

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 19, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PIYARATH S. KAYARATH,

Defendant - Appellant.

No. 21-3123
(D.C. No. 6:94-CR-10128-JWB-2)
(D. Kan.)

ORDER AND JUDGMENT*

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

Appellant Piyarath S. Kayarath, proceeding pro se, asks us to reverse the district court’s order denying in part and dismissing in part his motion for compassionate release under 18 U.S.C. § 3582(c)(1).¹ Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining Kayarath’s brief and the 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.

¹ Because Kayarath appears pro se, we liberally construe his pleadings but won’t act as his advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

BACKGROUND

I. Factual Background

In 1994, Kayarath, then age 18, and four other young men robbed the owners of a restaurant in Wichita, Kansas. During the robbery, one of the other men beat, shot, and killed Barbara Sun, one of the owners. In 1997, a jury convicted Kayarath on two counts: (1) Hobbs Act robbery, in violation of 18 U.S.C. § 1951 and 18 U.S.C. § 2; and (2) carrying and using a firearm during and in relation to a crime of violence, as defined by 18 U.S.C. § 924(c)(1), and during the course thereof causing the death of a person by murder through use of a firearm, in violation of 18 U.S.C. § 924(j)(1) and 18 U.S.C. § 2.² The judge sentenced him to 240 months' imprisonment for the Hobbs Act conviction and life imprisonment for the § 924 (j)(1) conviction. This was the mandatory sentence before the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). We upheld the jury's verdict and his sentence. *Kayarath*, 41 F. App'x at 257.

II. Procedural Background

In February 2021, Kayarath requested that the warden seek compassionate release on Kayarath's behalf. The warden declined. As allowed by the First Step Act, Kayarath then moved the district court for compassionate release under 18 U.S.C. § 3582(c)(1). He cited four bases: (1) the risks posed to his health by COVID-19; (2) his rehabilitation; (3) his time-served (twenty-six years); and (4) the "uncertainty" over his § 924(j)(1)

² At the time of Kayarath's conviction, § 924(j)(1) was codified at § 924(i)(1). See *United States v. Kayarath*, 41 F. App'x 255, 257 (10th Cir. 2002). We refer to § 924(j)(1), the current location of the provision at issue, in this order.

conviction. In response, the government argued that Kayarath's motion failed because he alleged no more than a cursory fear of contracting COVID-19, he was vaccinated, and the § 3553(a) factors weighed against any reduction of his life sentence. In reply, Kayarath reemphasized his arguments about the dangers posed to him by COVID-19. And, for the first time, he noted the district court had lacked discretion at his 1997 sentencing to consider his youth and impose a lesser sentence. Thus, he argued that, post-*Booker*, the advisory nature of the Sentencing Guidelines provided an extraordinary and compelling reason for a sentence reduction. In addition, Kayarath maintained that the § 3553(a) factors favored release.

The district court denied in part and dismissed in part³ Kayarath's motion. In its order, the district court noted that the government had conceded that Kayarath satisfied the exhaustion requirements set forth in § 3582(c)(1)(A). Next, the district court held that Kayarath's risk of exposure to COVID-19, his rehabilitation efforts, his age, his time-served, and the fact that the Sentencing Guidelines are no longer mandatory didn't constitute extraordinary and compelling reasons under 18 U.S.C. § 3582(c)(1)(A).

The district court also determined that even if Kayarath could show extraordinary and compelling circumstances, it would still deny his motion after considering the § 3553(a) factors. Specifically, the district court ruled that Kayarath's life sentence reflected the seriousness of the offense, promoted respect for the law, deterred criminal

³ The district court treated Kayarath's arguments about the "uncertainty" of his § 924(j)(1) conviction as a successive § 2255 motion over which it had no jurisdiction. Kayarath does not challenge that dismissal.

conduct, and protected the public from the possibility of further crimes. It also emphasized the serious nature of the offenses, Kayarath's responsibility for the murder committed by his "compatriot," and his criminal history.

DISCUSSION

I. Standard of Review

We review a district court's order denying a § 3582(c)(1)(A) motion for abuse-of-discretion. *See United States v. Williams*, 848 F. App'x 810, 812 (10th Cir. 2021). "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. Battle*, 706 F.3d 1313, 1317 (10th Cir. 2013). Relevant here, "[b]ecause the weighing of the § 3553(a) factors is committed to the discretion of the district court, we cannot reverse 'unless we have a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.'" *United States v. Hald*, 8 F.4th 932, 949–50 (10th Cir. 2021) (quoting *United States v. Chavez-Meza*, 854 F.3d 655, 659 (10th Cir. 2017)).

II. Legal Background

In reviewing a motion under 18 U.S.C. § 3582(c)(1)(A), a district court must (1) "find whether extraordinary and compelling reasons warrant such a sentence reduction," (2) find whether a sentence "reduction is consistent with applicable policy statements issued by the Sentencing Commission," and (3) "consider any

applicable § 3553(a) factors⁴ and determine whether, in its discretion, the reduction authorized by steps one and two is warranted in whole or in part under the particular circumstances of the case.” *United States v. Maumau*, 993 F.3d 821, 831 (10th Cir. 2021) (brackets and internal quotations omitted). If a defendant’s motion fails any of these steps, the district court may deny the motion without addressing the others. *See United States v. McGee*, 992 F.3d 1035, 1043 (10th Cir. 2021).

III. Analysis

Kayarath argues that the district court erred by failing to fully analyze all relevant § 3553(a) factors. Specifically, Kayarath argues that the district court inaccurately discussed his history and characteristics, ignored the kind of sentences available, and failed to avoid unwarranted sentencing disparities. Kayarath also asserts that the district court “barely mention[ed]” his young age when he committed the offenses and disregarded the person he is today. Finally, Kayarath argues that the district court erred in its § 3553(a) analysis by presuming the reasonability of his life sentence and noting that

⁴ The § 3553(a) factors are: (1) “the nature and circumstances of the offense and the history and characteristics of the defendant”; (2) “the need for the sentence imposed to reflect the seriousness of the offense”; (3) “the kinds of sentences available”; (4) “the kinds of sentences available and sentencing range established for” the offense at the time of sentencing; (5) “any pertinent policy statement” in effect at the time of the defendant’s sentencing; and (6) “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(1)–(6).

“the same life sentence would be the applicable guideline sentence for a similar offense committed today.”

Kayarath’s “arguments do not establish that the district court based its decision on an error of law or a clearly erroneous assessment of the evidence when it determined that the [§ 3553(a)] factors weighed against” compassionate release. *Williams*, 848 F. App’x at 813 (quoting *United States v. Harmon*, 834 F. App’x 101, 102 (5th Cir. 2021)). The district court listed the six applicable § 3553(a) factors, highlighted those it found to be most relevant, and concluded that the imposed life sentence “remains sufficient, but not greater than necessary to meet the sentencing factors in § 3553(a) and punish the offense.” “We have no reason to doubt that the district court in fact considered those factors, and nothing more was required.” *Hald*, 8 F.4th at 949.

Further, Kayarath’s contention that the district court improperly analyzed the individual § 3553(a) factors is meritless. The weighing of the factors is in the district court’s discretion. *Hald*, 8 F.4th at 949. We cannot reverse without “a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice under the circumstance.” *Chavez-Meza*, 854 F.3d at 659 (internal quotation marks omitted). We have no such conviction here.

We also reject Kayarath’s argument that the district court committed legal error by considering that “the same life sentence would be the applicable advisory guidelines sentence for a similar offense committed today,” post-*Booker*. Kayarath contends that this statement improperly presumed his guidelines sentence to be reasonable. We have held that a district court errs when it applies a “presumption of reasonableness to the

advisory guidelines when *sentencing*.” *United States v. Conlan*, 500 F.3d 1167, 1169 (10th Cir. 2007) (emphasis added). But this alleged error did not occur at sentencing. And even assuming a court legally errs by making such a presumption when analyzing a § 3582(c)(1)(A)(i) motion, the district court here did no such thing. Its statement was a logical response to Kayarath’s contention that it should consider a life sentence for his crime to be an extraordinary and compelling reason for release.

Moreover, even if we were to view the district court’s statement as a presumption of reasonableness, in denying Kayarath’s motion, the district court here did not solely rely on the authority of the Sentencing Guidelines. Rather, it specifically justified its decision by considering the § 3553(a) factors, and—recognizing that the Sentencing Guidelines are no longer mandatory—by considering potentially mitigating factors, such as Kayarath’s age, his time-served, and the length of his sentence. *See United States v. Prieto-Chavez*, 268 F. App’x 695, 703 (10th Cir. 2008) (holding that although the district court erred in stating that a presumption of reasonableness applied, that error did not

affect the defendant’s substantial rights, because the district court properly considered the § 3553(a) factors).

CONCLUSION

Because we do not believe the district court relied on an “incorrect conclusion of law or a clearly erroneous finding of fact” when conducting its § 3553(a) analysis, we affirm.⁵ *Battle*, 706 F.3d at 1317.

Entered for the Court

Gregory A. Phillips
Circuit Judge

⁵ Because we affirm on the § 3553(a) factors, we need not reach Kayarath’s arguments about if the district court erred in concluding that he failed to establish extraordinary and compelling circumstances. “Even if these other arguments succeeded, the district court’s decision would nevertheless stand on its § 3553(a) ruling in light of the district court’s explicit statement that even if [Kayarath] could show extraordinary and compelling circumstances, it would deny relief based on the § 3553(a) factors.” *Williams*, 848 F. App’x at 813 n.3 (10th Cir. 2021).