

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BREYON RICHARDSON,

Defendant.

Crim. No. 18-22-LPS-1  
UNSEALED 1/5/2021

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**MEMORANDUM ORDER**

At Wilmington this **30th** day of **December, 2020**, having reviewed Defendant Breyon Richardson’s Amended Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (D.I. 71), the government’s response (D.I. 73), and Richardson’s reply (D.I. 74);

**IT IS HEREBY ORDERED** that Defendant’s Motion (D.I. 71) is **DENIED**.

“[A] judgment of conviction that includes [a sentence of imprisonment] constitutes a final judgment and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 825 (2010). The First Step Act amended 18 U.S.C. § 3582 to permit inmates in specified circumstances to file motions seeking “compassionate release.” *See* 18 U.S.C. § 3582(c)(1)(A). Prevailing on a compassionate release motion requires a sentenced 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).

Richardson has exhausted his administrative remedies. He petitioned the Bureau of Prisons (“BOP”) on October 20, 2020 and filed the instant motion on December 2, 2020, a lapse

of 42 days, satisfying the requirements of 18 U.S.C. § 3582(c)(1)(A). *See United States v. Harris*, 973 F.3d 170, 171 (3d Cir. 2020) (“[T]he statute states that the defendant may file the motion thirty days after the warden receives his request.”); *see also* D.I. 73 at 7 (government conceding exhaustion requirement has been met).

Richardson has also met his burden to demonstrate the presence of extraordinary and compelling reasons that could support modifying his sentence. As the government acknowledges:

Richardson has listed a serious medical condition of obesity that, according to current CDC guidelines, puts him at higher risk for severe illness if he were to contract COVID-19. That condition is confirmed in Richardson’s medical records. On the unique facts of this case, the government concedes that Richardson has established the existence of extraordinary and compelling reasons under 18 U.S.C. § 3582(c)(1)(A)(i), because these conditions are “serious physical or medical condition[s] . . . that substantially diminish the ability of the defendant to provide self-care within the environment of the correctional facility.”

(D.I. 73 at 11) (quoting U.S.S.G. § 1B1.13 cmt. n.1(A))

Richardson’s motion, however, fails at steps (3) and (4). He has not shown that his release would not pose a danger or that the section 3553(a) factors support a reduced sentence.

The government accurately characterizes the record as follows:

One year after release from a federal conviction for possessing a firearm in violation of a family court order, the defendant Breyon Richardson was arrested for new gun charges, this time for convincing a new girlfriend to purchase guns on his behalf. On the day of his March 6, 2018 arrest, Richardson was in the middle of a physical dispute with an ex-girlfriend where he threatened, “I’m strapped.”

...

Richardson has served roughly 32 months of his sentence

[of 42 months].<sup>1</sup> The last few months he has spent in special housing for having assaulted another inmate.

...

At Richardson's sentencing, the Court imposed a sentence at the top of the Guidelines range for his offense – 21 months. (The government asked for an upward variance to 36 months, believing the sentence did not reflect the severity of Richardson's conduct.) The Court then imposed an additional 21-month sentence to be served consecutively for the violation of supervised release.

...

As his back-to-back firearms convictions demonstrate, Richardson has a serious and unhealthy fascination with firearms that is not abated by court intervention. And far from merely possessing firearms, Richardson has a proven history of publicizing his firearm ownership in the hopes of intimidating others. Unlawful gun ownership as exhibited by Richardson is dangerous . . . .

Forty-two months encompassed both the new firearms crimes and the punishment for violating terms of supervised release so soon after his prior offense. It also reflected [that] the prior sentence of time served after seven months' incarceration . . . did nothing to deter Richardson from continued dangerous, unlawful behavior, notwithstanding his consistent promises of change. The sentence of 42 months' incarceration imposed by this court last year continues to reflect the seriousness of Richardson's offenses, promotes respect for the law, and provides just punishment for these crimes. Further, the full period of incarceration is clearly necessary to specifically deter Richardson

....

(D.I. 73 at 1-3, 12-14) (internal citations omitted)


Richardson's papers devote little attention to steps (3) and (4). In addition to focusing on

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<sup>1</sup> "Mr. Richardson is serving a 21-month sentence for false statements in the attempted purchase of a firearm, in violation of 18 U.S.C. § 922(a)(6), consecutive to a 21-month sentence for a violation of supervised release. This Court imposed the sentence on April 17, 2019, and Mr. Richardson's release date is currently set for May 9, 2021." (D.I. 71 at 1)

the impact of COVID-19 on USP Canaan, where he is incarcerated, and his health conditions, Richardson emphasizes that he has only little more than five months left to serve on his sentence. (*See, e.g.*, D.I. 71 at 1) (noting projected release date of May 9, 2021) While the fact that Richardson has served such a large percentage of his sentence gives heft to his motion, it is insufficient, in the overall context of the record before the Court, to show an absence of dangerousness if he is released early or to show that the sentencing factors, in totality, favor reducing his sentence to time-served. In this regard, in addition to all of the other factors noted above, the Court is particularly troubled by the “multiple behavioral issues” at USP Canaan. (D.I. 73 at 14 & Ex. B) Most particularly, Richardson “admitted assaulting” another inmate. (*Id.* at Ex. B p. 1) Moreover, were Richardson to be released now, the pandemic would adversely impact the ability of the United States Probation Office (“USPO”) to supervise him, even if he were placed on home confinement with electronic monitoring. There is reason to hope that the coronavirus situation will have materially improved months from now when Richardson is scheduled to be released. (*See, e.g.*, D.I. 73 at 14) This will enable USPO to better assist Richardson in reentering society, hopefully resulting in a more successful post-incarceration result than Richardson experienced the last time he was sentenced in this Court.

**IT IS FURTHER ORDERED** that the parties shall meet and confer and, no later than January 5, 2021, advise the Court of whether they request any redactions to this sealed order. The parties must also, no later than that same date, file redacted versions of their motion and briefs (D.I. 71, 73, 74).

  
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HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE