

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:23-cr-9-TPB-KCD

DENIS CASSEUS

**UNITED STATES' RESPONSE IN OPPOSITION TO
DENIS CASSEUS'S MOTION FOR COMPASSIONATE RELEASE**

The United States opposes Denis Casseus's motion for compassionate release. Doc. 62. Denis Casseus has no medical or family circumstances that are extraordinary and compelling, and, in any event, the 18 U.S.C. § 3553(a) factors do not support his early release from incarceration.

I. Background

On October 20, 2023, this Court sentenced Denis Casseus to serve 24 months of imprisonment after he pleaded guilty to two counts of bank fraud, in violation of 18 U.S.C. §§ 1344 and 2, and one count of illegal monetary transaction, in violation of 18 U.S.C. §§ 1957 and 2.¹ Doc. 30 and 59. The charges were based on the defendant submitting two fraudulent PPP loan applications to a financial institution on behalf of two purported businesses, of which Denis Casseus claimed to be the president and registered agent, seeking PPP loans through the SBA. Doc. 30. The

¹ On October 20, 2023, the defendant's partner, Ismaelle Manuel, was sentenced to a term of five years of supervised release for committing three counts of bank fraud, in violation of 18 U.S.C. §§ 1344 and 2. *United States v. Ismaelle Manuel*, Case No. 2:23-cr-3-TPB-KCD, Doc. 67. The total amount of PPP loan proceeds fraudulently obtained by Ismaelle Manuel in the scheme was \$411,417.00. *United States v. Ismaelle Manuel*, Case No. 2:23-cr-3-TPB-KCD, Doc. 32.

defendant falsely represented and certified that the PPP funds acquired from each of the requested loans would be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments on behalf of his businesses. *Id.* In total, Denis Casseus's false and fraudulent representations caused the financial institution to approve and fund a total of \$298,875.00 in PPP loans for the two businesses. *Id.* The defendant was the sole signor on the bank accounts that the PPP funds were deposited into. *Id.* Casseus conducted several online transfers from each of the bank accounts of the businesses into his personal bank account. Doc. 30. The defendant used the fraudulently obtained PPP funds that had been transferred into his personal bank account to wire the funds to a title company, and he used the funds towards the purchase of real property located in Cape Coral, Florida. *Id.* Further, the money that Casseus wire transferred was the proceeds of bank fraud, as Casseus used more than \$10,000 in PPP loan funds towards the purchase of his residence. *Id.*

The defendant was permitted to self-surrender on or before December 21, 2023. Doc. 58 and 59.

Denis Casseus is incarcerated at FPC Pensacola in Pensacola, Florida, is 45 years old, and is projected to be released on August 22, 2025. See BOP Inmate Locator at <https://www.bop.gov/inmateloc/> (last accessed on February 13, 2024). Casseus has served almost nine weeks of the sentence imposed.

The defendant has not sought any administrative remedy; therefore, Casseus has not exhausted his administrative remedies. *See* Attachment A, Administrative Remedy Generalized Retrieval, search conducted February 9, 2024.

On January 24, 2024, the defendant's partner, Ismaelle Manuel, filed the Motion for Sentence Reduction Under 18 U.S.C. § 3582(c)(1)(A) (Compassionate Release), in the defendant's name. Doc. 62.

On February 9, 2024, defense counsel for the defendant, Zeljka Bozanic, filed a Motion to Reduce Sentence Based on Retroactive Application of Amendment 821 to the Sentencing Guidelines. Doc. 64.

II. Memorandum of law

Pursuant to 28 U.S.C. § 1654, “[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” The defendant's partner, Ismaelle Manuel, is not a party in this case. On January 22, 2024, Manuel signed the motion for compassionate release. Doc. 62 at 6. Further, in her letter attached to the motion, Manuel acknowledges that she is submitting the Motion for Sentence Reduction form with the attachment of the Proposed Release Plan. Doc. 62-1 at 23. Therefore, the motion was not brought by Casseus and he cannot be represented by his partner, who is a non-lawyer. Therefore, Manuel's motion for compassionate release filed for Casseus should be denied.

Further, the motion for compassionate release does not establish a basis for compassionate release in this case. The motion does not establish an extraordinary and compelling reason to warrant such a reduction.

