FILED
United States Court of Appeals
Tenth Circuit

July 11, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY JAMES RAY IGNATOVICH,

Defendant - Appellant.

No. 23-5043
(D.C. No. 4:16-CR-00085-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

Timothy James Ray Ignatovich moved under 18 U.S.C. § 3582(c)(1)(A)(i) for compassionate release from his 216-month federal prison sentence based on (1) a comparison with the 179-month national average federal sentence for kidnapping, (2) his efforts at rehabilitation, and (3) his release plan. The district

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

court denied relief, and Mr. Ignatovich appeals.[1] Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND

A. *Compassionate Release*

A district court may grant compassionate release if it finds that:

1. "extraordinary and compelling reasons warrant" a reduced sentence;

2. a "reduction is consistent with applicable policy statements" from the Sentencing Commission; and

3. a reduction is warranted after considering the applicable sentencing factors listed in 18 U.S.C. § 3553(a).

28 U.S.C. § 3582(c)(1)(A)(i); *accord United States v. Maumau*, 993 F.3d 821, 830-31 (10th Cir. 2021). A district court may deny compassionate release if it finds that any of these requirements is lacking. *See Maumau*, 993 F.3d at 831 n.4. The court here addressed only the first requirement.

B. *Procedural History*

Mr. Ignatovich pled guilty to conspiracy to commit kidnapping, kidnapping, kidnapping of children, and being a felon in possession of a firearm. The district court sentenced him to 216 months in prison.

The district court denied his compassionate release request for failure to show extraordinary and compelling reasons. It found that (1) his sentence, even with a

[1] Mr. Ignatovich represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

two-level downward departure, is commensurate with the national average because it accounted for enhancements based on multiple convictions, age and vulnerability of the victims, and his criminal history[2]; (2) his efforts at rehabilitation, while commendable, are not extraordinary or compelling; and (3) his release planning, which includes care for his infirm parents, also commendable, are also not sufficient under § 3582(c)(1)(A).

II. DISCUSSION

We review for an abuse of discretion, which occurs when a district court relies on an incorrect legal conclusion or a clearly erroneous factual finding. *See United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021). Mr. Ignatovich has not shown that the district court abused its discretion.

In his brief, Mr. Ignatovich argues the district court violated "horizontal stare decisis" because it did not credit the "multiple cases" he cited "from district courts in the Tenth Circuit" that granted sentence reductions for "identical reasons" presented here. Aplt. Br. at 2. The only case he discusses in his brief is *United States v. Rivas*, 2022 WL 974088 (D. Utah Mar. 31, 2022), which, he asserts, bears "striking similarities" to his case. Aplt. Br. at 2. We disagree based on one significant difference.

In *Rivas*, "Defendant was charged with two counts of armed carjacking and two counts of using, carrying, discharging, or possessing a firearm during and in relation

[2] Mr. Ignatovich contends the district court did not explain why his sentence was below the Guidelines range. Aplt. Br. at 3; Reply Br. at 2. Although the court did not discuss the substantial assistance Mr. Ignatovich describes in his briefs, it did say the sentencing judge "departed downward two levels," ROA at 47.

to a crime of violence in violation of 18 U.S.C. § 924(c)." 2022 WL 974088, at *1. He pled "guilty to the two § 924(c) charges and was sentenced to 10 years on the first charge and 25 years on the second charge to run consecutive, as was then required by statute." *Id.* In seeking a sentence reduction under § 3582(c)(1)(A)(i), Mr. Rivas, like Mr. Ignatovich here, pointed to "his youth at the time of sentencing, the length of sentence, and his rehabilitative efforts," and his wish to take care of infirm parents. *Id.* at *2. But unlike this case, a significant factor in *Rivas* was that Mr. Rivas "was sentenced to a lengthy term due to § 924(c)'s stacking provision which has since been eliminated" by the First Step Act. *Id*. The district court reduced Mr. Rivas's sentence to 276 months. *Id.* at *3; *see Maumau*, 993 F.3d at 837 (upholding sentence reduction in similar circumstances). No comparable changes have been made to the sentencing requirements for kidnapping.[3]

Mr. Ignatovich also argues that the cumulative reasons he presents for sentence reduction, including the national average sentence for kidnapping, "gang disassociation, substantial assistance, rehabilitation, family circumstances, and being

[3] Mr. Ignatovich complains that the Government in its response brief "acts as though appellant ONLY cited Rivas, which is untrue." Reply Br. at 2. But *Rivas* is the only case he discusses in his appellate briefing from the various district court decisions he presented below. Our review is limited to the arguments the appellant advances on appeal. *See Denver Homeless Out Loud v. Denver, Colo.*, 32 F.4th 1259, 1270 (10th Cir. 2022) ("We ordinarily decline to consider arguments not raised in an opening brief.") We also note that although Mr. Ignatovich cited eight district court cases, including *Rivas*, in his "Memorandum of Law" to the district court, he did not explain how they provided on-point support for his sentence reduction motion. *See* ROA at 26.

over the age of 35," satisfy § 3582(c)(1)(A)(i)'s "extraordinary and compelling reasons" requirement. Aplt. Br. at 1. But as the district court determined, his reliance on the average kidnapping sentence of 176 months is misplaced as a comparator because his 216-month sentence, even with departures, reflected enhancements for multiple convictions, age and vulnerability of the victims, and his criminal history.[4] Beyond that, we see no abuse of discretion in the district court's determination that the other reasons Mr. Ignatovich proffered are not extraordinary and compelling.

III. **CONCLUSION**

We affirm the district court. We deny Mr. Ignatovich's motion to proceed on appeal *in forma pauperis* ("*ifp*"). *See Buchheit v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012) (denying *ifp* for failure to show the "existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised").

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

[4] The district court explained, "National averages of sentences that provide no details underlying a sentence are not dispositive as a method of identifying an unwarranted disparity because they do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." ROA at 48.