

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MALIK MCCAULEY,

Defendant.

No. 19-CR-0045-LPS

ORDER

At Wilmington this 12th day of July, 2021, having reviewed Defendant Malik McCauley’s Motion for a Compassionate Release Pursuant to 18 U.S.C. § 3582 (D.I. 34), the government’s response (D.I. 37), McCauley’s reply (D.I. 42), and the other pertinent materials (*see, e.g.*, D.I. 35, 38);

IT IS HEREBY ORDERED that McCauley’s motion (D.I. 34) 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, 824 (2010) (internal quotation marks omitted). 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).¹

As to the first prong, the government acknowledges that McCauley has met the exhaustion requirement. (See D.I. 37 at 7) Under § 3582(c)(1)(A), a defendant seeking a reduced sentence must first ask the Bureau of Prisons (“BOP”) and then either (i) wait 30 days for the BOP to respond or (ii) exhaust all available administrative appeals after receiving an adverse decision. See *United States v. Raia*, 954 F.3d 594, 595, 597 (3d Cir. 2020). McCauley requested compassionate release from the Warden at F.C.I. Cumberland on February 22, 2021 – citing a weakened immune system resulting from diabetes (D.I. 34 Ex. A) – and waited until April 1, 2021, more than 30 days, to file his motion (D.I. 34; D.I. 37 at 7). The first requirement, then, is met.

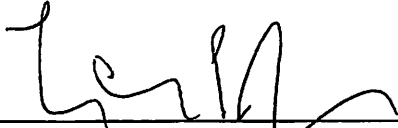
However, McCauley has failed to meet his burden on the second prong, as he has not demonstrated extraordinary and compelling circumstances. McCauley attempts to satisfy prong (2) by pointing to his personal health situation. The record establishes that McCauley is pre-diabetic and at an increased risk of developing type 2 diabetes, of which he has a family history. (D.I. 35 at 10, 34; D.I. 42 at 2) While type 2 diabetes “can make [one] more likely to get severely ill from COVID-19,” CDC guidance does not specifically elucidate the effect of prediabetes on one’s susceptibility to serious illness as a result of COVID-19. *People with Certain Medical Conditions*, Ctrs. for Disease Control & Prevention (May 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical->

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 prong (2).

conditions.html; *see United States v. Rae*, 2020 WL 4544387, at *4 (E.D. Pa. Aug. 6, 2020). The Court has no basis to find that McCauley’s pre-diabetes makes him more likely to get severely ill from Covid-19.

In fact, the record strongly suggests the contrary. In November 2020, McCauley contracted Covid-19, from which fortunately he appears to have quickly and fully recovered. (D.I. 37 at 1, 12; *see* D.I. 35 at 5; D.I. 42 at 3) The government contends he was entirely asymptomatic (*see* D.I. 37 at 1, 12), while McCauley insists he experienced severe headaches and body aches (D.I. 42 at 3). In any event, there is no evidence that McCauley suffered severe health consequences from his infection. Given the additional fact that McCauley has been offered a covid vaccine (*see* D.I. 34 Ex. B; *see also generally United States v. Robinson*, 2021 WL 719658, at *1 (W.D. Pa. Feb. 23, 2021) (holding that defendant’s decision not to be vaccinated undermined foundational premises of his motion for compassionate release)), the Court finds that McCauley has failed to demonstrate any extraordinary and compelling circumstances to justify a sentence reduction to time served. (*See* D.I. 37 at 13) (“Defendant’s medical situation is stable and effectively managed. . . . [H]is medical problems do not ‘substantially diminish . . . [his] ability . . . to provide self-care within the environment of a correctional facility.’”) (internal quotation marks and citation omitted)

The Court need not, and will not, reach prong (4).


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE