

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD BROCKENBAUGH,

Defendant.

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Crim. No. 11-50-LPS

ORDER

At Wilmington this 12th day of July, 2021, having reviewed Defendant Ronald Brockenbaugh's Renewed Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (D.I. 71), attached exhibits (Exs. A, B & C), and the government's response (D.I. 73);

IT IS HEREBY ORDERED that Brockenbaugh's motion (D.I. 71) is **DENIED**.

A compassionate release motion by a sentenced defendant requires the 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

In an order issued on November 13, 2020, the Court found, based on the government's concession, that Brockenbaugh has exhausted his administrative remedies and that his medical conditions "establish the existence of extraordinary and compelling reasons." (D.I. 60 at 1)

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 both prongs (3) and (4).

(citing D.I. 58 at 1, 6) As of its March 8, 2021 response, the government continued to concede that these first two requirements are satisfied. (*See* D.I. 73 at 2) However, as with his earlier motion, Brockenbaugh's renewed motion fails at step (3), dangerousness. It also fails at step (4), as the 3553(a) factors do not support his request to reduce his sentence to time served.

As the Court noted in its November 2020 order, and as remains the case on the present record, Brockenbaugh has not demonstrated an absence of danger to the community were he to be released, largely due to his extensive and violent criminal history:

His criminal history is lengthy and predominated by violent crimes. In 1986, he was convicted in the United States District Court for the Southern District of Florida of bank robbery and attempted bank robbery. One year later, he was convicted in Florida state court on additional robbery charges. Nine years after that, Brockenbaugh was sentenced on state battery charges. Fourteen years passed and then he pled guilty in this Court to eight armed robberies of stores throughout Delaware and Connecticut. As the Court noted at sentencing, "the very serious dangerous series of crimes" that Brockenbaugh committed created "true victims who were feeling that their lives were threatened, which is a horrible, horrible thing to have done."

(D.I. 60 at 2) (internal citations omitted) These facts, of course, have not changed, and create a high hurdle to overcome to show an absence of dangerousness.

Brockenbaugh's renewed motion presents even more evidence than his original motion that he may now be a changed man. The record shows that while incarcerated he has completed numerous courses and maintained strong family ties. (*See* D.I. 71 at 3-4; *see also id.* at Exs. A & B) He has at least the beginnings of a plan for release, including a place he seeks to live and a potential job. (*See id.* at 5, Ex. B) Encouragingly, his counsel writes that he "is now a man who *has* changed." (D.I. 71 at 3) While the Court hopes this is correct, it does not suffice to meet Brockenbaugh's burden to show that he would not be a danger to the community if released. Instead, the Court agrees with the

government that the “nature of the representations now made by the defendant in his Renewed Motion do not in any way change the basic dangerousness determination made by the Court.” (D.I. 73 at 3)

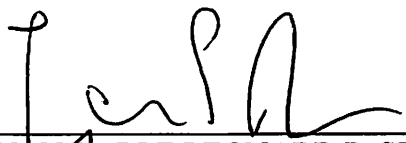
Even if this were not the case, Brockenbaugh’s motion also fails at the final step as he has also not demonstrated that the 3553(a) factors support a reduced sentence. *See generally* 18 U.S.C. § 3553(a). This is due in part, again, to his extensive criminal history, as well as the enormous severity of the string of crimes he committed which led to the sentence he is now serving. (*See* D.I. 73 at 1 (“Defendant entered a guilty plea to a ten count Information which charged eight Hobbs Act robberies, one count of possessing and brandishing a firearm and one count of possession of a firearm and ammunition by a convicted felon.”); *id.* at 3 (“The Defendant’s criminal history consists of a staggering 14 robbery charges, the majority of those charges involving the use of a firearm.”) (emphasis omitted)) The interests of deterrence and protection of the public also disfavor reducing Brockenbaugh’s sentence. Finally, and importantly, the Court notes that the 180-month² sentence it imposed is a sentence Brockenbaugh himself agreed to as part of his plea agreement, an agreement for which he received benefits. (*See, e.g., id.* at 4; *see also* D.I. 60 at 3 n.1 (“While Brockenbaugh may be able to show, years later, that the section 3553(a) factors no longer support the sentence he agreed to at the time of sentencing, this is an issue not adequately or persuasively addressed in the papers now before the Court.”)) In light of all of the circumstances, Brockenbaugh has failed to show that the

² Defendant contends that his projected release date is March 16, 2024, and if he is held until that date he would serve a total of 4,691 days. (D.I. 71 at 5 n.7) It appears that as of the date of this Order, July 12, 2021, Brockenbaugh has been in federal custody for 3,693 days. Hence, he has served approximately 79% of the sentence the Court imposed.

3553(a) factors favor a reduced sentence.³

Therefore, the Court is denying Brockenbaugh's renewed motion. While today's denial is not expressly "without prejudice," the Court recognizes that Brockenbaugh may choose to seek relief again in the future. Should he do so, he will not only have to produce a record that provides a meritorious basis for the Court to change its findings as to dangerousness and the 3553(a) factors; he may also confront a situation in which he must again meet his burden to show exhaustion and extraordinary and compelling circumstances, as the background situation with respect to covid seems to be (thankfully) changing. While the Court does not wish to discourage Mr. Brockenbaugh from the promising path on which he appears to be travelling, the Court also does not wish to be mistaken as suggesting he is likely to prevail on a renewed motion, should he file one.

IT IS FURTHER ORDERED that no later than **July 14** the government shall file a redacted version of its sealed response (D.I. 73).


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

³ While arguably the interest in providing restitution to victims is a factor supporting the motion, that interest is far from sufficient, under the totality of circumstances, to warrant granting the requested relief. (*See* D.I. 73 at 4) ("The defendant can pay restitution when he completes his sentence of imprisonment.")