

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

HUSSAIN,

Defendant.

Case No. [16-cr-00462-CRB-1](#)

**ORDER DENYING MOTION TO
REDUCE SENTENCE**

Sushovan Hussain has moved for a reduced sentence under 18 U.S.C. § 3582(c)(1)(A). See generally Mot. (dkt. 624). The Court determines that Mr. Hussain has not satisfied the requirements of that statute or the applicable Sentencing Commission policy statement. See U.S.S.G. § 1B1.13 cmt. n.1. Mr. Hussain’s motion for a reduced sentence is therefore denied. The Court determines that there is no need for oral argument.

I. BACKGROUND

Mr. Hussain was a resident of the United Kingdom who served as Chief Financial Officer of Autonomy Corporation plc from June 2001 until November 2011. See Superseding Indictment (dkt. 52) at 3–4. In August 2011, Hewlett-Packard Company (HP) agreed to acquire Autonomy for approximately \$11 billion. Id. at 2. On November 10, 2016, Mr. Hussain was indicted on various charges stemming from an alleged “fraudulent scheme to deceive purchasers and sellers of Autonomy securities and HP about the true performance of Autonomy’s business, its financial condition, and its prospects for growth.” Indictment (dkt. 51) at 4. On April 30, 2018, a jury found Mr. Hussain guilty of 16 criminal counts: one count of conspiracy to commit wire fraud under 18 U.S.C. § 1349, fourteen counts of wire fraud under 18 U.S.C. § 1343, and one count of securities fraud

1 under 18 U.S.C. § 1348. See Jury Verdict (dkt. 394); Judgment (dkt. 560) at 1.

2 On May 4, 2019, the Court ordered Mr. Hussain to remain in the Northern District
3 of California and to wear a GPS monitoring device. See Order Setting Conditions of
4 Release (dkt. 400). On May 13, 2019, the Court sentenced Mr. Hussain to 60 months'
5 imprisonment, three years of supervised release, a \$4 million fine, and \$6.1 million in
6 forfeiture. See Judgment at 2–3, 6–7. The Bureau of Prisons designated Mr. Hussain to
7 FCI Allenwood Low in White Deer, Pennsylvania. Id. at 2. Mr. Hussain appealed his
8 convictions, and the Ninth Circuit granted his request for bail pending appeal. See Ninth
9 Circuit Order (dkt. 616). On August 26, 2020, the Ninth Circuit affirmed his convictions
10 and the Court's sentencing judgment. United States v. Hussain, 927 F.3d 1138 (9th Cir.
11 2020).

12 Because the Ninth Circuit granted Mr. Hussain's request for bail pending appeal,
13 see Ninth Circuit Order (dkt. 616), Mr. Hussain's custodial term has not yet begun.
14 Nonetheless, on September 11, 2020, he requested that the acting warden of FCI
15 Allenwood Low and the Regional Counsel for the Northeast Regional Office of the Bureau
16 of Prisons move for his sentence to be reduced under 18 U.S.C. § 3582(c)(1)(A)(i). Kecker
17 Decl. Exh. B (dkt. 624-3). The Bureau of Prisons denied Mr. Hussain's request because he
18 is not yet an inmate. Kecker Decl. Exh. C (dkt. 624-4). Mr. Hussain now moves the Court
19 to reduce his sentence under § 3582(c)(1)(A)(i). See Mot. at 16. He requests neither a
20 delayed reporting date nor an elimination of his entire custodial term. Id. at 3 n.5, 13.
21 Instead, he seeks "a reduction in the total number of months he must serve." Id. at 3 n.5.

22 **II. LEGAL STANDARD**

23 The Sentencing Reform Act of 1984, 18 U.S.C. § 3551 et seq., does not generally
24 permit federal courts to "modify a term of imprisonment once it has been imposed."
25 Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)).
26 Congress has provided certain exceptions to that rule. As relevant here, a court may
27 reduce a defendant's sentence under 18 U.S.C. § 3582(c)(1)(A)(i) if certain procedural
28 requirements are met and if "extraordinary and compelling reasons warrant such a

1 reduction.”

2 After the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, a defendant
3 may move for relief under § 3582(c)(1)(A) if the defendant satisfies the statute’s
4 exhaustion requirements. See First Step Act § 603(b)(1). A defendant may bring a
5 § 3582(c)(1)(A) motion only once he has “fully exhausted all administrative rights to
6 appeal a failure of the Bureau of Prisons” to bring the motion on his behalf, or after “the
7 lapse of 30 days from the receipt of such a request by the warden of the defendant’s
8 facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A).

9 A court may grant a § 3582(c)(1)(A)(i) motion to reduce a defendant’s sentence “if
10 it finds that . . . extraordinary and compelling reasons warrant such a reduction.”¹ But a
11 court does not have carte blanche to decide that new developments or ideas constitute such
12 reasons, because a sentence reduction under § 3582(c) must be “consistent with applicable
13 policy statements issued by the Sentencing Commission.” Id. § 3582(c)(1)(A); see also
14 Dillon, 560 U.S. at 819 (holding that the Sentencing Commission policy statement
15 applicable to 18 U.S.C. § 3582(c)(2) remains mandatory after United States v. Booker, 543
16 U.S. 220 (2005)).

17 The Sentencing Commission has enumerated circumstances constituting
18 “extraordinary and compelling reasons” to reduce a sentence. See U.S.S.G. § 1B1.13 cmt
19 n.1. All relate to a defendant’s individual characteristics or conditions—that is, some
20 combination of the defendant’s specific health, age, and family circumstances. See id. For
21 example, if the defendant suffers from “a terminal illness (i.e., a serious and advanced
22 illness with an end of life trajectory)” or “a serious physical or mental condition,
23 . . . serious functional or cognitive impairment, or . . . deteriorating physical or mental
24 health because of the aging process . . . that substantially diminishes the ability of the
25 defendant to provide self-care within the environment of a correctional facility and from
26 which he or she is not expected to recover,” the “extraordinary and compelling reasons”

27 _____
28 ¹ A court must also consider the sentencing factors set forth in 18 U.S.C. § 3553(a) “to the extent
that they are applicable.” 18 U.S.C. § 3582(c)(1)(A).

1 standard is satisfied. See U.S.S.G. § 1B1.13 cmt. n.1(A)(i)(i)–(ii). The standard is also
 2 satisfied if “[t]he defendant (i) is at least 65 years old; (ii) is experiencing a serious
 3 deterioration in physical or mental health because of the aging process; and (iii) has served
 4 at least 10 years or 75% of his or her term of imprisonment, whichever is less,” U.S.S.G.
 5 § 1B1.13 cmt. n.1(B), or in certain circumstances requiring the defendant to care for minor
 6 children or a spouse or registered partner, id. § 1B1.13 cmt. n.1(C). Finally, the standard is
 7 satisfied if, “[a]s determined by the Director of the Bureau of Prisons, there exists in the
 8 defendant’s case an extraordinary or compelling reason other than, or in combination
 9 with,” the above-described circumstances. U.S.S.G. § 1B1.13 cmt. n.1(D). No other
 10 circumstances qualify.

11 The Sentencing Commission has also directed that a court may reduce a sentence
 12 under § 3582(c)(1)(A) only if the court finds that “[t]he defendant is not a danger to the
 13 safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).”
 14 U.S.S.G. § 1B1.13(2). Section 3142(g), in turn, requires courts to “take into account” four
 15 factors when determining the defendant’s dangerousness: (1) “the nature and
 16 circumstances of the offense charged,” (2) “the weight of the evidence against the person,”
 17 (3) “the history and characteristics of the person,” and (4) “the nature and seriousness of
 18 the danger to any person or the community that would be posed by the person’s release.”
 19 18 U.S.C. § 3142(g).

20 **III. DISCUSSION**

21 Mr. Hussain has not satisfied these requirements. Although he has satisfied 18
 22 U.S.C. § 3582(c)(1)(A)’s exhaustion requirement, Mr. Hussain has not shown that
 23 extraordinary and compelling reasons warrant reducing his sentence.

