FILED
United States Court of Appeals
Tenth Circuit

August 9, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS L. QUINN,

Defendant - Appellant.

No. 22-3262
(D.C. No. 2:10-CR-20129-KHV-3)
(D. Kan.)

ORDER AND JUDGMENT*

Before **McHUGH**, **MURPHY**, and **CARSON**, Circuit Judges.

Defendant Marcus L. Quinn, a pro se federal prisoner, appeals the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. We also deny Defendant's request to proceed *in forma pauperis*.

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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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I.

In 2011, a jury found Defendant guilty of multiple drug-related crimes. Defendant's offense level was 42, with a criminal history category III, which resulted in a guideline sentencing range of 360 months to life in prison. On January 23, 2012, the district court sentenced Defendant to 360 months in prison. Almost ten years later, following Amendments 750 and 782 to the Sentencing Guidelines, the district court reduced his offense level to 38 and sentence to 292 months. Defendant's projected release is October 19, 2030.

On July 5, 2022, Defendant moved for compassionate release under the Fair Sentencing Act. See 18 U.S.C. § 3582(c)(1)(A)(i). The government responded. The district court denied the motion because Defendant did not demonstrate an "extraordinary and compelling" reason for sentence reduction and because the 18 U.S.C. § 3553(a) factors did not support reduction. Defendant appeals.

II.

We review the district court's decision to deny relief under § 3582(c)(1)(A) for an abuse of discretion. United States v. Hemmelgarn, 15 F.4th 1027, 1031 (10th Cir. 2021) (citing United States v. Williams, 848 F. App'x 810, 812 (10th Cir. 2021) (unpublished) (collecting cases)). Under this standard, we will uphold the district court's ruling unless it relied 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).

A district court may grant a motion for compassionate release if a defendant meets three requirements: (1) extraordinary and compelling reasons warrant a sentence

reduction; (2) such a reduction reflects the applicable policy statements issued by the Sentencing Commission; and (3) the factors set forth in 18 U.S.C. § 3553(a) support early release. 18 U.S.C. § 3582(c)(1)(A)(i); United States v. McGee, 992 F.3d 1035, 1042 (10th Cir. 2021). To date, the Sentencing Commission has not issued an "applicable" policy statement for motions for compassionate release filed by defendants. United States v. Maumau, 993 F.3d 821, 836–37 (10th Cir. 2021); McGee, 992 F.3d at 1049–50. So, at this time, the second requirement does not apply. See id. If either the first or third requirements are lacking, however, the district court may deny the motion. McGee, 992 F.3d at 1043 (citing United States v. Elias, 984 F.3d 516, 519 (6th Cir. 2021)).

III.

On appeal, Defendant asserts that we should reduce his sentence because he presented extraordinary and compelling reasons to the district court. He argues that his sentence is too long and that the proposed Eliminating a Quantifiably Unjust Application of the Law Act of 2021 ("EQUAL Act") entitles him to a reduction.[1]

Turning first to Defendant's argument that his sentence is too long; he suggests that his current sentence of 292 months is not the "low end" of the guidelines. Instead, he says "[t]he low end would be at 235." But Defendant provides no basis on which we could find an abuse of discretion. Indeed, Defendant

[1] The House passed the EQUAL Act in 2021 but, as was the case when the district court issued its decision, the EQUAL Act still sits in the Senate Committee on the Judiciary. If enacted, the EQUAL Act would reduce the crack cocaine/powder cocaine ratio from 18:1 to 1:1. See EQUAL Act, S. 524, 118th Cong. (2023).

points only to the Fair Sentencing Act, which the district court already considered in reducing his offense level from 42 to 38 (and his sentence from 360 months to 292 months). And his current 292-month sentence is the bottom of the amended guideline range of 292 to 365 months. Defendant does not show that he is entitled to another reduction—and the district court did not abuse its discretion in rejecting a similar argument.[2]

Defendant also cites the EQUAL Act as an extraordinary and compelling reason for release. The district court rejected this argument, explaining that "[p]roposed legislation by itself is insufficient to grant wholesale relief to all defendants who could potentially benefit from such legislation." We agree. Although courts can consider changes in law, they are "not required to be persuaded by every argument parties make." Concepcion v. United States, 142 S. Ct. 2389, 2404 (2022). And, crucial here, Congress has not yet enacted the EQUAL Act.

Defendant does not address the EQUAL Act's legislative status—or case law discussing the same—in his brief. But, based on our review, courts have uniformly rejected arguments that the EQUAL Act is an extraordinary and compelling circumstance. See, e.g., United States v. Ford, No. CR 10-20129-07-KHV, 2023 WL 1434302, at *6 & n.5 (D. Kan. Feb. 1, 2023), aff'd, No. 23-3038, 2023 WL 3829725

[2] At the district court, Defendant argued his sentence was "draconian" and based on "offering a few tiny gatherings of Crack." He does not renew that precise argument here, but we address the argument he makes to us as it arguably follows from his district court argument and "we of course liberally construe *pro se* pleadings." Ogden v. San Juan Cnty., 32 F.3d 452, 455 (10th Cir. 1994).

(10th Cir. June 6, 2023); United States v. Morgan, No. 1:09-CR-20254, 2023 WL 2072084, at *3 (E.D. Mich. Feb. 17, 2023); Palermo v. United States, No. 1:17-CR-290-GHW, 2022 WL 14129780, at *2 (S.D.N.Y. Oct. 22, 2022); United States v. Sims, No. 19CR857NSR01, 2022 WL 3013111, at *4 (S.D.N.Y. July 29, 2022). Their rationale focuses on the bill's yet-to-be-enacted status, slippery-slope concerns, and justiciability issues. We agree that legislative predictions are not extraordinary and compelling reasons to reduce a sentence. The district court did not abuse its discretion.

Moreover, although Defendant does not cite the § 3553(a) factors upon appeal, the district court did not abuse its discretion in its evaluation of the § 3553(a) factors. "[W]eighing of the § 3553(a) factors is committed to the discretion of the district court" and we will not reverse unless the lower court made a "clear error of judgment." United States v. Hald, 8 F.4th 932, 949 (10th Cir. 2021) (citation omitted). The district court appropriately considered criminal history, deterrence, and protection of the public. We see no abuse in its weighing of the § 3553(a) factors.

In sum, the district court did not abuse its discretion in denying Defendant's motion for compassionate release under § 3582(c). We also deny Defendant's request to proceed *in forma pauperis*. Defendant has failed to show "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal."

DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991) (citing 28 U.S.C. § 1915(a)).

Entered for the Court

Joel M. Carson III
Circuit Judge