

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 3, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY D. CROSBY,

Defendant - Appellant.

No. 23-3034
(D.C. No. 5:09-CR-40049-KHV-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.

Gregory Crosby, a federal prisoner proceeding pro se,¹ appeals the district court’s order denying his motion for compassionate release under 18 U.S.C.

§ 3582(c)(1)(A)(i). Finding no abuse of discretion, we affirm.

In December 2009, a jury convicted Crosby of attempted bank robbery, in violation of 18 U.S.C. § 2113(a), and conveying false information, in violation of 18

* After examining the brief 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 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 Crosby’s pro se filings liberally, “but we do not act as his advocate.” *United States v. Griffith*, 928 F.3d 855, 864 n.1 (10th Cir. 2019).

U.S.C. § 1038. His convictions stem from a May 2009 incident in which he handed a bank teller a note demanding cash and falsely claimed to have planted bombs in his car and a federal courthouse. For these offenses, the district court sentenced Crosby to 262 months in prison and 3 years of supervised release. Crosby appealed his conviction for attempted bank robbery, and we affirmed. *See United States v. Crosby*, 416 F. App'x 776, 778–81 (10th Cir. 2011).

In December 2022, Crosby filed a compassionate-release motion under § 3582(c)(1)(A) seeking to reduce his sentence by 36 months based on his age and completion of education programs while in prison. The government responded that Crosby had not satisfied the statutory requirements for obtaining such relief because he did not exhaust his administrative remedies, and even if he had, he failed to show that a sentence reduction was warranted. *See* § 3582(c)(1)(A)(i). The district court agreed on both counts, so it denied Crosby's motion.²

Crosby now appeals, arguing that the district court erred in denying his compassionate-release motion under § 3582(c)(1)(A).³ We review such a denial for abuse of discretion, reversing only if the district court based its decision on incorrect legal conclusions or clearly erroneous factual findings. *United States v. Hemmelgarn*,

² The district court also held that it lacked the authority to grant Crosby's separate request for a transfer to a different prison, and Crosby does not appeal that decision.

³ Crosby also purports to seek relief under 18 U.S.C. § 4205(g). But that statute—the predecessor to § 3582(c)(1)(A)—applies only to offenses committed before November 1, 1987. *See* 28 C.F.R. § 572.40. Since Crosby's offense occurred in May 2009, § 4205(g) does not apply.

15 F.4th 1027, 1031 (10th Cir. 2021). Section 3582(c)(1)(A) requires defendants to exhaust their administrative remedies before requesting a sentence reduction. *Id.* at 1030. Once they do so, the district court may grant a reduction if three requirements are met: (1) extraordinary and compelling circumstances support the reduction; (2) the reduction is consistent with the Sentencing Commission’s applicable policy statements; and (3) the 18 U.S.C. § 3553(a) sentencing factors support a reduction. § 3582(c)(1)(A)(i); *see also United States v. McGee*, 992 F.3d 1035, 1042–43 (10th Cir. 2021). The district court can consider these three requirements in any order and can deny relief if any requirement is lacking. *See United States v. Hald*, 8 F.4th 932, 942–43, 947 (10th Cir. 2021). Moreover, because there are currently no applicable policy statements for defendant-filed compassionate-release motions like Crosby’s, only the first and third requirements are relevant here. *See McGee*, 992 F.3d at 1050.

Crosby challenges both grounds on which the district court denied his § 3582(c)(1)(A) motion. He first argues that although he failed to exhaust his administrative remedies before filing his motion, he exhausted them after the district court denied his motion. And assuming he properly exhausted administrative remedies, he argues that the district court should have granted his motion and reduced his sentence as requested. We need only address the second argument because even if Crosby could overcome the exhaustion requirement by satisfying it after the district court’s decision, he has not shown that the district court erred in denying his motion on the merits. *See Hemmelgarn*, 15 F.4th at 1030–31 (holding

that “§ 3582(c)(1)(A)’s exhaustion requirement is a claim-processing rule” rather than a jurisdictional rule).

On the merits, the district court concluded that Crosby failed to show that either extraordinary and compelling circumstances or the § 3553(a) factors supported a sentence reduction. *See* § 3582(c)(1)(A). But on appeal, Crosby only disputes the district court’s conclusion that he failed to show extraordinary and compelling circumstances warranting a sentence reduction, ignoring the district court’s separate conclusion that the § 3553(a) factors did not support a reduction. His failure to address both necessary requirements for relief under § 3582(c)(1)(A) is enough, by itself, to affirm the district court’s decision. *See Shook v. Bd. of Cnty. Comm’rs*, 543 F.3d 597, 613 n.7 (10th Cir. 2008) (explaining that when district court’s decision rests on alternative grounds, party challenging that decision “necessarily loses” by only disputing one of those grounds “because the second alternative stands as an independent and adequate basis, regardless of the correctness of the first alternative”); *United States v. Thompson*, No. 22-6136, 2023 WL 409699, at *2 (10th Cir. Jan. 26, 2023) (unpublished) (upholding denial of compassionate-release motion in part because defendant “address[ed] only the first” requirement and “ignore[d] entirely the district court’s . . . conclusion that [the § 3553(a)] factors did not warrant a sentence reduction”).⁴

⁴ We cite this unpublished case for its persuasive value. *See* Fed. R. App. P. 32.1; 10th Cir. R. 32.1(A).

Even if we overlooked his failure to address the § 3553(a) factors, Crosby still fails to undermine the district court’s conclusion that he did not establish extraordinary and compelling circumstances warranting a sentence reduction. Crosby points to his efforts at rehabilitation while in prison, but as the district court noted, “rehabilitation alone is not an extraordinary and compelling reason for relief.” R. vol. 1, 157; *see also* 28 U.S.C. § 994(t) (“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason [for a sentence reduction under § 3583(c)(1)(A)].”). And although Crosby’s motion cited his age as an additional circumstance supporting a reduction, Crosby does not discuss that circumstance on appeal, much less refute the district court’s conclusion that it was not so extraordinary and compelling as to warrant relief when considered together with his rehabilitation efforts.

For these reasons, even if Crosby properly exhausted his administrative remedies, he has not shown that the district court abused its discretion in denying his motion for compassionate release. We therefore affirm the district court’s decision. Appellant’s motion to proceed *in forma pauperis* is granted.

Entered for the Court

Nancy L. Moritz
Circuit Judge