A district court has no inherent authority to modify a sentence; it may do so “only when authorized by a statute or rule.” *United States v. Puentes*, 803 F.3d 597, 606 (11th Cir. 2015). One of those statutes is 18 U.S.C. § 3582(c)(1)(A), which permits a court to reduce a term of imprisonment if the court determines that (1) “extraordinary and compelling reasons warrant such a reduction,” (2) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,” and (3) the § 3553(a) sentencing factors weigh in favor of a reduction. *Id.*; see also *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021).

The Sentencing Commission’s applicable policy statement, set forth in USSG §1B1.13, defines “extraordinary and compelling reasons” for purposes of section 3582(c)(1)(A), and it is binding on the courts. *United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021). Under section 1B1.13, “extraordinary and compelling reasons” which may render a defendant eligible for a sentence reduction include any or a combination of circumstances defined under the following categories: (1) medical circumstances of the defendant; (2) advanced age plus length of term already served; (3) family circumstances that result in the defendant being the only available caregiver for a minor or incapacitated immediate family member; (4) sexual or physical abuse of the defendant by an individual with custody or control of the defendant during the term of imprisonment sought to be reduced; (5) other

circumstances similar in gravity to those in (1) through (4); and (6) an “unusually long sentence,” if the defendant has served at least 10 years imprisonment and a change in the law would produce a gross disparity between the defendant’s sentence and the sentence likely to be imposed at the time the motion is filed. USSG §1B1.13(b)(1)–(6).

If the court finds that an extraordinary and compelling reason exists, it still may not reduce the defendant’s term of imprisonment under section 3582(c)(1)(A) unless it also finds that the defendant’s release would not endanger the community and that the factors listed in 18 U.S.C. § 3553(a) favor compassionate release. *Tinker*, 14 F.4th at 1237. If the defendant fails to establish any of the three requirements, the court is not required to analyze the other requirements and cannot grant relief. *See United States v. Giron*, 15 F.4th 1343, 1348 (11th Cir. 2021).

The defendant, as movant, bears the burden of establishing entitlement to relief under section 3582. *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014) (addressing a motion for reduction of sentence under 18 U.S.C. § 3582(c)(2)). The defendant may move for compassionate release after “fully exhaust[ing] all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” *See United States v. Harris*, 989 F.3d 908, 909–10 (11th Cir. 2021) (quoting 18 U.S.C. § 3582(c)(1)(A)(i)). The exhaustion requirement is “mandatory, in the sense that a court must enforce the rule if a party properly raises it.” *Harris*, 989 F.3d at 911 (internal quotation marks

omitted).

III. Denis Casseus's compassionate release motion

A. Exhaustion

Casseus has not exhausted his administrative remedies within the BOP.

Casseus has not sought a sentence reduction from BOP. In the motion filed by his partner, she admits that the defendant did not submit a request for compassionate release to the warden. Doc. 62. Because Casseus has failed to exhaust his administrative remedies, his motion may be denied on that basis alone. *See Harris*, 989 F.3d at 911.

B. Extraordinary and compelling circumstances

Here, Denis Casseus requests a reduction of his sentence based on extraordinary and compelling reasons. His partner indicated in the motion that the caregiver of the defendant's minor children has become incapacitated and he is the only available caregiver for his children. Further in the motion, his partner states that the request is due to his wife's inability to withstand her mental health issues while working and caring for their five children.² Doc. 62. The motion further provides that she is also going through back issues due to three major surgeries done at once. From the medical documentation provided by Manuel, it appears that the procedures occurred in 2021. Doc. 62-1 at 16-21. His partner stated that she is unable to lift heavy objects, and the motion includes that the defendant wants to be

² On October 20, 2023, this Court ordered Ismaelle Manuel to participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this Court directive. *United States v. Ismaelle Manuel*, Case No. 2:23-cr-3-TPB-KCD, Doc. 67 at 5.

able to assist his family financially. *Id.* Section 1B1.13(b) permits a reduction of a defendant's sentence based on family circumstances when:

(3) Family Circumstances of the Defendant.—

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, "immediate family member" refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

USSG §1B1.13(b)(3).

Casseus, or rather his partner who prepared and signed the motion for compassionate release, has not shown that his partner and the mother of the children is "incapacitated." Instead, in the release plan submitted, his partner advised that she and an adult daughter would be able to drive the defendant to any medical appointments. Doc. 62-1 at 5. Further, in her letter to the Court, Manuel stated that she has secured a job as a Med Tech/CAN from 10pm to 6am, and she advised that she is able to take her son to school and get herself ready to go to class. Doc. 62-1 at

22. Manuel stated that she will be starting classes in March 2024, as she had enrolled in a program for business administration. *Id.*

While a tremendous burden has undoubtedly been placed on their children and his partner due to their crime, that is always the case when parents choose to commit crimes. *See, e.g., United States v. Gonzalez*, Case No. 17-cr-60223-BLOOM, 2021 WL 4066897, at *5 (S.D. Fla. Sept. 3, 2021) (“[L]oved ones are often adversely impacted by a family member’s incarceration, and must make necessary and inconvenient life adjustments during that individual’s incarceration. These often-unavoidable consequences, however, do not create extraordinary circumstances[.]”).

In the Proposed Release Plan, submitted as an attachment to the Motion for Compassionate Release, Manuel provided the ages of the children which included that one child is 16 years old and another is 19 years old. Further, in the Proposed Release Plan, Manuel indicated that she and their 19 year old child would be assisting the defendant with transportation to medical appointments and work. Doc. 62-1. It appears that the mother of his children is not incapacitated, and one of their children is an adult and is able to offer assistance. The Court should exercise its discretion to deny Casseus’s request for relief.

The Court already considered at sentencing the family circumstances in this case. The Court imposed a sentence of time served, with a term of five years supervised release to follow for the defendant’s partner. (*United States v. Ismaelle Manuel*, Case no. 2:23-cr-3-TPB-KCD, Doc. 67). With the sentence imposed, the Court allowed a parent to remain with the four minor children.

C. Factors in 18 U.S.C. § 3553(a)³

Before granting a sentence reduction, the Court (in addition to finding “extraordinary and compelling reasons”) must find that the § 3553(a) sentencing factors weigh in favor of a reduction. 18 U.S.C. § 3582(c)(1)(A). The Court already did a thorough balancing of the § 3553(a) factors at Casseus’s sentencing, and the compassionate release allegation does not disturb the Court’s prior analysis that a 24-month sentence was warranted.

This Court should not grant Denis Casseus a reduction of his sentence because the applicable sentencing factors in section 3553(a) weigh against release. The defendant has served approximately nine weeks of his 24 month sentence of imprisonment.

At the sentencing hearing, the Court considered the factors set forth in Title 18, United States Code, Section 3553. The Court imposed a sentence that promoted respect for the law, afforded an adequate deterrence, protected the public, and

³The factors in section 3553(a) are: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines; (5) any pertinent policy statement issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

reflected the seriousness of the crime. The Court addressed the defendant and his partner concerning the nature and circumstances of the offenses. The Court considered that the defendant admitted that it was his idea to file fraudulent PPP loan applications, and he convinced his partner to file separate PPP loan applications for which she was being sentenced. Further, the Court considered that the advisory guideline range was 30 months to 37 months. *See* Doc. 45 at 14, PSR. At sentencing, the Court advised that the guideline range was advisory, and the Court imposed the sentence that the Court believed that the defendant deserved. The Court imposed the sentence that was not greater than necessary. The sentence imposed was 24 months of imprisonment.

In conclusion, Casseus has failed to exhaust his administrative remedies, and this motion was filed by a non-lawyer. In the motion, Casseus has not established that his familial situation is an extraordinary and compelling reason to warrant relief, and the § 3553(a) factors would not support reducing his sentence. *See United States v. Espinal*, No. 8:18-cr-299-VMC-AAS, 2023 WL 3995021, at *2 (M.D. Fla. June 14, 2023) (“Wanting to provide financially for one’s spouse and children is not a qualifying ‘family circumstance’ . . .”).

THEREFORE, this Court should deny Denis Casseus's motion for compassionate release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Zeljka Bozanic
zeljka@bozaniclaw.com

I hereby certify that on February 21, 2024, a true and correct copy of the foregoing document and the notice of electronic filing were sent by United States Mail to the following non-CM/ECF participant(s):

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