

FILED
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2:20 pm, Apr 10, 2020

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

██████████,

Defendant.

-----X

MEMORANDUM OF
DECISION & ORDER
13-CR-285 (ADS)

APPEARANCES:

United States Attorney’s Office, Eastern District of New York

Attorneys for the Government

610 Federal Plaza

Central Islip, NY 11722

By: ██████████, Assistant United States Attorney.

Barket ██████████ Epstein & Kearon, LLP

Attorneys for the Defendant

666 Old Country Road

Garden City, NY 11530

By: Donna Aldea, Esq., Of Counsel.

SPATT, District Judge:

Defendant ██████████ is serving a 20-month sentence imposed by this Court for a Violation of Conditions of Release stemming from a relapse with drug use and a guilty plea to state drug charges. He currently has approximately nine months remaining on his sentence, with a scheduled release date of January 29, 2021.

Presently before the Court is an application for compassionate release by ██████████ pursuant to 18 U.S.C. §3582(c)(1)(A)(i), 18 U.S.C. §3624(c)(2), or 18 U.S.C. §3622(a)(3) & (6). He brings this application as a result of his high-risk for life-threatening complications from the COVID-19 outbreak, which is spreading rapidly through Danbury FCI, where he is currently incarcerated. For the following reasons, the Court grants the Defendant’s motion.

“A court may not modify a term of imprisonment once it has been imposed except pursuant to statute.” *United States v. Gotti*, No. 02-cr-743 (CM), 2020 WL 497987, at *1 (S.D.N.Y. Jan. 15, 2020). 18 U.S.C. § 3582(c)(1)(A)(i) permits a court to reduce a term of imprisonment if, after considering the factors set forth in section 3553(a), “it finds that ... extraordinary and compelling reasons warrant such a reduction ... and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* Relevant here, extraordinary and compelling reasons for modification exist where “[t]he defendant is ... suffering from a serious physical or medical condition ... 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.” U.S.S.G. § 1B1.13 comment n.1(A)(ii).

The Court finds that extraordinary and compelling reasons compel modification of [REDACTED] sentence. He is 63 years old and in failing health. [REDACTED] suffers from advanced Crohn’s Disease, which has required multiple surgeries and lengthy hospital stays, and has nearly claimed his life. In addition to Crohn’s, he also suffers from Hepatitis C, and is currently being tested for Diabetes because of new concerning symptoms. Among these, [REDACTED] currently has open sores on his legs, which will not heal and are badly infected, requiring antibiotic medications, pain relievers, and bandaging. His legs are swollen and purple, and he is currently unable to walk, and confined to a wheelchair. Over the past few days, he has also experienced severe diarrhea, weakness and dizziness, and an inability to hold down food or liquids. His age, preexisting medical ailments, and current medical condition all place him at extremely high risk for life-threatening complications in the event of a COVID-19 infection.

Due to his advanced age, his multiple worsening medical conditions, the nature of his offenses, and his having completed some of his sentence, the Government consents to the reduction

of [REDACTED] sentence to time served, subject to a number of conditions. The Defendant has informed the Court that he agrees to the conditions outlined by the Government.

Therefore, the Court grants [REDACTED] motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), subject to conditions. Accordingly, the Court hereby:

ORDERS that the defendant is sentenced to time served to be followed by nine (9) months of supervised release; and

ORDERS that the supervised release term will include all the standard conditions of supervision as ordered in the Judgment and Commitment order, as well as the following special conditions:

- The defendant shall be placed under 24-hour home incarceration to be enforced by location monitoring, using specific technology to be determined by the Probation Department, which includes, among other variations: voice recognition; Smartlink (smart phone application used to verify an individual's location, similar to GPS); voice identification; virtual supervision (utilizing video telephonic capabilities, i.e., FaceTime.), or imposed curfew, monitored by random telephone checks. The defendant may only leave his residence for necessary medical services with advanced notification, and approval if time permits, from the Probation Department. All other leave from the residence must be submitted through defense counsel for the Court's approval.
- Upon his release from custody, the defendant will go to a hospital as soon as practicable, but no later than 12 hours from the time of his release, and follow the instructions of the medical personnel at that hospital.
- The defendant shall participate in an outpatient drug treatment program approved by the U.S. Probation Department. The defendant shall contribute to the costs of such

treatment not to exceed an amount determined reasonable by the Probation Department's Sliding Scale for Substance Abuse Treatment Services and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid. The defendant shall disclose all financial information and documents to the Probation Department to assess his or her ability to pay. The defendant shall not consume any alcohol or other intoxicants during and after treatment, unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.

- The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e) (1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

It is **SO ORDERED**.

Dated: Central Islip, New York

April 10, 2020


s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge