FILED
United States Court of Appeals
Tenth Circuit

October 19, 2021

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAWN J. GIESWEIN,

Defendant - Appellant.

No. 21-6056
(D.C. No. 5:07-CR-00120-F-1)
(W.D. Okla.)

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**ORDER AND JUDGMENT***

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Before **MORITZ**, **BALDOCK**, and **EID**, Circuit Judges.

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Shawn Gieswein, proceeding pro se,[1] appeals the district court's order denying his motion for a sentence reduction under the compassionate-release statute, 18 U.S.C. § 3582(c)(1)(A)(i). We affirm.

In 2007, a jury convicted Gieswein of one count of being a felon in possession of a firearm and one count of witness tampering. For these crimes, Gieswein is

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

[1] We construe Gieswein's pro se brief liberally, "but we do not act as his advocate." *United States v. Griffith*, 928 F.3d 855, 864 n.1 (10th Cir. 2019).

currently serving a 240-month prison sentence (consecutive 120-month sentences on each count) to be followed by concurrent three-year terms of supervised release.

In March 2021, Gieswein sought—for the third time—a sentence reduction through the compassionate-release statute. The district court denied relief after concluding that Gieswein failed to exhaust his administrative remedies as required by § 3582(c)(1)(A). In the alternative, it noted that Gieswein failed to establish extraordinary and compelling reasons warranting compassionate release. The district court further denied Gieswein's timely motion for reconsideration.

Gieswein now appeals, arguing that he is entitled to a reduced sentence under § 3582(c)(1)(A)(i). But as the government points out in response, Gieswein's appellate brief contains no challenge to the district court's conclusion that he failed to exhaust his administrative remedies. He has therefore waived any such challenge. *See United States v. Cooper*, 654 F.3d 1104, 1128 (10th Cir. 2011); *United States v. Gieswein*, 832 F. App'x 576, 577 (10th Cir. 2021) (unpublished) (concluding, in appeal from denial of Gieswein's second compassionate-release motion, that Gieswein waived review "[d]ue to his failure to address the district court's ruling"). And because Gieswein's failure to exhaust is a sufficient reason to affirm the district court's order, we need not—and do not—reach the arguments that Gieswein does make. *See Bones v. Honeywell Int'l, Inc.*, 366 F.3d 869, 877 (10th Cir. 2004) (declining to address argument because "even if [appellant] were to prevail on that issue," district court's order would "stand on the alternative ground which was not appealed").

Accordingly, we affirm.[2] As a final matter, because Gieswein fails to present a nonfrivolous appellate argument, we deny his motion to proceed in forma pauperis. *See Standifer v. Ledezma*, 653 F.3d 1276, 1280–81 (10th Cir. 2011).

Entered for the Court

Nancy L. Moritz
Circuit Judge

[2] The district court concluded that the compassionate-release statute's exhaustion requirement was jurisdictional. We have since held that it is not. *United States v. Hemmelgarn*, No. 20-4109, 2021 WL 4692815, at *2 (10th Cir. Oct. 8, 2021). But the exhaustion requirement, though nonjurisdictional, remains a mandatory claim-processing rule that the court must enforce when the government invokes it, as it does here. *See id.* at *2–3; *United States v. Sanford*, 986 F.3d 779, 782 (7th Cir. 2021). Thus, the district court's error in labeling the exhaustion requirement jurisdictional was harmless. *See United States v. Paxton*, 422 F.3d 1203, 1207 (10th Cir. 2005).