

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR422-065
	)	
DARA BUCK	)	
	)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO
DEFENDANT’S FOURTH 18 U.S.C. § 3582(c)(1)(A) MOTION**

Defendant Dara Buck spearheaded a prolific fraud scheme in which she and others illegally raked in millions of dollars from Covid-19 relief programs and federal student loan forgiveness. She was sentenced to serve forty-two months in prison for her extensive fraud. Her first act after being sentenced was to ask the Court for an extension of her self-report date. She asserted *inter alia* that she was “the sole parent in charge of raising her children and would like additional time to make sure her estate is in order.” (Doc. 46 at 1.) The government did not oppose this request, and the Court granted it. (Doc. 47.) To date, she has served only around eight months. Now before the Court is her *fourth* motion for early release. (Doc. 62.) This motion should be denied for many of the same reasons as her prior three motions. Specifically, Buck has failed to show extraordinary and compelling reasons that would justify shortening her sentence under 18 U.S.C. § 3582(c)(1)(A), and the sentencing factors under 18 U.S.C. § 3553(a) counsel against any sentence reduction in this case.

In Buck’s first motion, which she filed after she had been in prison for about

three weeks, she claimed to be suffering from a raft of medical ailments—“severe headaches, hearing loss, tears in both shoulders, 5 abdominal hernias, irritable bowel syndrome with diarrhea, chronic kidney disease stage 3, liver enzymes, osteopenia in [her] lower spine, ovarian failure, and arthritis in both shoulders, knees, back, and both feet”—and, separately, she expressed concerns about her aunt’s ability to care for her three minor children. (Doc. 48 at 1.) In her second and third such motions, she abandoned her efforts to be released based on her own purported medical issues and instead focused exclusively on her childcare concerns. (Doc. 53; 55.) The Court properly denied all three of these motions on the grounds that Buck had failed to show administrative exhaustion, that she had failed to show extraordinary and compelling circumstances, and that even if she had satisfied these prerequisites the sentencing factors were strongly against her. (Docs. 52; 61.¹) Although Buck has now cured her noncompliance with the statute’s threshold requirement that she wait thirty days after asking the Bureau of Prisons (BOP) to move on her behalf before moving herself, nothing has changed on the latter two fronts, so the Court should deny this most recent attempt on those grounds.

For Buck to bring this motion properly, first she must either (1) have actually exhausted the administrative process for asking BOP to bring the motion on her behalf, or (2) have waited thirty days after asking BOP to do so via a request to her warden. *United States v. Harris*, 989 F.3d 908, 911 (11th Cir. 2021). Based on

¹ This latter order addressed both the second and third motions.

information provided by the Bureau of Prisons (BOP), the government understands that Buck presented the warden with her most recent request for BOP to seek a reduction in sentence on August 29, that the warden routed Buck's request to BOP's general counsel in late November, and that BOP's administrative review of the request remains ongoing. Therefore, because more than thirty days have lapsed since the warden's receipt of Buck's request, the Court is not obligated this time around to dismiss the motion on failure-to-exhaust grounds.

However, Buck still has not demonstrated an extraordinary and compelling reason for early release under U.S.S.G. § 1B1.13 and application note 1 because she still has not shown that her children's caregivers are incapacitated. *See United States v. Granda*, 852 F. App'x 442, 446 (11th Cir. 2021) ("[I]t was Granda's burden to show that his circumstances warranted a reduction."). In the first iteration of this motion, Buck described her aunt as "currently ill[,] a recent cancer survivor still battling with recovery." (Doc. 48 at 1.) In the order denying that motion, the Court concluded that "it appears from Buck's statements that despite her aunt's condition, she is currently not incapacitated" (Doc. 52 at 6.) In the second and third iterations of this motion, Buck claimed that her aunt had abandoned the children and that Buck's twenty-one-year-old daughter, who had stepped into the ostensible breach, was not a suitable caregiver. (Doc. 53; 55.) In the order denying those motions, the Court explained that "the scant evidence Buck provides does not sufficiently prove her claims of the caregivers' incapacitation." (Doc. 61 at 1.)

In response to the Court's two previous denials, Buck now strains to conform

the facts to the legal requirement that she show genuine incapacitation. She now claims more definitively that “[her] aunt, Maxine Buck, cannot care for [her] children due to her health conditions.” (Doc. 62 at 1.) As support, Buck attaches a letter from her aunt, who refers to herself as Maxine Buck-Gailliard, describing the daily effects of her various medical issues. However, it is perhaps revealing that Buck-Gailliard leads with a series of decidedly non-medical (but admittedly sympathetic) complaints:

1. Her children are used to their mother’s way of everything and not mine. I am “old school” and do not believe that a child should tell me what they will and will not do.
2. I am not used to children going behind my back to the older sister to get permission after I’ve told them no.
3. I am not used to kids sneaking out to the house, being “sassy no manners” and stomping away when I am speaking.

(Doc. 62 at 4.)

