

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY GRAY,

Defendant.

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Crim. No. 07-137-LPS

ORDER

At Wilmington this **12th** day of **July, 2021**, having reviewed Defendant Jeffrey Gray's Motion to Reinstate Petition for Compassionate Release and Reduction of Sentence Under the First Step Act of 2018 (D.I. 143), the government's Response (D.I. 147) and exhibit (D.I. 148), as well as Gray's reply (D.I. 149);

IT IS HEREBY ORDERED that Gray's motion (D.I. 143) is **DENIED**.

A compassionate release motion by a sentenced defendant requires that defendant "(1) to exhaust administrative remedies, (2) to show extraordinary and compelling circumstances, (3) to show an absence of dangerousness, and (4) to show that the section 3553(a) factors support a reduced sentence." *United States v. Vurgich*, 2020 WL 4335783, at *3 (D. Del. July 28, 2020) (internal citation omitted).¹

The pending motion is Gray's third seeking compassionate release. (*See* D.I. 133, 138)
The Court denied the first two motions for failure to exhaust administrative remedies. (*See* D.I.

¹ Judge Andrews, who authored *Vurgich*, has expressed skepticism that prong (3), dangerousness, is applicable in light of other circuit court rulings. *See United States v. Flagg*, Crim. A. No. 19-30-RGA D.I. 59 at 2. Whether absence of dangerousness is a separate requirement does not affect the disposition of the pending motion because the Court is denying it under prongs (2) and (4).

137, 142) The exhaustion requirement is now satisfied because Gray has narrowed the basis for relief to only those grounds which the government agrees he has exhausted: “changes in the law and his post-conviction rehabilitation.” (D.I. 143 at 2; *see also* D.I. 147 at 4) The impact of the coronavirus pandemic, and Gray’s age, are no longer asserted as bases for relief. (*See* D.I. 133, 138) Accordingly, Gray has shown that he has exhausted his administrative remedies.

Gray’s motion fails, however, at the second step as he has failed to meet his burden to show that extraordinary and compelling circumstances warrant reducing his sentence to time served.

The parties dispute whether the Policy Statement embodied in United States Sentencing Guideline § 1B1.13 is applicable to Gray’s motion. That Policy Statement circumscribes “extraordinary and compelling reasons” to essentially three categories: (1) terminal or serious medical conditions that prevent self-care in a prison setting; (2) advanced age combined with physical or mental health decline; and (3) family circumstances implicating a break in continuity of care of immediate relatives. The Court need not decide whether the Policy Statement applies because it would deny the motion whether or not the Policy Statement is applicable.²

If the Policy Statement is applicable, even Gray appears to concede that his motion must fail. Nowhere in his extensive filings does Gray argue that he has a terminal or serious medical condition which cannot be cared for while incarcerated, that he is of advanced age and has suffered a decline in his physical or mental health, or that he has family circumstances requiring care for immediate relatives. The grounds for relief Gray does cite – changes in the law and rehabilitation – are not contemplated as extraordinary and compelling circumstances under the


² The Court understands that this issue is pending before the Third Circuit in a case which was argued on March 16, 2021. *See United States v. Andrews*, No. 20-2768.

Policy Statement and are, to the contrary, at least partially excluded as grounds for compassionate release. (*See* D.I. 147 at 5-6; *see also* U.S.S.G. § 1B1.13 Appl. Note 3 (“[R]ehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.”)) If the Policy Statement applies, Gray has plainly failed to prove he is entitled to any relief.

While the analysis is slightly more complicated if the Policy Statement is inapplicable, the outcome is the same. Assuming the Court is permitted to undertake an independent analysis of whether Gray has presented extraordinary and compelling circumstances warranting the relief of reduction of his sentence to one of time served, the Court finds that he has not. *See* 18 U.S.C. § 3582(c)(1)(A)(i) (“The court may not modify a term of imprisonment once it has been imposed except [where, among other requirements] extraordinary and compelling reasons warrant such a reduction”). While, as Gray notes, other courts have sometimes found the combination of sentencing disparities (resulting from changes in the law) and rehabilitation to constitute extraordinary and compelling circumstances for purposes of a compassionate release motion (*see* D.I. 143 at 6-9), such a conclusion is not supported here. Gray has already benefited from the change in the law that followed his sentencing: his original sentence of 480 months was reduced to 384 months. (*See* D.I. 124, 129) Gray was also the beneficiary of Presidential clemency, which further reduced his sentence to 240 months. (*See* D.I. 130; D.I. 147 at 2-3) There is simply no basis to find any unwarranted disparity in Gray’s current sentence. (*See* D.I. 147 at 12) (“Defendant has already had his original sentence cut in half Defendant’s current sentence is already significantly lower than the currently applicable Sentencing Guidelines range. It is also five years lower than the mandatory minimum of 25 years he faced at the time of his original sentencing.”) (internal citations omitted)

Likewise, while Gray's post-sentencing rehabilitation has been admirable (*see, e.g.*, D.I. 147 at 10; *but see* D.I. 148 Ex. C) (disciplinary infractions), there is nothing in the record on which the Court could ground a finding that he has demonstrated extraordinary or compelling rehabilitative efforts. *See generally* 28 U.S.C. § 994(t) ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."). It follows that the combination of changes in the law, sentencing disparities, and rehabilitation do not, under the circumstances here, constitute extraordinary and compelling reasons for compassionate release.

Gray's motion also fails at step (4) as he has not shown that the 3553(a) factors favor reduction of his sentence to time served. Gray was found guilty of conspiracy to distribute more than five kilograms of cocaine, attempt to possess with intent to distribute more than 500 grams of cocaine, possession of a firearm in furtherance of drug trafficking, money laundering, and possession of a firearm by a felon. (*See* D.I. 147 at 2) As the government puts it, "[t]he nature and circumstances of the offense demonstrate that Defendant was a large-scale cocaine trafficker who was responsible for putting kilos of cocaine on the streets of Wilmington." (*Id.* at 11) Gray's criminal history includes two prior cocaine trafficking offenses, including one in which he possessed a firearm. (*See id.* at 6-7) He was on probation when he committed the instant offenses. (*See id.* at 7) The nature and seriousness of his offenses; the need to promote respect for the law; the needs of deterrence and to protect the public; the history and characteristics of the defendant; and the interests of punishment together support the current sentence of 240 months and do not justify the lesser sentence of time served.³


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

³ Gray has been in federal custody since November 6, 2007, which is slightly more than 164 months. (D.I. 6) His current projected release date is December 15, 2024. (D.I. 147 at 3)