

ENTERED

August 26, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES,

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VS.

CRIMINAL ACTION NO.
H-17-116-2

STEPHEN E. STOCKMAN,

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR
COMPASSIONATE RELEASE**

Stephen E. Stockman, a federal prison inmate, asks the court to grant his motion for compassionate release and reduce his sentence to time served. (Docket Entry Nos. 463, 465). Stockman moved under 18 U.S.C. § 3582(c)(1)(A), relying on his susceptibility to severe symptoms from COVID-19 because of his underlying medical conditions. The court appointed the Federal Public Defender to represent Stockman in the matter. (Docket Entry No. 464). The government opposed the motion, Stockman replied, and the government filed a surreply. (Docket Entry Nos. 467, 469, 471).

Based on a careful consideration of the briefs, the record, and the applicable law, the court denies Stockman's motion for compassionate release. The reasons for this result are explained below.

I. Background

From 2010 to 2014, Stockman, a former member of the United States House of Representatives, used his position as an elected official in a scheme to obtain donations from wealthy individuals and organizations and divert those funds from their intended purpose for his personal use and to fund his political campaigns. (*See* Docket Entry No. 318). A jury found Stockman guilty of 23 counts of mail fraud, wire fraud, conspiracy to make conduit contributions

and false statements, making false statements, making excessive contributions, money laundering, and filing a false tax return. (Docket Entry No. 207). The district court sentenced Stockman to a 120-month prison sentence and a three-year supervised release term. (Docket Entry No. 329). The court also imposed restitution of \$1,014,718.51 and a \$2,300 special assessment. (*Id.*). Stockman’s conviction was affirmed by the United States Court of Appeals for the Fifth Circuit on January 10, 2020. *United States v. Stockman*, 947 F.3d 253 (5th Cir. 2020). Stockman has served approximately 28 months of his 120-month sentence. (Docket Entry No. 465 at 1).

II. The Legal Standard

After a defendant has been sentenced to a term of imprisonment, a court “may reduce the term” if, after considering the 18 U.S.C. § 3553(a) factors, the court finds that “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A); *see, e.g., United States v. Chambliss*, 948 F.3d 691, 692 (5th Cir. 2020) (the district court’s denial of compassionate release was not an abuse of discretion, although there was an extraordinary and compelling reason for sentence reduction, because the § 3553(a) factors weighed against release).

The factors listed under 18 U.S.C. § 3553(a) include:

- 1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- 2) the need for the sentence imposed to
 - (A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) afford adequate deterrence to criminal conduct;
 - (C) protect the public from further crimes of the defendant; and
 - (D) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- 3) the kinds of sentences available;
- 4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines;
- 5) any pertinent policy statement issued by the Sentencing Commission;
- 6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- 7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a) (summarized).

In addition to the § 3553(a) factors, the court must also determine whether there are extraordinary and compelling reasons that warrant a sentence reduction and whether the reduction is consistent with the Sentencing Commission’s policy statements. Section 1B1.13 of the Federal Sentencing Guidelines—“Reduction in Term of Imprisonment Under 18 U.S. C. § 3582(c)(1)(A) (Policy Statement)”—and the Application Notes are instructive.¹ “Extraordinary and compelling reasons” may exist under the following circumstances:

(A) Medical Condition of the Defendant—

- (i) The defendant is suffering from a terminal illness. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-state organ disease, and advanced dementia; or
- (ii) The defendant is suffering from a serious physical or medical condition; suffering from a serious functional or cognitive impairment; or experiencing deteriorating physical or mental health because of the aging process; and
- (iii) The illness, condition, or impairment 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.

¹ The § 1B1.13 provisions concerning individuals who are at least 70 years old are inapplicable; Stockman is 63 years old.

(B) Age of the Defendant – The defendant is at least 65 years old; is experiencing a serious deterioration in physical or mental health because of the aging process; and has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances –

(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children; or

(ii) The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons – As determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. 1B1.13 (summarized).²

III. Analysis

Stockman argued that his underlying preexisting conditions increase the risk of severe symptoms from a COVID-19 infection. Stockman is 63 years old. He has a history of asthma, diabetes, hypertension, obesity, osteoporosis, hyperlipidemia, and vitamin D deficiency. (Docket Entry No. 465 at 5). Stockman cited the high number of positive cases among both inmates and staff at FCI Beaumont Low to support his argument that “extraordinary and compelling reasons” exist for a sentence reduction. (*Id.* at 4–5). On August 7, 2020, Stockman informed the court that he had contracted COVID-19. (*Id.* at 1). On August 10, 2020, the Bureau of Prisons reported that Stockman had recovered. (Docket Entry No. 467 at 15).

