideration of § 1B1.13, the court also recognized it had the independent authority to determine for itself whether extraordinary and compelling reasons warrant release. *See id.* at 1044. Exercising that authority, the district court determined there were no such reasons here. Thus, the court's analysis was not constrained by § 1B1.13, and any error in considering § 1B1.13 was harmless.

Mata-Soto next disputes the district court's substantive conclusion that he failed to establish extraordinary and compelling reasons for release. He insists there is a gross disparity between his life sentence under § 841(b)(1)(A) and the more lenient 20-year maximum term he says he should have received under § 841(b)(1)(C). He argued in the district court that because his indictment did not attribute a quantity of drugs to him, he should have been punished under § 841(b)(1)(C). But the district court correctly recognized the proper vehicle to raise that argument was a motion to vacate his conviction and sentence under 28 U.S.C. § 2255, not a compassionate-release motion under § 3582(c)(1)(A). *See United States v. Gay*, 771 F.3d 681, 686 (10th Cir. 2014) (noting that § 3582(c)(2) does not permit a collateral attack on a sentence, which must be brought on direct appeal or through a § 2255 motion). Moreover, Mata-Soto was not sentenced under § 841(b)(1)(C). He pleaded guilty to conspiring to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of §§ 841(a) and 846, which triggered the higher statutory range under § 841(b)(1)(A)(viii). He was sentenced accordingly. Nothing about this argument suggests a legal error.

Mata-Soto also cited his successful rehabilitation efforts, but the district court correctly determined that rehabilitation alone could not constitute an extraordinary and compelling reason warranting release. *See* 28 U.S.C. § 994(t) ("Rehabilitation . . . alone shall not be considered an extraordinary and compelling reason.").

Additionally, Mata-Soto claimed he was at risk of contracting COVID-19. The district court determined, however, that at age 32, he was relatively young, he

had no medical conditions that put him at greater risk of severe illness, and he failed to show that he was at greater risk in prison than if he were released to immigration officials and detained until he was removed to Mexico. Under these circumstances, the court concluded his risk of contracting COVID-19 was not an extraordinary and compelling reason for release. Mata-Soto disagrees with this and the court's other conclusions, but he does not show an abuse of discretion.

Because Mata-Soto failed to show an extraordinary and compelling reason for release, the district court was under no obligation to further consider the motion. *See McGee*, 992 F.3d at 1043 ("[D]istrict courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others." (internal quotation marks omitted)). Nonetheless, consistent with step three, the district court proceeded to evaluate the § 3553(a) factors and concluded that even if Mata-Soto had established extraordinary and compelling reasons warranting release, the court would still deny his motion based on the § 3553(a) factors. The court explained that Mata-Soto committed a significant drug-trafficking crime for which he was responsible for 78.93 kilograms of methamphetamine. The court also observed that he had served only 12 years of a life sentence, he possessed a firearm during his commission of the offense, he was the manager or supervisor of a multi-person conspiracy, he threatened to harm the family of a co-defendant, and his total offense level of 43 did not reflect his actual offense level of 45, which exceeded the maximum level of 43 under the Sentencing Guidelines. The court weighed these considerations against his efforts at

rehabilitation, recognizing that he had participated in various BOP programs, and concluded that the § 3553(a) factors did not support a reduced sentence.

Mata-Soto contends the district court did not account for sentencing disparities or mitigating circumstances such as his successful rehabilitation efforts, his character traits, and the non-violent nature of his offense. But he cites nothing to support his contention that the court failed to account for sentencing disparities. *Cf. Piper*, 839 F.3d at 1267 ("We have . . . found no basis to impose upon the district court a requirement to address every nonfrivolous, material argument raised by the defendant in a § 3582(c)(2) proceeding." (internal quotation marks omitted)). Moreover, § 3553(a)(6) aims "to avoid unwarranted sentence disparities among defendants with *similar records* who have been found guilty of *similar conduct*." 18 U.S.C. § 3553(a)(6) (emphasis added). Mata-Soto asserts some defendants convicted of dissimilar crimes such as murder, sexual assault, and kidnapping have received lower sentences than he did and that other defendants with dissimilar circumstances have been granted compassionate release. But he does not refer us to any disparity involving a defendant with a similar record and similar conduct.

As for mitigating circumstances, the district court accounted for Mata-Soto's progress made toward rehabilitation. The court also considered his character traits and the nature of the offense, but rather than view these as positive factors, the court indicated that a sentence of time-served would not reflect the gravity of the offense or the need both for deterrence and to protect the public. The district court explained that Mata-Soto committed a significant drug-trafficking offense, he was a supervisor

or manager of a conspiracy, he possessed a firearm, and he threatened to harm a co-defendant's family. The court clearly viewed these factors as weighing against a sentence reduction. We conclude the district court did not abuse its discretion.

III

The district court's decision is affirmed. Mata-Soto's motion to proceed on appeal without prepayment of fees is granted.

Entered for the Court

Mary Beck Briscoe
Circuit Judge