

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER HURD,

Defendant.

Crim. No. 18-29-LPS-1  
REDACTED PUBLIC  
VERSION 1/15/2021

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**ORDER**

At Wilmington this **8th** day of **January, 2021**, having reviewed Defendant Christopher Hurd’s Amended Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (D.I. 81) (“Amended Motion”), and the government’s response (D.I. 84), **IT IS HEREBY ORDERED** that the Amended Motion (D.I. 81) is **DENIED**. **IT IS FURTHER ORDERED** that Hurd’s original motion (D.I. 75) is **DENIED AS MOOT**.

On April 10, 2019, Hurd pled guilty to conspiracy to distribute furanyl fentanyl, in violation of 18 U.S.C. § 841(a)(1)(c) and 21 U.S.C. § 846. On October 2, 2019, the Court sentenced him to 120 months imprisonment. His anticipated release date is May 18, 2026. (*See* D.I. 84 at 3)

“[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).

As the government concedes (*see* D.I. 84 at 11 n.8), Hurd has exhausted his administrative remedies. He petitioned the Bureau of Prisons (“BOP”) for release on July 5, 2020 (D.I. 81 at 3 & Ex. D) and filed the pending motion on November 3, 2020 (*id.* at 14). More than 30 days had elapsed between those two events, 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.”).

Hurd has also met his burden to demonstrate the presence of extraordinary and compelling reasons that could support modifying his sentence. In determining whether extraordinary and compelling reasons exist, “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). There must be something more. For example, extraordinary and compelling circumstances may exist where “underlying health conditions . . . render [one] especially vulnerable to COVID-19.” *United States v. Rodriguez*, 451 F. Supp. 3d 392, 401 (E.D. Pa. 2020). Hurd has demonstrated the presence of such health conditions.

The record shows that Hurd was diagnosed with [REDACTED] in 2010. (D.I. 81 Ex. C at 11) That diagnosis stems from Hurd’s history (eight years) of tobacco and marijuana use. (D.I. 84 at 2; *see also* generally D.I. 81 Ex. A) The CDC indicates that being (or having been) a smoker increases the risk of severe illness from COVID-19. *See People with Certain Medical Conditions*, Ctrs. Disease Control & Prevention,

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Dec. 29, 2020).

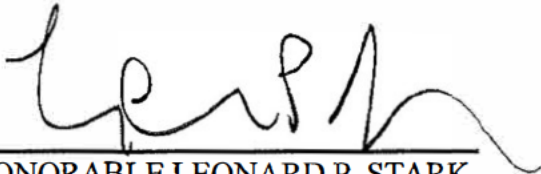
Hurd was also recently diagnosed with COVID-19 and, fortunately, has recovered, evidently without symptoms or lingering ill-effects. (D.I. 84 at 14 & Ex. 3 at 9) At this time, the Court is not prepared to find that this means all of Hurd's risk from future exposure to coronavirus is mitigated. The CDC has noted that "[b]ased on what we know from similar viruses, some reinfections are expected." *Reinfection*, Ctrs. Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html> (last accessed Jan. 4, 2021). Although the possibility of reinfection "remain[s] rare," there have nonetheless been "[c]ases of reinfection with COVID-19." *Id.* Consistent with this guidance, the government concedes "there is not yet a scientific consensus on the risk of reinfection." (D.I. 84 at 14)

Nevertheless, Hurd's motion fails at the third step. He has not shown that his release would not pose a danger.

Hurd's criminal history includes convictions dating back to 2003, on charges including harassment, menacing, and terroristic threatening. (D.I. 63 ¶¶ 31-56) His record reveals hostility towards probation officers and repeated violations of court-ordered supervision. (*Id.* ¶¶ 38, 42, 58, 65) That Hurd deliberately laced already-dangerous drugs, such as heroin, with even more dangerous substances, like fentanyl, further adds to the risk of danger Hurd would pose to the community. (*See* D.I. 84 at 15-16) As the government notes, at sentencing "the Court recognized that the Defendant's actions led directly to the death of a woman. . . . Further, even after finding out that someone died from his drugs, the Defendant did not stop selling them." (*Id.* at 16) Taken as a whole, then, the record does not show an absence of dangerousness were Hurd to be released.

Because Hurd's motion fails at step (3) of the inquiry, the Court need not (and will not) proceed to step (4).

**IT IS FURTHER ORDERED** that the parties shall meet and confer and, no later than January 12, 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 briefing (D.I. 81, 84).



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HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE