

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 20-CR-0088-CVE
v.)	
)	USM No.: 02516-509
BENJAMIN JAMES HAYFORD,)	
)	
Defendant.)	

ORDER

Before the Court is defendant’s motion for reduction of sentence (Dkt. # 45), filed on July 29, 2021. Defendant argues three factors justify a reduction of sentence. First, defendant argues he suffers from chronic asthma, chronic back pain, hepatic steatosis, hypercholesterolemia, hypertension, obesity (body mass index of 32.6), venous insufficiency, bipolar 1 disorder, major depressive and panic disorders, post-traumatic stress disorder, inherited increased susceptibility of venous thromboembolism, inherited increased susceptibility of developing type 2 diabetes, and immediate family history of cardiovascular disease, transient ischemic attack, and myopathy. Second, he maintains the high risk of contracting COVID-19 within Bureau of Prisons’ institutions due to overcrowding, the lack of ability to social distance and unsanitary conditions, combined with his medical problems, places him at a high risk for severe illness if COVID-19 is contracted. Third, defendant claims exceptional rehabilitative efforts while imprisoned. Defendant requests immediate release or release to home confinement for the duration of his sentence.

The Court has found that defendant has exhausted his administrative remedies giving the Court jurisdiction to consider his motion (Dkt. # 46). On September 14, 2021, plaintiff filed a response in opposition to defendant’s motion for sentence reduction (Dkt. # 48). Plaintiff argues that, although defendant’s medical conditions could qualify as an extraordinary and compelling

reason for release during the COVID-19 pandemic, records reflect that prior to filing his motion, he received both doses of the Moderna COVID-19 vaccine. Plaintiff further argues defendant's current physical health care level is level 1 – healthy/simple care, and care level 2 for mental health. Bureau of Prisons medical records reflect defendant suffers from hyperlipidemia, hypertension, and mild intermittent asthma, as well as mental health issues. Plaintiff argues that defendant is fully vaccinated against COVID-19 and this fact alone should negate his eligibility for compassionate release. Further, plaintiff advises that USP Leavenworth, where defendant is imprisoned, presents no significant COVID-19 risk as of the 1705 inmates, only one is currently positive for COVID-19. For the foregoing reasons, plaintiff asserts that defendant has failed to demonstrate his medical conditions present an extraordinary and compelling reason to reduce his sentence.

On September 30, 2021, defendant filed a reply to response to motion (Dkt. # 49). In his reply, defendant alleges the Bureau of Prisons has failed to properly manage the COVID-19 pandemic and routinely publishes false infection data. He restates his various medical conditions in greater detail and, although fully vaccinated, discusses the continued risk of serious illness should he contract COVID-19 or a more dangerous variant of the disease. He challenges plaintiff's conclusions that he is not at undue risk and that his various medical conditions, in conjunction with a confined environment, do indeed constitute an extraordinary and compelling reason to release him from custody. See Dkt. # 49, at 4-15. Defendant presented favorable § 3553(a) factors, discussed the Court's broad authority under § 3582, and listed several cases where the courts have, under similar circumstances, reduced sentence. See Dkt. # 49, at 15-26. Finally, defendant argues that his rehabilitative efforts deserve consideration toward his early release.

In considering defendant's motion, the Court has reviewed the three-part test adopted by the Tenth Circuit in United States v. Maumau, 993 F.3d at 831 (10th Cir. 2021) (citing United

States v. Jones, 980 F.3d 1098, 1107 (6th Cir. 2020)). Step one requires the Court to determine in its discretion, whether “extraordinary and compelling reasons” exist to warrant a sentence reduction. Step two requires that the Court find whether such reduction is consistent with applicable policy statements issued by the United States Sentencing Commission. Step three requires the Court to consider any applicable 18 U.S.C. § 3553(a) factors and determine whether the reduction authorized by steps one and two is warranted under the circumstances of the case. The Court must address all three steps when granting such motion. Maumau, 993 F.3d at 831 n.4 (citing United States v. Navarro, 986 F.3d 668, 670 (6th Cir. 2021)). See also United States v. McGee, 992 F.3d 1035 (10th Cir. 2021). However, because the policy statements of the Sentencing Commission have not been updated since enactment of the First Step Act, which amended 18 U.S.C. § 3582(c)(1)(A) to allow defendants to file motions for compassionate release directly with the Court, the existing policy statements are not applicable to motions filed directly by defendants. Maumau, 993 F.3d at 834. Further, when any of the three prerequisite steps are lacking, the Court may deny a compassionate release motion and does not need to address the other steps. The Court must address all three steps when granting such motion. Maumau, at 13 n.4. (citing United States v. Navarro, 986 F.3d 668, 670 (6th Cir. 2021)).

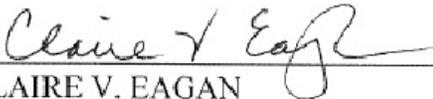
The Court has reviewed defendant’s presentence report, where defendant reported his health concerns included vascular issues, high blood pressure, high cholesterol, non-alcoholic related fatty liver disease, chronic back pain, cold weather induced asthma, and insomnia. He reported he was prescribed rosuvastatin, olmesartan, and hydroxyzine. Defendant further reported he suffered from major depressive and panic anxiety disorders, for which he was prescribed a service animal, alprazolam, and sertraline. See PSR ¶¶ 35, 36. The Court also reviewed the most recent Bureau of Prisons’ medical evaluations conducted of defendant from January to July 1, 2021. Reports confirm defendant is being treated for hyperlipidemia, hypertension, asthma,

bipolar disorder, and anxiety disorder. He recently ceased taking prescription medications buspirone and sertraline, but he continues to take lamotrigine for his mental health conditions. He is currently prescribed an albuterol inhaler for asthma, losartan for hypertension, and rosuvastatin for hyperlipidemia. He reports no discomfort, is stable and on sick call and chronic clinic care as needed. Defendant was administered his second Moderna COVID-19 vaccine on April 13, 2021. In addition, the Court is aware that at this time at USP Leavenworth, the institution where defendant is incarcerated, there is only one COVID-19 positive inmate and one positive staff member. This controlled infection rate suggests that the facility is complying with the Bureau of Prison's COVID-19 response plan, to include social distancing, surface sanitation, and availability of the COVID-19 vaccine. Although defendant suffers from multiple ailments that, according to the Centers of Disease Control, place him at a higher risk of severe response to COVID-19, the Court finds that defendant is not in jeopardy of serious complications should he contract the virus. This finding is based on defendant's comprehensive medical care, including frequent clinical contacts and prescription medication to control risk factors; being fully vaccinated against the disease; and imprisonment at a COVID-19 response-compliant institution. In addition, defendant's presumptive release date is October 2, 2022. Based on this release date, defendant calculates that he may be eligible for placement in a residential reentry center or a community corrections center as early as October 2021 (see defendant's motion for miscellaneous relief, Dkt. # 41 at 1). If this is correct, he would be eligible for release to home confinement as early as April 2022, an alternate outcome requested by defendant (Dkt. # 45, at 26). Defendant's medical conditions do not rise to the level of an "extraordinary and compelling reason" to warrant a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).

As the Court has found that the requirement at step one of the foregoing three-part test in Maumau has not been met, the other prerequisite steps need not be addressed.

IT IS THEREFORE ORDERED that defendant's motion for reduction of sentence (Dkt. # 45) is **denied**.

DATED this 13th day of October 2021.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE