

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 99-CR-00583-SEITZ

UNITED STATES OF AMERICA

v.

SALVADOR MAGLUTA,

Defendant.

ORDER DENYING DEFENDANT'S MOTION
FOR COMPASSIONATE RELEASE

THIS MATTER is before the Court on Defendant Salvador Magluta's Motion for Compassionate Release [DE 3049], which seeks a prison sentence reduction based on his mental and physical health, especially given the COVID-19 pandemic. The Government opposes the Motion [DE 3060], and Defendant has replied [DE 3067]. The Court has carefully considered the parties' filings, the legal authorities, and the record. Because the recent decision in *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021), precludes a district court from exercising discretion under Subdivision (D) of U.S.S.G. § 1B1.13's Application Notes, and because Defendant's medical issues do not otherwise satisfy § 1B1.13, Defendant's Motion must be DENIED.

I. Background

The facts of this case have been detailed in several prior orders, but the most relevant are restated here. Defendant Salvador Magluta played a prominent role in the height of the violent drug trafficking days of South Florida, from the late 1970s

through the 1990s. On August 15, 2002, he was found guilty of conspiracy to obstruct justice and disobey a court order, obstruction of justice through jury and witness bribery related to a prior drug trafficking trial which ended in an acquittal, conspiracy to launder narcotics trafficking proceeds, and eight substantive money laundering counts. He was acquitted on other charges, including three murder counts, other witness bribery counts, including perjured testimony, encouraging witness flight, and several other money laundering counts. On November 29, 2006, Magluta received an amended sentence totaling 195 years in prison, with three years of supervised release to follow [DE 2696, 3019]. On March 25, 2014, Defendant's motion under 28 U.S.C. § 2255 was denied [DE 3047].

Magluta has served approximately 22 years in prison since his arrest in this case. He is 66 years old, with several health-related issues described below and is currently housed at Florence ADMAX USP.

II. Legal Standard

A. Compassionate Release

The framework to modify a sentence is set forth in 18 U.S.C. § 3582(c). *See U.S. v. Maiello*, 805 F.3d 992, 999 (11th Cir. 2015). The court upon motion of a defendant can modify a sentence if “extraordinary and compelling reasons warrant such a reduction...” 18 U.S.C. § 3582(c)(1)(A). Details that describe such circumstances are contained in Section 1B1.13 of the U.S. Sentencing Commission's Guidelines. Its Application Notes illustrate four bases (in Subdivisions (A) through (D)) that demonstrate “extraordinary and compelling reasons” as follows:

(A) Medical Condition of the Defendant.

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. The defendant

(i) is at least 65 years old;

(ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and

(iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. As determined by the Director of the Bureau of Prisons ["BOP"], there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S. Sentencing Guidelines Manual § 1B1.13 cmt. Application Notes (U.S.

Sentencing Comm'n 2021). The Eleventh Circuit recently held in *Bryant* that courts may not substitute their discretion under Subdivision (D) for that of the Director of the BOP, despite FSA amendments that negated the BOP's gatekeeper function for compassionate release motions. 996 F.3d at 1263.

B. 18 U.S.C. § 3553(a)

Even if a defendant satisfies a court that his asserted basis is consistent with one of U.S.S.G. § 1B1.13 Application Note's subdivisions, the defendant must also

demonstrate that release is appropriate in light of the 18 U.S.C. §3553(a) factors. 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13(2). In addition to considering the “nature and circumstances of the offense and the history and characteristics of the defendant,” the § 3553(a) factors include, among others, “the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] to protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(1) & (2).

III. Discussion

A. The Parties’ Positions

1. Magluta’s Position

Magluta asserts that his Motion is properly before the Court because he exhausted his administrative remedies, as required by 18 U.S.C. § 3582(c)(1)(A). He states that he submitted his request for sentence reduction to his warden on July 1, 2020, and 30 days lapsed without his receiving a response.

Magluta seeks a sentence reduction to a life term of home confinement. After justifying a court’s authority for doing so, Magluta argues that the Court should reduce his sentence under 18 U.S.C. § 3582(c)(1)(A)(i) due to his deteriorating physical and mental health from many years in solitary confinement at various BOP facilities, which he feels is excessive and inhumane [DE 3049 at 1, 6]. His physical illnesses include Stage 3 chronic kidney disease, kidney failure, hypertension, and Type 2 Diabetes, among others, which he fears put him at increased risk if he were to contract COVID-19. He cites as a few of his mental

illnesses early dementia and major depressive disorder. He claims that he no longer poses a danger to the community, and that the 18 U.S.C. § 3553(a) factors counsel in favor of sentence reduction.

As to the § 3553(a) factors, Magluta argues that they weigh in his favor. He feels that the more than 20 years that he's served in prison, many in solitary confinement, have caused physical and mental injury that has amounted to more punishment than necessary to achieve the ends of § 3553(a). He adds that his rehabilitation, built on his religious faith, along with his limited disciplinary record, also favors an end to his incarceration. Finally, he argues that his risk of recidivism is low, and that the Court also must consider any disparity in sentences, noting his co-defendant, Augusto Falcon, was released in 2017. As to his community reentry plan, Magluta proposes living in his mother's home with his mother, and/or his son and his family, or other family members.

2. Government's Position

The Government contends that Magluta's health bases lack merit, they do not meet the guidelines set forth in U.S.S.G. § 1B1.13, and Defendant's provided medical records do not support his claims. The Government states that Defendant's complaints about the BOP's use of solitary confinement are beyond the scope of a motion for compassionate release. The Government recounts Defendant's extensive criminal activities that led to his incarceration, and an incident of cellular phones being found in Defendant's prison cell in 2013. Even if his health warranted release, the Government continues, the § 3553(a) factors further counsel against

release because Magluta remains a danger to the community. The Government rejects Defendant's claim that he is similarly situated to Mr. Falcon, who pled guilty, and points to the Court's previous rejection of that argument as well. The Government also details the BOP's purported plans for handling the current pandemic, generally. The Government questions Defendant's release plan that has him living with several family members, some of whom aided him in earlier illegal activities.

B. Basis of Court's Decision

Defendant Salvador Magluta asserts he has satisfied the administrative exhaustion requirements for compassionate release [DE 3049-1 at 3]. The Government agrees [DE 3060 at 13]. The Court concurs that 18 U.S.C. § 3582(c)(1)(A)'s exhaustion requirements have been met and turns to the merits of Defendant's Motion.

The thrust of Magluta's extensive Motion, filed before *Bryant* altered his pathways for relief, is that he should be granted compassionate release due to his mental and physical health, in light of the COVID-19 pandemic and his time assigned to high security facilities and solitary confinement. With these claims, however, his intended use of 18 U.S.C. § 3582(c)(1)(A)(i) is simply beyond its post-*Bryant* means.

The Court's authority to modify a sentence is circumscribed by 18 U.S.C. § 3582(c). With *Bryant*, the Court's authority has been further constrained. Specifically, the Eleventh Circuit held that United States Sentencing Guideline §

1B1.13 applies to defendant-brought motions for compassionate release under § 3582(c)(1)(A)(i), and that courts cannot substitute their own discretion for that of the Director of the BOP under § 1B1.13 Application Notes' Subdivision (D). 996 F.3d at 1262-63.

Thus, in the Eleventh Circuit, Subdivision (D)'s catch-all provision remains limited to other reasons as determined by the Director of the BOP. Like the vast majority of compassionate release motions, Magluta (not the BOP) moved for sentence modification and, thus, the BOP has not offered any reason for release. As a result, in accordance with *Bryant*, the Court is without any authority to consider (and, thus, does not reach) Defendant's sentence modification arguments based on Eighth Amendment-related claims, the risks raised with the COVID-19 pandemic, as it relates to his medical conditions, or any other arguments requiring such discretion. Therefore, the Court must deny the Motion on any Subdivision (D) basis.¹

Defendant still retains the ability to seek relief under one of the first three subdivisions of § 1B1.13's Application Notes, concerning personal health or family dependency issues. Therefore, as an alternative to relief under Subdivision (D), Defendant argues that his claims satisfy Subdivision (A)(ii) or (B), which relate to a prisoner's unlikely health recovery and inability to provide self-care, or his age-related health deterioration, respectively

¹ In a footnote in his Reply, Defendant references *Bryant* and its distinction from other Circuit Courts of Appeal on the role of U.S.S.G. § 1B1.13. See Docket Entry 3067 at 14 n.17.

First, Subdivision (A)(ii) provides for compassionate release where certain health criteria are met “that substantially diminish the ability of a defendant to provide self-care within the environment of a correctional facility and from which he is she is not expected to recover.” Defendant’s conditions do not meet this guideline. The only self-care-specific argument Defendant appears to make in his extensive briefing is that the COVID-19 pandemic has hindered his ability to manage his medical needs [DE 3049 at 22]. Other than describing how the pandemic could spread in his facility, however, he does not further elucidate this argument, nor does the Court find a connection on its own. Defendant, for example, does not argue that he is unable to ambulate, take care of his own daily tasks of living, to receive or take medication, or participate in mental health counseling – with or without the pandemic’s effects on his facility.

The provided medical records do not suggest any such issues either. According to them, he was categorized under “Current Care Assignments” as “stable, chronic care,” as of July 28, 2020 [DE 3049-4 at 6]. He is further categorized under “Current Medical Duty Status Assignments” as “no medical restr—regular duty.” In the related notes from this same report, they indicate that Magluta is “Medical Care-2” with “no medical restrictions.” They further state that Magluta is cleared for employment opportunities and, while he is indicated as having “Serious Mental Illness” with a “Mental Health Care-3” designation, he commonly refuses or does not participate in treatment, and declines out-of-cell

recreation time [DE 3049 at 6-7].² Thus, the Court finds no self-care argument justifying sentence modification under Subdivision (A)(ii).

Magluta's second avenue would be under Subdivision (B). Magluta meets two of its three requirements – he is over 65 years old, and he has served at least 10 years of his prison sentence. Magluta, however, has not demonstrated that he is “experiencing a serious deterioration in physical or mental health because of the ageing process.”

The cause and effect of mental health issues and behaviors that exacerbate them are certainly complex and subject to ongoing medical inquiry. An observation in one of Magluta's mental health medical visits from June 22, 2013, however, is telling [DE 3051-1 at 13]. Magluta reported “feeling very down lately.” The report notes that he had been put in isolated housing “due to behavioral issues,” which led to loneliness. The Court is concerned for Magluta's mental health but equally troubled as to evidence of his own agency in these matters. More recently, Defendant describes an incident in May 2019 in which he put bags of medication in his mouth, and, then, had to be placed in restraints and have them removed. At first blush, this is a seemingly disturbing incident of mental illness, but further review gives pause to such a conclusion. Defendant apparently made clear that he was choosing to make a particular statement. The medical notes regarding the incident relate that “[inmate] stated that this ‘was the only way he could get anyone

² Defendant has a second roadblock under Subdivision (A)(ii). It requires that the condition related to the self-care challenge be one from which Magluta is “not expected to recover.” Given the lack of viability of any self-care argument, the Court cannot reach or conjecture as to the expectation for recovery of a particular illness that would be related to self-care.

to listen to him’... [Inmate] stated he was not going to harm himself” [DE 3051-1 at 104].

Focusing on the applicable standard, any potential argument that the opt-out behaviors described above result from recent mental health deterioration is inconsistent with his medical records. Notably, one report from February 2017 contains the observation that Magluta also at that time exhibited a “lack of willingness to engage in treatment (he has come to session but declines to engage in meaningful treatment), [and to] consider alternative activities to improve his mood (ex. exercise, extra time out of cell)” [DE 3051-1 at 79]. The report at that time continues, “Although inmate Magluta does present with some depressive symptoms, the symptoms appear to be associated with his [Florence ADMAX prison facility] placement and acceptance of a long sentence.” The report adds that Magluta “continues to advocate for a [facility] transfer and his presentation suggests exaggeration of symptoms, likely as a means to assist with facilitating said transfer.”

The Court acknowledges that Defendant has a well-documented history of recurring mental health issues, along with a concomitant history of the BOP’s efforts to help manage it. But the standard under U.S.S.G. § 1B1.13 Application Notes’ Subdivision (B) requires, specifically, “serious deterioration...because of the ageing process.” Defendant has submitted a more recent brain scan report indicating “deteriorated mental status” and “senescent changes roughly commensurate with patient age,” but neither the report nor counsel make any claim

as to the severity of these changes [DE 3067 at 9-10]. Upon a review of this report and other related records, a determination of serious deterioration due to the ageing process is not warranted.

Finally, the Court need not reach an analysis of the 18 U.S.C. § 3553(a) factors because, as explained above, Defendant's Motion otherwise fails to meet the requirements of 18 U.S.C. § 3582.³ For the same reasons, the Court sees no utility in holding a hearing on Defendant's Motion and, thus, denies that request.

Therefore, it is

ORDERED THAT

Defendant Salvador Magluta's Motion for Compassionate Release [DE 3049] is DENIED.

DONE AND ORDERED in Miami, Florida, this 28th day of September 2021.



PATRICIA A. SEITZ

UNITED STATES SENIOR DISTRICT JUDGE

³ While Defendant highlights the progress he has made since his incarceration to right prior wrongs and “demonstrate both his remorse and his rehabilitation,” the record shows some inconsistencies [DE 3049 at 29]. In support of his claim, Defendant points to two programs – the “Challenge program, a cognitive behavioral program...[and] the Enhanced-Challenge, Opportunity, Discipline, and Ethics (E-CODE) treatment program” – that he completed while incarcerated. While the record is unclear, he appears to have completed the Challenge program in September 2012 [DE 3049-4 at 6]. He enrolled in May 2003 in the E-CODE program, “designed to introduce Inmates to the merit of pro-social values and a non-criminal lifestyle,” and completed it in June 2005. Notwithstanding completion of these programs, Magluta chose in March 2013 to smuggle two cellular phones into his cell. See DE 3060-1.