² Courts differ on whether Application Note 1 remains binding after Congress passed the First Step Act. *Compare United States v. Cantu*, 423 F. Supp. 3d 345, 352 (S.D. Tex. 2019) (“U.S.S.G. § 1B1.13 cmt. n.1(D) no longer describes an appropriate use of sentence-modification provisions and is thus not part of the applicable policy statement binding the Court.”), with *United States v. Saldana*, No. 19-7057, 2020 WL 1486892, at *3 (10th Cir. Mar. 26, 2020) (the district court did not err by considering § 1B1.13 commentary when determining whether an “extraordinary and compelling reason” existed that warranted a sentence reduction).

Courts have found that an increased risk of COVID-19 infection or severe symptoms or effects because of an inmate's underlying conditions shows the "extraordinary and compelling reasons" necessary for a sentencing reduction under § 3582(c)(1)(A). *See, e.g., United States v. Ferguson*, No. CR H-12-600-4, 2020 WL 3632468, at *2 (S.D. Tex. July 3, 2020); *United States v. Johnson*, No. CR H-96-176, 2020 WL 3618682, at *3 (S.D. Tex. July 2, 2020). But when, as here, an inmate is infected and recovers, courts have found that those risks change and diminish. *See United States v. Baker*, No. CR 16-179, 2020 WL 4584195, at *4 (E.D. La. Aug. 10, 2020) ("While Baker suffers from medical conditions that place him at risk of serious illness of COVID-19 . . . , he did not become severely ill or develop life-threatening complications when he did in fact contract the virus, such that he would no longer be able to provide self-care while incarcerated."); *United States v. Neal*, No. CR 11-28, 2020 WL 4334792, at *1 (E.D. La. July 28, 2020) ("Courts have repeatedly found that defendants who contract COVID-19 and recover are not among those who fall within the guidelines or demonstrate 'extraordinary and compelling reasons,' meriting a reduction in their sentence."); *United States v. Wagner*, No. 4:18-CR-155 (1), 2020 WL 4034009, at *4 (E.D. Tex. July 15, 2020) ("It appears that the risks of complications or death due to COVID-19 that [the defendant] contends are extraordinary and compelling reasons for compassionate release are no longer germane."); *United States v. Gallegos*, No. 4:17-CR-568, 2020 WL 3403032, at *3 (S.D. Tex. June 19, 2020).

Stockman confirms that his symptoms have improved, but he argues that the possibility of reinfection and long-term health complications demonstrates continuing extraordinary and compelling reasons for release. (Docket Entry No. 465 at 11; Docket Entry No. 469 at 3). Stockman points out that "[h]is access to health care and his ability to make health care decisions are limited while he is incarcerated," arguing that he has not received the hydroxychloroquine

tablets that were prescribed to him when he was diagnosed with COVID-19, as well as other supplements and medical procedures that have been withheld or postponed due to his incarceration. (Docket Entry No. 465 at 11). But these reasons do not show that the Bureau of Prisons cannot, has nor, or will not effectively manage Stockman's health conditions or that Stockman cannot provide self-care now that he has recovered from COVID-19 without serious complications. As the government notes, and Stockman admits, the number of positive COVID-19 cases at FCI Beaumont Low is declining. (Docket Entry No. 467 at 19–20); *see also* BOP COVID-19 Resource Page, available at <https://www.bop.gov/coronavirus/> (last accessed Aug. 25, 2020).

Stockman also cites an “unremediated toxic mold problem” as an extraordinary and compelling reason for release because it “is likely to exacerbate the respiratory issues that Mr. Stockman suffers from.” (Docket Entry No. 469 at 4). Stockman claims that the mold problem has been present for more than 10 years. (*Id.* at 2). Before filing a compassionate release motion in federal court, a defendant must first exhaust administrative procedures. Under 18 U.S.C. § 3582, as amended by the First Step Act, the court may act

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.

18 U.S.C. § 3582(c)(1)(A). Stockman has not presented a request for sentence reduction because of the mold problem to the Bureau of Prisons. (*See* Docket Entry No. 471; *see also* Docket Entry No. 463 at 25 (explaining that Stockman's reduction in sentence was based on concerns about COVID-19)). Stockman cannot rely on his earlier motion to the Bureau of Prisons to satisfy the exhaustion requirement. *See United States v. Samak*, No. CR 91-189, 2020 WL 2473780, at *2

(E.D. La. May 13, 2020) (“For a petitioner’s request to the warden to exhaust administrative remedies in accordance with § 3582(c)(1)(A), the request must be premised on the same facts alleged in the corresponding motion filed with the court.”).

Even if Stockman had satisfied the exhaustion requirement, the record does not show that the mold problem has caused such serious health issues for Stockman that he cannot provide self-care, or that the Bureau of Prisons is unable to adequately manage his needs. (*See* Docket Entry No. 469 at 2).

Stockman has not demonstrated extraordinary and compelling reasons for release. His motion for compassionate release is denied.

IV. Conclusion

Stockman’s motion for compassionate release, (Docket Entry No. 463), is denied.

SIGNED on August 26, 2020, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge