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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. AARON ASHCRAFT, Defendant.	CASE NO. 2:22-CR-00087-KJM UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR REDUCTION IN SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)

I. INTRODUCTION

The United States opposes Aaron Ashcraft's *pro se* motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 35. Based on purported family circumstances, Ashcraft moves for a time-served sentence, which would result in an almost 90% reduction to the sentence this Court imposed. Ashcraft has not met his burden of establishing that "extraordinary and compelling" reasons justify any reduction. Even if he could establish such reasons, the factors in 18 U.S.C. 3553(a) weigh heavily against granting Ashcraft's motion. For these reasons and those that follow, this Court should deny the motion.

II. STATEMENT OF FACTS

A. Ashcraft's Crimes

As detailed in the Factual Basis for Plea attached as Exhibit A to Ashcraft's plea agreement, ECF

10, and the Presentence Investigation Report ("PSR"), ECF 17, over an approximately four-year period, Ashcraft engaged multiple fraudulent schemes that involved him stealing almost $1 million from pandemic-relief programs and embezzling almost $800,000 from his employer.

During the depths of the COVID-19 pandemic, Ashcraft defrauded the Small Business Administration and its affiliated lenders. Through the use of shell companies, falsified tax documents, and falsified financial records, Ashcraft fraudulently obtained almost $1 million in federal disaster relief funds from the Paycheck Protection Program ("PPP"). He tried to get more. Specifically, from approximately May 2020 through April 2021, Ashcraft submitted seven fraudulent PPP loan applications, seeking a total of over $1.2 million. The PPP funds Ashcraft sought and obtained were meant to provide relief to small businesses, many of which were struggling to keep their doors open. Every dollar he took from the program was a dollar that could have and should have been used to keep real businesses afloat.

Not only did the Ashcraft defraud the PPP program, he also embezzled from his former employer, a local street sweeping business. Over a period of almost three years—September 2017 through June 2020—Ashcraft made more than 300 fraudulent charges to his employer's credit card accounts. Those charges totaled approximately $780,000. Ashcraft carried out the embezzlement while holding multiple positions at the company, including chief financial officer. Ashcraft's employer entrusted him with its finances. He exploited that trust for his own gain.

In addition to stealing federal disaster relief funds and embezzling from his employer, Ashcraft also defrauded the State of Maine. Specifically, in approximately July 2020, Ashcraft submitted with the Maine Department of Labor a falsified application for Pandemic Unemployment Assistance. As with the PPP loan applications, the defendant provided falsified information and tax forms. By doing so, he fraudulently obtained almost $60,000.

B. Guilty Plea and Sentencing

Based on his illicit conduct, on April 25, 2022, the United States charged Ashcraft with two counts of wire fraud, in violation of 18 U.S.C. § 1343, and five counts of bank fraud, in violation of 18 U.S.C. § 1344. ECF 1. Pursuant to a plea agreement, on May 9, 2022, Ashcraft pled guilty to one count of wire fraud and one count of bank fraud. ECF 6 and 10. In his plea agreement, Ashcraft and the government stipulated to certain guideline factors and estimated a sentencing range of 41 to 51 months. ECF 10 at 9. And the government agreed to recommend a prison sentence at the low end of the applicable guideline range. ECF 10 at 6. In the PSR, the Probation Officer calculated a sentencing range of 41 to 51 months and recommended a sentence of 46 months. ECF 17-3 at 1. On December 13, 2022, this Court sentenced Ashcraft to a total term 41 months' imprisonment—the low end of his guideline range. ECF 23. Ashcraft began serving his sentence on September 6, 2023. Ex. 1 at 2 (Public Information Inmate Data). On January 10, 2024, this Court entered an order reducing Ashcraft's prison sentence to 33 months, based on the retroactive zero-point offender amendment to the Sentencing Guidelines. ECF 40.

C. Incarceration and Projected Release Date

Ashcraft is serving his sentence at FCI Sheridan. Ex. 1. Ashcraft's projected release date initially was July 5, 2026, based upon application of his good conduct time and First Step Act Credits. Ex. 1 at 3. Ashcraft has served approximately four months of his recently reduced 33-month sentence.

D. Administrative Remedies

Pursuant to 18 U.S.C. § 3582(c)(1), an inmate may file a motion for sentence reduction after completing the BOP exhaustion requirements or after waiting 30 days from receipt of a request by the Warden, whichever is earlier. On October 16, 2023, Ashcraft submitted a request to the Warden. ECF 35 at 7. That request is pending. Thus, Ashcraft has exhausted his administrative remedies.

III. LEGAL FRAMEWORK FOR COMPASSIONATE RELEASE

"Ordinarily, a federal court may not modify a term of imprisonment once it has been imposed." *United States v. Wright*, 46 F.4th 938, 944 (9th Cir. 2022). The First Step Act, however, authorizes criminal defendants to move for a sentence reduction based on "extraordinary and compelling reasons." 18 U.S.C § 3582(c)(1)(A)(i); *United States v. Chen*, 48 F.4th 1092, 1095 (9th Cir. 2022). When a defendant seeks what is known as compassionate release under § 3582(c)(1)(A)(i), a district court:

> may reduce his term of imprisonment if four conditions are met: (1) the defendant exhausted administrative remedies; (2) 'extraordinary and compelling reasons' warrant a sentence reduction; (3) a sentence reduction is 'consistent with applicable policy statements' issued by the U.S. Sentencing Commission; and (4) the district court considered the factors set forth in 18 U.S.C. § 3553(a).

Chen, 48 F.4th at 1094-95.

U.S.S.G. § 1B1.13, as amended November 1, 2023, provides six categories of "extraordinary and compelling" reasons applicable to compassionate release motions filed by defendants. As relevant here, it identifies "the death or incapacitation of the caregiver of the defendant's . . . child who is over 18 years of age and incapable of self-care because of a mental or physical disability or a medical condition" as an extraordinary and compelling reason. U.S.S.G. § 1B1.13(b)(3)(A).

In addition to determining whether extraordinary and compelling circumstances exist, the Court "must consider and weigh the factors set forth in 18 U.S.C. § 3553(a) to decide whether the requested sentence reduction is warranted 'under the particular circumstances of the case.'" *Wright*, 46 F.4th at 945 (quoting *Dillon v. United States*, 560 U.S. 817, 827 (2010)); *United States v. Dogan*, No. 2:16-cr-00198-JAM, 2020 WL 4208532, at *3 (E.D. Cal. July 22, 2020) ("In deciding a motion for compassionate release, a court can neither disregard nor undermine the relevant factors set forth in 18 U.S.C. § 3553."). Compassionate release is a "narrow" remedy, and it is within the Court's discretion to deny relief based on these factors. *See* 18 U.S.C. § 3582(c)(1)(A)(i); *Wright*, 46 F.4th at 944–45.

As the movant, the burden of establishing eligibility for compassionate release falls on the defendant. *Wright*, 46 F.4th at 951.

IV. ARGUMENT

A. Ashcraft does not demonstrate that "family circumstances" warrant compassionate release.

Ashcraft requests release to care for his adult son who, he asserts, recently was diagnosed with Multiple Sclerosis. ECF 35. Ashcraft claims his son is unable to care for himself. And he claims he is the sole available family member who can care for his son. ECF 35 at 1; *see also id*. at 3 ("The Defendant's son has no family to care for him."). Ashcraft provides no records or other support for his claims.

According to the PSR, at the time of sentencing, Ashcraft's son was living with his mother. PSR 16. No record evidence supports a finding that she is "incapacitat[ed]," which is a high standard. *See United States v. Rooks*, 2022 WL 267899, at *6 (E.D. Pa. Jan. 28, 2022) ("To prove incapacitation, a defendant must establish a person is 'completely disabled' or unable to 'carry on any self-care and [are] totally confined to a chair or bed.' . . . [I]t is not enough to show a potential caregiver is merely 'inconvenienced' by the childcare or 'somewhat sick.'") (first alteration in original; citations omitted)). Ashcraft does not even claim that she is.

Moreover, while Ashcraft asserts his efforts to seek support for his son from extended family and friends have "proven fruitless," ECF 35 at 2, he provides no details of those efforts. Ashcraft makes no mention of why other family members cannot assist in care for his son. The PSR notes that Ashcraft has multiple family members, including his parents and three siblings, who appear potentially able to care for his son, if needed. ECF 17 at 15. It also indicates that family on his son's mother's side lives in Sacramento. ECF 17 at 16.

Additionally, no record evidence supports Ashcraft's claim that his son is unable to care for himself. Ashcraft contends that his "son was recently diagnosed with an aggressive and advanced strain of Multiple Sclerosis." ECF 35 at 1. At the same time, he claims his son is undergoing testing to "specify the strain of his illness." ECF 35 at 3. Although Multiple Sclerosis can be a severe, potentially disabling medical condition, this Court should not assume, without any evidence, that Ashcraft's son is incapable of self-care at this time.

Put simply, Ashcraft has failed to meet his burden of establishing that "extraordinary and compelling reasons" warrant a reduction in his in his sentence. As such, this Court should deny his motion.

B. The § 3553 Factors Weigh Against a Reduced Sentence.

This Court also should deny Ashcraft's motion on the independent ground that his requested reduction is not warranted based on consideration of the § 3553(a) factors. Any compassionate release decision, even for a statutorily eligible defendant, must also consider the factors listed in 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3582(c)(1)(A)(i). Those factors include, among others, (a) the nature and circumstances of the offense and the defendant's history and characteristics; (b) the need for the sentence imposed to (i) reflect the seriousness of the offense, (ii) promote respect for the law and provide just punishment for the offense, (iii) afford adequate deterrence to criminal conduct, i.e., general deterrence, and (iv) protect the public from further crimes of the defendant, i.e., specific deterrence. In applying these factors, courts have considered the length of the sentence and how much of that sentence the defendant has served. *See United States v. Pawlowski*, 967 F.3d 330, 330–31 (7th Cir. 2020).

On December 13, 2022, this Court weighed the § 3553 factors and determined that a sentence of 41 months' imprisonment—the low end of Ashcraft's then-applicable guideline range—was sufficient but not greater than necessary comply with the purposes set forth in § 3553(a)(2). It considered, among other things, the fact that Ashcraft defrauded not one, not two, but three victims. He exploited the trust his former employer placed in him to steal almost $800,000. He stole almost $1 million in PPP funds. And he stole almost $60,000 in unemployment compensation.

Ashcraft has served only a little over four months in prison—approximately 12% of his recently reduced sentence. Releasing him now would not further the goals of sentencing; it would do the opposite. As such, a time-served sentence is not warranted.

V. CONCLUSION

For the foregoing reasons, this Court should deny Ashcraft's motion.

Dated: January 16, 2024

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AARON ASHCRAFT,

Defendant.

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he/she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. That on January 16, 2024, a copy of the GOVERNMENT'S OPPOSITION was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California. Addressee(s): **Aaron Ashcraft #00025-510, FCI-Sheridan, P.O. Box 6000, Sheridan, OR 97378.**

/s/ C. Buxbaum
C. BUXBAUM