

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
ROBERT SHEPHERD,)
)
 Defendant.)

Crim. No. 16-93-LPS-6

PUBLIC VERSION
07/22/2020

MEMORANDUM ORDER

At Wilmington this **9th** day of **July, 2020**:

Having reviewed Defendant Robert Shepherd’s (“Shepherd” or “Defendant”) Emergency Motion for Release to Home Confinement (D.I. 394), and having considered the government’s response (D.I. 399) and Shepherd’s Reply (D.I. 401), IT IS HEREBY ORDERED that:

1. Shepherd’s motion (D.I. 394) is DENIED without prejudice to renew, especially if any material circumstance changes.

2. The parties shall file a joint status report in 30 days providing updated information on the situation at FCI-Schuylkill, Shepherd’s health status,

3.


As a threshold matter, the Court finds it has jurisdiction to resolve Shepherd’s motion. While the government argues that Shepherd did not exhaust his remedies under the compassionate release statute (D.I. 399 at 3-4), the Court finds that Shepherd did so by sending the warden of

FCI-Schuylkill a request for release to home confinement, in which he stated that: (1) his asthma makes him vulnerable to severe COVID-19 complications and (2) he would reside with his wife upon release (*see* D.I. 399 Ex. C at 2; *see also* 28 C.F.R. § 571.61 (stating that inmate’s request to file motion for compassionate release “shall be submitted to the Warden” and “shall at minimum contain . . . (1) [t]he extraordinary or compelling circumstances that the inmate believes warrant consideration [and] (2) [p]roposed release plans, including where the inmate will reside”). This conclusion is consistent with the warden’s recognition that Shepherd’s letter was a “Compassionate Release/RIS [reduction in sentence] request.” (D.I. 401 at 2; *see also* D.I. 401 Ex. E)

However, Shepherd has not shown that “extraordinary and compelling reasons” justify modifying his sentence. *See* 18 U.S.C § 3582(c). Shepherd suggests his “treatment history of severe asthma” places his at greater risk for severe COVID complications (D.I. 394 at ¶ 6), but Shepherd’s medical records indicate that his asthma is well-controlled (*see* D.I. 399 at 4). Moreover, as the Third Circuit recently stated, “the existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.” *United States v. Roeder*, 807 Fed. App’x 157, 161 n.16 (3d Cir. Apr. 1, 2020); *see also United States v. Dewitt Evans*, 2020 WL 2543142, at *3 (D. Del. May 19, 2020) (“Defendant’s medical records do not show him to have ‘moderate to severe asthma’ and therefore to be at any substantially greater risk for complications from COVID-19 than a completely healthy individual in prison. Thus, in my opinion, he does not have such health issues as to demonstrate ‘extraordinary and compelling circumstances,’ even when combined with the on-going COVID-19 pandemic, and thus, he does not qualify for compassionate release.”).

Shepherd also argues that “the conditions of confinement at FCI-Schuylkill create the ideal environment for the transmission of contagious disease” (D.I 394 at ¶ 5), but he offers no concrete evidence that FCI-Schuylkill places inmates at meaningfully increased risk for COVID-19 infection. Instead, it appears from the record that FCI-Schuylkill has made serious efforts to protect inmates from exposure to COVID-19 (D.I. 399 at 2-3), and publicly-available data shows that the prison has only one inmate COVID case and zero staff cases, *see* www.bop.gov/coronavirus (last visited July 8, 2020).¹

In sum, the Court agrees with the government that “Defendant is asking the Court to cast aside his serious drug trafficking criminal history and release him because he suffers from light asthma while being housed at a facility that has [only one] COVID-19 case[.]” (D.I. 399 at 6) Thus, the Court thus will deny Shepherd’s motion. However, this denial is without prejudice to Shepherd’s right to file another motion, should there be any material change in Shepherd’s health, the conditions at FCI-Schuylkill, or other pertinent circumstances.



HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

¹ Because Shepherd has failed to show the required “extraordinary and compelling reasons” to justify his release, the Court need not decide whether Shepherd’s release would pose a “danger to the safety of any person or to community.” If Shepherd eventually renews his motion, he will have to persuade the Court that he would not pose such a danger, notwithstanding his extensive criminal history of drug trafficking, some of which occurred while he was on supervised release. (*See* D.I. 399 at 6)