Buck also attaches a short letter from Buck-Gailliard’s doctor that reads in its entirety as follows: “Patient Maxine Buck-Gailliard has progressive chronic diseases that make assisting others, lifting, stairs painful and difficult. These put the patient at risk of further injury and worsened outcomes. She is not able to provide care for the children.” (Doc. 62 at 3.) First, the rather conclusory final sentence of this letter does not seem necessarily to follow from the more factual statements that precede it. Second, it is an opinion on an ultimate issue that is the province of the Court, and the Court is not obligated to assign it controlling weight. *See United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021) (explaining that while U.S.S.G. § 1B1.13 establishes a finite list of what *can* count as extraordinary and compelling

circumstances under 18 U.S.C. § 3582(c)(1)(A), whether the evidence actually *does* establish any of the things on that list is a question within the district court's discretion).

The United States is not insensitive to Buck-Gailliard's medical conditions and non-medical childcare travails. However, Buck's evidence does nothing to disturb the Court's conclusion that Buck-Gailliard is not incapacitated; instead, it actually provides further support for that conclusion. Taken together, these letters establish that it is challenging but not impossible for Buck-Gailliard to supervise the children, none of whom are so young as to require much if anything in the way of carrying, holding, rocking, changing, and the like.

In the end, Buck "has shown nothing more than that which innumerable defendants could no doubt establish: namely that the imposition of prison sentences normally disrupts familial relationships." *United States v. Allen*, 87 F.3d 1224, 1226 (11th Cir. 1996) (internal citation and punctuation omitted). Several other district courts in our circuit have, in denying motions very similar to Buck's, recognized that the regrettable difficulties imposed on defendants' family members are simply one of the many inevitable downstream consequences of crime, not a justification for release. *See, e.g., United States v. Williams*, No. 3:19-CR-33-BJD-JBT, 2021 WL 1238410, at *2 (M.D. Fla. Apr. 2, 2021) ("[U]nfortunately, it is not uncommon that a defendant's children or dependents must be placed in the care of other people as a consequence of the defendant's conviction. As such, this is not an extraordinary circumstance."); *United States v. Peake*, No. 6:13-CR-438-KOB-JHE, 2020 WL

7246617, at *4 (N.D. Ala. Dec. 9, 2020) (“Those arrangements [that the defendant’s family members care for his children] may be difficult and take sacrificial actions, but they are possible. The court is sympathetic towards Mr. Peake's mother's situation, but her situation does not constitute an extraordinary and compelling reason to reduce Mr. Peake's sentence.”); *United States v. Lemy*, No. 20-CR-80062-RAR, 2023 WL 246895, at *3 (S.D. Fla. Jan. 18, 2023) (“Although [the defendant’s mother] ‘suffers severely from diabetes, hypertension, impaired vision, and other minor health problems,’ Mot. at 3, the Court is not at liberty to deviate from the text of the policy statement and rewrite the Application Note to accommodate Defendant.”).

Additionally, Buck-Gailliard is not going it alone; rather, Buck’s motion and Buck-Gailliard’s letter reveal that Buck-Gailliard has assistance from Buck’s adult daughter. To sweep away this inconvenient fact, Buck speculates, wholly without explanation, that her adult daughter “will likely be taken into state custody” at a December 8 court hearing pertaining to a pending criminal charge. (Doc. 62 at 1.) However, Buck’s daughter is at liberty on a personal recognizance bond, (Doc. 62 at 10), for a felony offense that is alleged to have occurred on the relatively recent date of May 12, 2023, (Doc. 62 at 9), and that therefore seems unlikely to reach trial in the immediate future. Further, December 8 has come and gone, and Buck’s daughter does not appear to be in jail or prison.²

² See Dorchester County Inmate Lookup, *available at* <https://www.dorchestercountysc.gov/government/public-safety/sheriff->

One additional point on the caregiver issue: Buck’s incapacitation argument rests on the threshold notion that her aunt and adult daughter are the only possible caregivers. Buck’s thinking here seems to be that if she establishes that *they* are incapacitated, then she establishes extraordinary and compelling circumstances. However, the government’s position is that she still has never proven—with evidence—that *none* of the several other adult family members mentioned in the presentence report can care for her children. It is her burden to do so. *See, e.g., United States v. Lambert*, No. CR 116-079, 2020 WL 5949627, at 2* (S.D. Ga. Oct. 7, 2020).

Finally, the United States need not restate the remarkable degree to which application of the § 3553(a) factors counsels against a sentence reduction in this case. For very good reasons, the Court has already twice indicated that even if Buck had established extraordinary and compelling circumstances, the Court would deny a sentence reduction on this independent basis anyway. Nothing about Buck’s motion or the passage of two months since the Court’s last order effects any change here.

For the foregoing reasons, the United States respectfully requests that the Court deny Buck’s motion. Like the Court, the United States “hopes that Buck will spend her time in prison contemplating the wrongfulness of her conduct and

soffice/detention-center (last visited Dec. 19, 2023); South Carolina Department of Corrections Inmate Search, *available at* <https://www.doc.sc.gov/inmate-search-disclaimer> (last visited Dec. 19, 2023).

seeking rehabilitation rather than attempting to shirk the responsibility of a sentence that she unquestionably deserves.” (Doc. 52.)

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 20, 2023, I filed this response through this Court's ECF system and served all parties through the Notice of Electronic Filing. In addition, my office mailed a paper copy to:

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