

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 11, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL GUZMAN-AVILES,

Defendant - Appellant.

No. 25-3150
(D.C. No. 2:14-CR-20017-JWL-1)
(D. Kan.)

ORDER AND JUDGMENT*

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

Defendant Angel Guzman-Aviles appeals the district court's order denying his *pro se* motion seeking compassionate release from prison pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) , or, in the alternative, his motion for a reduction in sentence based on a change in the law pursuant to 18 U.S.C. § 3582(c)(2). Our jurisdiction arises under 28 U.S.C. § 1291. We review the district court's denial of Defendant's motions for an abuse of discretion. *United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Cir. 2021) (subsection (c)(1)(A)); *United States v. Chavez-Mesa*, 854 F.3d 655, 657 (10th Cir. 2017) (subsection (c)(2)). Applying the appropriate law, we affirm.

I.

To place Defendant’s current motions in context, we commence by recounting the germane history of his prosecution, both pre- and post-judgment. In May 2015, Defendant pleaded guilty to one count of possession with intent to distribute fifty grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). Using the 2014 Guidelines Manual, Defendant’s Presentence Investigation Report (PSR) assigned him a base offense level of 38 based on the quantity of drugs (methamphetamine and marijuana) involved. After subtracting two levels pursuant to U.S.S.G. § 3E1.1(a) to reflect his acceptance of responsibility and adding two levels pursuant to U.S.S.G. § 2D1.1(b)(1) based on his possession of a firearm during the crime of conviction, the PSR assigned Defendant an adjusted offense level of 38. With an adjusted offense level of 38 and a Criminal History Category I based on zero criminal history points, the PSR calculated an advisory guideline range of 235–293 months’ imprisonment. The district court sentenced Defendant to 235 months’ imprisonment over his objection that the evidence did not support a two-level upwards adjustment to his offense level based on possession of a firearm, but rather entitled him to relief under the “safety-valve” provision contained in U.S.S.G. § 5C1.2(a)(2) (“Limitation on Applicability of Statutory Minimum Sentences in Certain Cases”); *see also* 18 U.S.C. § 3553(f)(1), (2) (same).

On direct appeal, we too concluded application of the two-level upward adjustment was appropriate and “safety-valve” relief was unavailable to Defendant:

Because the Government has shown by a preponderance of the evidence the existence of a temporal and spatial relation between the firearm, Guzman-Aviles, and drug trafficking activity, the district court did not err when it applied the § 2D1.1(b)(1) enhancement. Further, Guzman-Aviles was correctly denied relief under the safety-valve provision [§ 5C1.2(a)(2)] because, by accepting the pistol from [a buyer] during a drug deal, he *actually* possessed the firearm in connection with the crime of conviction. *See United States v. Zavalza-Rodriguez*, 379 F.3d 1182, 1188 (10th Cir. 2004) (precluding relief under § 5C1.2(a)(2) where defendant actively possessed a firearm in connection with the charged offense).

United States v. Guzman-Aviles, 663 F. App’x 674, 678 (10th Cir. 2016) (unpublished) (emphasis added).

Fast forwarding, Defendant filed his first motion for compassionate release pursuant to § 3582(c)(1)(A)(i) in February, 2024. Subsection (c)(1)(A)(i) provides that upon a defendant’s motion, the district court “may reduce” a term of imprisonment after considering the factors set forth in § 3553(a) to the extent they are applicable, *if* the court finds “extraordinary and compelling reasons warrant such a reduction” and such reduction is consistent with the Sentencing Commission’s applicable policy statements. In 2023, the Sentencing Commission promulgated an applicable policy statement on the meaning of “extraordinary and compelling.” *See* U.S.S.G. § 1B1.13 (Amendment 814). Subsection (b)(6) addresses “Unusually Long Sentence[s]:”