24 **A. EXHAUSTION**

25 Mr. Hussain’s motion requires the Court to determine whether a defendant who has
 26 yet to begin his sentence may nonetheless satisfy § 3582(c)(1)(A)’s exhaustion
 27 requirement.

28 The Court may reduce a sentence under § 3582(c)(1)(A) only

1 upon motion of the Director of the Bureau of Prisons, or upon motion of the
 2 defendant after the defendant has exhausted all administrative rights to
 3 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.

4 18 U.S.C. § 3582(c)(1)(A). This language requires a defendant to exhaust his
 5 administrative rights before moving for relief; it does not expressly require a defendant to
 6 exhaust those rights while in custody. See id. Nor does the statute imply that the
 7 defendant must be in custody, as Mr. Hussain's actions show. Although not yet
 8 incarcerated at FCI Allenwood Low, Mr. Hussain was able to request that both the Bureau
 9 of Prisons and the "warden of [his] facility" move for relief on his behalf because his
 10 facility was designated when Mr. Hussain was sentenced. See Keker Decl. Exh. B, C.
 11 Because the Bureau of Prisons conclusively informed Mr. Hussain that it will not consider
 12 his request, see Keker Decl. Exh. C, he has exhausted his administrative rights. The statute
 13 requires nothing more.

14 The Court thus considers, and rejects, Mr. Hussain's motion on the merits.

15 **B. "EXTRAORDINARY AND COMPELLING REASONS"**

16 Mr. Hussain has not shown that "extraordinary and compelling reasons" warrant
 17 reducing his sentence. 18 U.S.C. § 3582(c)(1)(A). Mr. Hussain argues that, due to the
 18 COVID-19 pandemic, (1) imprisonment is more difficult now than when he was
 19 sentenced, (2) he has already endured "very real punishment" while unable to see his
 20 family or leave the Northern District of California, and (3) high infection rates in federal
 21 prisons, along with Mr. Hussain's asthma and high cholesterol, put him at increased risk of
 22 severe illness. Mot. at 11–14. The Court addresses each argument in turn.

23 Mr. Hussain's contention that COVID-19 has made life in prison more difficult
 24 does not fit within any "extraordinary and compelling" reason enumerated by the
 25 Sentencing Commission. See U.S.S.G. § 1B1.13 cmt. n.1. Indeed, this purported
 26 justification bears no resemblance to the circumstances identified in the policy statement,
 27 which focus on individualized characteristics and conditions. The same goes for Mr.
 28 Hussain's arguments about his time away from home and family; the policy statement

1 recognizes neither exile nor estrangement from family as an “extraordinary and
2 compelling” reason to reduce a sentence. These arguments amount to a request that the
3 Court resentence Mr. Hussain because his original sentence is, upon reflection, too severe.
4 Simply put, Congress has not authorized the Court to reduce a sentence on that basis.

5 Mr. Hussain’s argument that the Court may go beyond the Sentencing
6 Commission’s enumerated circumstances is meritless. He argues that the Court may
7 reduce his sentence if it finds “an extraordinary and compelling reason other than” those
8 the Sentencing Commission has identified. Mot. at 10 (citing U.S.S.G. § 1B1.13 cmt.
9 n.1(D)). But the specific language on which Mr. Hussain relies states only that
10 extraordinary and compelling reasons exist if, “[a]s determined by the Director of the
11 Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling
12 reason other than, or in combination with,” the other enumerated circumstances. U.S.S.G.
13 § 1B1.13 cmt. n.1(D) (emphasis added). Because the Court is not the Director of the
14 Bureau of Prisons, this catch-all language does not authorize the Court to do anything.²

15 Finally, Mr. Hussain’s medical conditions are not extraordinary and compelling
16 reasons to reduce his sentence. He points to difficulties that federal prisons have had
17 preventing COVID-19 outbreaks and argues that his asthma and high cholesterol place him
18 at an increased risk of severe illness or death if he contracts COVID-19 in prison. Mot. 11.
19 These circumstances do not warrant relief for three reasons.

20 First, Mr. Hussain’s conditions are not serious enough. The Probation Office’s
21 Presentence Investigation Report noted that Mr. Hussain (1) “suffers from mild asthma, for
22 which he has an inhaler, and for which he takes Salbutamol when he has difficulty
23 breathing,” and (2) “has elevated LDL cholesterol,” for which he did not take medication.
24 PSR (dkt. 427) ¶ 77. Mr. Hussain’s additional medical evidence, at most, establishes that

25
26 ² Even if the Court were authorized to reduce sentences based on a finding that a previously
27 imposed sentence is too severe, it would not do so here. Section 3582(c)(1)(A), as interpreted by
28 the Sentencing Commission, is sensibly focused on defendants’ individualized circumstances, not
circumstances shared by most inmates or members of the general public. And nothing about life
in prison, exile from home, or separation from family meaningfully sets Mr. Hussain apart from
any other defendant.

1 he suffers from moderate asthma that he can control by using inhalers. See Medical
2 Exhibits A, B (dkt. 623-2,623-3). The CDC has not identified high cholesterol as a factor
3 that puts a person at risk of severe illness from COVID-19. See CDC, “People with
4 Certain Medical Conditions,” updated Sept. 11, 2020, available at
5 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html)
6 [risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html) (last visited Oct. 6, 2020). And although the CDC has indicated that moderate
7 asthma “might” put a person at increased risk, id., Mr. Hussain’s medical records do not
8 state or otherwise indicate that Mr. Hussain will have difficulty controlling his asthma
9 while in prison, see Medical Exhibits A, B. Therefore, Mr. Hussain does not have “a
10 serious physical or mental condition . . . that substantially diminishes [his] ability . . . to
11 provide self-care within the environment of a correctional facility and from which [he] is
12 not expected to recover.” U.S.S.G. § 1B1.13 cmt. n.1(A)(ii)(I).

13 Second, Mr. Hussain’s facility has thus far successfully prevented any COVID-19
14 outbreaks. As of the date of this order, FCI Allenwood Low has zero active COVID-19
15 cases among inmates and staff. See BOP, “COVID-19 Cases,” updated Oct. 6, 2020,
16 available at <https://www.bop.gov/coronavirus/index.jsp> (last visited Oct. 6, 2020). One
17 inmate and one staff member have fully recovered. Id.

18 Third, even were the Court to credit Mr. Hussain’s purported health risks, the relief
19 he seeks would do nothing to lessen those risks. Mr. Hussain wisely acknowledges that
20 the Court would not fully eliminate his 60-month prison sentence and requests only that
21 the Court trim time off his sentence. But Mr. Hussain has not served a day in prison for
22 his serious offenses. Thus, a sentence reduction, if any, would be minor. Risks arising
23 from COVID-19 will probably be mitigated, if not eliminated, in the next few years. It
24 would make little sense for the Court to reduce Mr. Hussain’s sentence on medical grounds
25 that that may not exist when Mr. Hussain is released. And while serious medical
26 conditions could conceivably weigh in favor of a delayed reporting date, Mr. Hussain has
27 declined to seek such relief. Mot. at 13; Reply at 1 n.1.

1 **IV. CONCLUSION**

2 Because the Court concludes that Mr. Hussain has not shown that “extraordinary
3 and compelling reasons” warrant reducing his sentence, the Court need not consider
4 whether Mr. Hussain is a danger to the community under 18 U.S.C. § 3152(g) or whether
5 the sentencing factors set forth in 18 U.S.C. § 3553(a) weigh in favor of a reduced
6 sentence.

7 For the foregoing reasons, Mr. Hussain’s Motion for a Reduced Sentence is denied.

8 **IT IS SO ORDERED.**

9 Dated: October 6, 2020



10 _____
11 CHARLES R. BREYER
12 United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
Northern District of California