If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such

change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

In his first § 3582(c)(1)(A)(i) motion, Defendant relied on subsection (b)(6) and claimed his sentence of 235-months' imprisonment was unusually long and a change in the law resulted in a disparity between the sentence he is serving and the sentence he likely would have received at the time he filed his motion in 2024. According to Defendant, under the current version of the Guidelines' drug-conversion calculator, his base offense level would be 30 rather than 38, yielding a lesser advisory guideline range. The district court rejected Defendant's argument and we again affirmed on appeal. *United States v. Guzman-Aviles*, 2025 WL 615386 (10th Cir. 2025) (unpublished). We explained the district court correctly noted that Defendant's PSR held him responsible for more than 27 kilograms of "Ice" methamphetamine and over 108 kilograms of marijuana "for a total combined marijuana equivalency of 544,508.9 kilograms." *Id.* at *1. This quantity of marijuana "exceeded the quantity . . . required to trigger his base offense level of 38" so Defendant was still subject to the same guideline range. *Id.* Accordingly, we agreed Defendant "had 'not shown that he is entitled to relief under § 1B1.13(b)(6) because there is no change in law that results in any disparity between the sentence he is serving and the sentence likely to be imposed today.'" ¹ *Id.* at *3 (quoting the district court).

¹ Today, Defendant's first motion for compassionate release would fail for a more fundamental reason. Just last term, the Supreme Court in *Rutherford v. United States*, 146 S. Ct. 1320 (2026), held that a sentencing disparity created by Congress's nonretroactive change to a criminal statute's mandatory penalties is not an "extraordinary and compelling" reason warranting compassionate release under

II.

This brings us to Defendant's second motion for compassionate release under § 3582(c)(1)(A)(i), or in the alternative, his first motion for a sentence reduction based on a change in the law pursuant to 18 U.S.C. § 3582(c)(2). Under subsection (c)(2), a district court may reduce a defendant's term of imprisonment where he was sentenced based on a sentencing range the Sentencing Commission has subsequently lowered after considering the § 3553(a) factors if such reduction is consistent with the Sentencing Commission's policy statements. Construing his *pro se* motions liberally, Defendant offers a myriad of reasons why he is entitled to relief under either or both of these subsections to § 3582. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) ("A *pro se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers."). Those reasons are as follows:

1. If he were sentenced today, Defendant, as a zero-point criminal history offender, would be eligible for a two-level reduction in his offense level under U.S.S.G. § 4C1.1(a) (Amendment 821) ("Adjustment for Certain Zero-Point Offenders"), which would lower his applicable guideline range.

§ 3582(c)(1)(A)(i). "When Congress declines to make a sentencing amendment retroactive, the fact that a preamendment sentence is longer than it would have been postamendment is not an extraordinary and compelling reason that warrants a sentence reduction." *Id.* at 1330 (internal brackets and quotations omitted). The Court explained that insofar as the Sentencing Commission's policy statement contained in U.S.S.G. § 3B1.13(b)(6) suggested otherwise, it conflicted with § 3582(c)(1)(A)(i): "[T]he Commission's policy statement must be consistent with the governing statute We are not bound to follow the Commission's guidance when it exceeds its statutory authority by adopting a definition of a term [*i.e.*, "extraordinary" and "compelling"] that is inconsistent with the statute." *Id.* at 1334 (internal brackets and quotations omitted).

2. At his original sentencing, the district court should have granted him a three- rather than a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1 (“Acceptance of Responsibility”) which would have lowered his applicable guideline range.

3. That Defendant (a) will be deported upon his release from federal prison, (b) suffered serious hardship in prison during the COVID-19 epidemic, and (c) has been an exemplary inmate are “extraordinary and compelling” reasons warranting his compassionate release.

A.

Based on a change in the law subsequent to his 2015 sentencing, Defendant’s first reason why he is entitled to relief under U.S.S.G. § 4C1.1 necessarily arises under § 3582(c)(2). Unfortunately for Defendant, however, a two-level reduction to his base offense level under § 4C1.1(a) would *not* be available to him today because he *actively* (as opposed to constructively) possessed a firearm in connection with his drug-trafficking offense. U.S.S.G. § 4C1.1(a)(7) (barring a two-level decrease in an offense level where a defendant “possess[es] . . . a firearm . . . in connection with the offense”). In *United States v. Bernal Salazar*, 2024 WL 4603965, at *2–3 (10th Cir. 2024) (unpublished), we looked to our precedents interpreting U.S.S.G. § 5C1.2(a)(2) to hold § 4C1.1(a)(7) disallows a two-level reduction to an offense level where a defendant *actively* possesses a firearm and a close connection is present linking the individual defendant, the weapon, and the offense. *Zavalza-Rodriguez*, 379 F.3d at 1187 (“[P]ossession in § 5C1.2(a)(2) is an active possession . . .”). As we explained in our decision adjudicating Defendant’s claim on direct appeal that he was entitled to relief under § 5C1.2(a)(2), *Guzman-Aviles*, 663 F. App’x at 678, Defendant actively possessed a firearm in connection with his crime of conviction. *See supra* at 2–3. Our

view then necessarily remains unchanged under the law of the case doctrine, thereby disqualifying Defendant from a two-level reduction under § 4C1.1(a)(7).² *See United States v. Moore*, 96 F.4th 1290, 1301 (10th Cir. 2024) (explaining that where a court decides a question, its answer generally should continue to govern the same question in subsequent stages of the same case).

B.

Defendant’s second reason why he is entitled to sentencing relief—that he was eligible at his original sentencing for a three- rather than a two-level reduction to his base offense level for acceptance of responsibility under U.S.S.G. § 3E1.1—fares no better than his first. Subsection (b) of § 3E1.1 provides that where a defendant is entitled to a two-level reduction for acceptance of responsibility, he may be entitled to an additional one-level reduction if he “timely” notifies authorities of his intention to enter a plea of guilty, thereby saving the Government the time and expense of preparing for trial and allowing the Court and Government to allocate their resources more efficiently. Because Defendant’s second reason for relief does not rely on a change in the law, it arises, if it all, under subsection (c)(1)(A)(i) to § 3582 rather than subsection (c)(2). But legal errors occurring at sentencing may not be brought under § 3582(c)(1)(A)(i) because such errors

² Defendant’s heavy reliance on our decision in *United States v. Martinez*, 82 F.4th 994 (10th Cir. 2023), is misplaced because in that case defendant constructively rather than actively possessed a firearm at the time of his offense of conviction. “[T]he undisputed facts in the PSR establish Mr. Martinez had ‘mere constructive possession’ [of the firearm]—and no more.” *Id.* at 1006. We explained that constructive possession did not preclude the district court from granting a “‘safety-valve’ reduction under §§ 2D1.1(b)(18) and 5C1.2.” *Id.*

are neither “extraordinary” nor “compelling” reasons supporting compassionate release. *See United States v. Wesley*, 60 F.4th 1277, 1279–80 (10th Cir. 2023) (claim that prosecutor’s alleged subornation of perjury about drug quantities attributable to defendant increased his sentencing exposure not cognizable under § 3582(c)(1)(A)(i)); *see id.* at 1286 (citing with approval circuit court decisions stating that § 3582(c)(1)(A)(i) may not be used to seek correction of legal errors at sentencing.). Rather, claims of sentencing error must be raised on direct appeal, or, assuming procedural hurdles do not limit the availability of such relief, in a motion for collateral relief pursuant to 28 U.S.C. § 2255.³ *Id.* at 1282 (A defendant may not use § 3582 to “circumvent the procedural and substantive requirements of § 2255.”); *see also United States v. Jenkins*, 50 F.4th 1185, 1201 (D.C. Cir. 2022) (“We must . . . interpret the compassionate-release statute in light of [§ 2255’s] reticulated scheme for collateral review, rather than invoke compassionate release to end-run its limits.”).

C.

This leaves us to consider the individual circumstances Defendant says constitute “extraordinary and compelling reasons” entitling him to compassionate release under

³ In any event, the record suggests Defendant was not entitled to an additional one-level reduction to his offense level under § 3E1.1(b) based on acceptance of responsibility. Defendant originally opted to enter a guilty plea but then rescinded his decision to plead guilty on March 25, 2015. The district court scheduled a trial to begin on May 4, 2015, but only on the morning of trial did Defendant again change his mind and agree to plead guilty. That Defendant blames the delay and his belated change of plea on his trial counsel makes no difference because like legal errors at sentencing, *pro se* claims of ineffective assistance of trial counsel are “appropriately pressed” not under § 3582, but “on a collateral attack under 28 U.S.C. § 2255.” *United States v. Pemberton*, 94 F.4th 1130, 1144 n.11 (10th Cir. 2024).

§ 3582(c)(1)(A)(i). Defendant points to what he describes as his exemplary conduct while in custody, the fact he will be deported following his release from prison, and the significant hardship he endured during the COVID pandemic. Apart from subsection (b)(6) under which Defendant has already unsuccessfully sought relief, *see supra* 3–4 & n.1, U.S.S.G. § 1B1.13, as amended in 2023, identifies four categories of “extraordinary and compelling reasons” that might justify Defendant’s compassionate release. Those categories relate to a defendant’s *current* medical circumstances, family circumstances, and age, as well as his status as a victim of physical abuse while incarcerated. *Id.* § 1B1.13(b)(1)–(4). A fifth “catchall” category provides that extraordinary and compelling reasons might justify a defendant’s compassionate release where he “presents any other circumstances or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).” *Id.* § 1B1.13(b)(5).

None of the reasons Defendant’s proffers in support of his § 3582(c)(1)(A)(i) motion relate to his current medical or family circumstances, his age, or status as a victim of physical abuse. Moreover, none of those reasons “are similar in gravity to those described in paragraphs (1) through (4)” of § 1B1.13(b). Neither the *past* inconveniences Defendant endured due to the COVID-19 epidemic nor his *future* anticipated deportation upon his release from prison constitute an “extraordinary and compelling” reason why he is entitled to compassionate release based upon his *present* circumstances. Countless numbers of currently-incarcerated federal inmates endured the COVID epidemic while imprisoned. Countless more are subject to deportation upon their release from federal

custody. *See United States v. Fuller*, 467 F. Supp. 3d 1082, 1086 (D. Colo. 2020) (explaining the COVID pandemic alone is not an “extraordinary and compelling” reason for compassionate release because the Sentencing Commission’s policy statement directs district courts to consider individual reasons for such release); *United States v. Garcia-Rodriguez*, 2022 WL 17588450, at *1 (10th Cir. 2022) (unpublished) (affirming denial of compassionate release where prisoner argued deportation was an “extraordinary and compelling” reason for release); *see also United States v. Varela-Maldonado*, 2024 WL 2300770, at *4 n.5 (D.N.M. 2024) (unpublished) (listing circuit court decisions affirming the denial of compassionate release where prisoner claimed deportation was an “extraordinary and compelling” reason for release). And while we commend Defendant for his rehabilitative efforts while incarcerated, “[r]ehabilitation . . . alone shall not be considered an extraordinary and compelling reason[]” for compassionate release under § 3582(c)(1)(A)(i). 28 U.S.C. § 994(t). Accordingly, the district court did not abuse its discretion when it concluded Defendant had not presented individual circumstances amounting to “extraordinary and compelling” reasons for his compassionate release within the meaning of § 3582(c)(1)(A)(i).

* * *

For all the foregoing reasons, the district court’s order denying Defendant’s *pro se* motion seeking compassionate release from prison pursuant to 18 U.S.C.

§ 3582(c)(1)(A)(i) , or, in the alternative, his motion for a reduction in sentence based on a change in the law pursuant to 18 U.S.C. § 3582(c)(2) is—

AFFIRMED.

Entered for the Court

Bobby R. Baldock
United States Circuit Judge