

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 1:22-CR-4-GNS
Filed Electronically

MANDY ELLEN BAUER

DEFENDANT

OPPOSITION TO MOTION FOR COMPASSIONATE RELEASE

The United States opposes lifelong criminal Mandy Bauer's Motion for Compassionate Release. (DN 31). Bauer's motion must be rejected because she cannot demonstrate any extraordinary and compelling reason to justify her release after serving less than half of her sentence. Moreover, early release would run contrary to the sentencing factors in 18 U.S.C. § 3553(a).

The Covid-19 pandemic began in early 2020, causing immeasurable damage to the world economy. That damage was felt acutely in the United States. Schools, houses of worship, and businesses were forced to close their doors, sporting events and concerts were canceled, travel came to a standstill, and there were shortages of food and consumer goods. Millions of Americans faced the loss of their livelihoods, on top of their fear of contracting a potentially deadly new illness.

In March 2020, the CARES Act was signed into law. Amongst other things, the CARES Act provided billions of dollars in funding to keep American business in operation, and to keep employees on the payroll. These funds took several forms, like Payroll Protection Program (PPP) loans and Economic Injury Disaster Loans (EIDL).

Mandy Bauer is an incorrigible criminal whose criminal history dates back well over 20 years. (DN 20, ¶¶ 55-70).¹ She was unconcerned about the desperate circumstances facing our country, its businesses and its citizens, and instead saw an opportunity get rich at taxpayer expense. Between April and July 2020, while the Covid-19 pandemic ravaged the United States, she filed nine blatantly fraudulent applications for various CARES Act funds, seeking to steal over \$230,000. She claimed between 6 and 10 employees and varying payroll expenses on different applications, ranging from \$132,000 to \$162,000 per year. All of it was false, and thankfully none of her applications were accepted. (*Id.*, ¶¶ 21-35).

Bauer pleaded guilty as charged on February 2, 2022. (*Id.*, ¶ 4). With a criminal history of IV, Bauer faced a Guideline range of 27-33 months of imprisonment. (*Id.*, ¶ 106). On May 17, 2022, this Court sentenced Bauer to twelve months and 1 day of incarceration, less than half the low end of the Guidelines, weighing Bauer's unsuccessful attempt to steal from taxpayers against her "significant criminal history" and her failure to abide by the conditions of her bond pending sentencing. (DN 29, PageID#184-187; DN 20, ¶ 10). Bauer began serving her sentence on June 24, 2022. (DN 27, PageID#158).

LEGAL ANALYSIS

I. The Standard of Review

A district court has limited authority to modify a sentence. United States v. Ruffin, 978 F.3d 1000, 1003 (6th Cir. 2020). "Generally speaking, once a court has imposed a sentence, it does not have the authority to change or modify that sentence unless such authority is expressly granted by statute." United States v. Hammond, 712 F.3d 333, 335 (6th Cir. 2013).

¹ Bauer's convictions include facilitating the manufacture of methamphetamine, engaging in an organized crime syndicate, assault, facilitating burglary, theft by deception, and endangering the welfare of a minor.

Under 18 U.S.C. § 3582(c)(1)(A), a defendant may move her sentencing court to reduce her sentence based on extraordinary and compelling reasons.² In considering such motions, district courts engage in a three-step inquiry: (1) “the court must ‘find’ that ‘extraordinary and compelling reasons warrant [a sentence] reduction,’” (2) “ensure ‘that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,’” and (3) “‘consider[] all relevant sentencing factors listed in 18 U.S.C. § 3553(a).” See United States v. Elias, 984 F.3d 516, 518 (6th Cir. 2021). Congress has tasked the Sentencing Commission with defining “extraordinary and compelling.” 28 U.S.C. § 994(t).

The Commission defined that phrase before Congress enacted the First Step Act, which first gave defendants the right to move the district court to reduce their sentences under § 3582(c)(1)(A). In the USSG §1B1.13 Application Notes, the Commission defined extraordinary and compelling reasons to include the defendant’s advanced age, serious medical conditions, and the defendant’s status as the caregiver for a spouse or child. In a fourth category, the Commission deferred to the Bureau of Prisons to define “other reasons.” The Sixth Circuit has ruled that because the Commission has not amended §1B1.13 since the First Step Act went into effect, it does not apply to motions inmates file directly with the court (as opposed to motions the Bureau of Prisons files, which the statute still allows). Elias, at 519.

The Sixth Circuit explains that “district courts have discretion to define ‘extraordinary and compelling’ on their own initiative.” Id. at 519-20. But under any definition, “extraordinary and compelling” has its limits. “[D]iscretion’ does not mean ‘whim’” and “[a] court might abuse its discretion, for example, if it misreads the meaning of the extraordinary- reason requirement.”

² Bauer has exhausted her administrative remedies.

United States v. Jones, 980 F.3d 1098, 1112 (6th Cir. 2020) (citing United States v. Keefer, No. 19-4148, 2020 WL 6112795, *4 (6th Cir. Oct. 16, 2020)).

The compassionate-release statute does not permit “a sort of Wild West” or allow “every district judge [to] hav[e] an idiosyncratic release policy.” United States v. Gunn, 980 F.3d 1178, 1180 (7th Cir. 2020). “The substantive aspects of the Sentencing Commission's analysis in § 1B1.13 and its Application Notes provide a working definition of ‘extraordinary and compelling reasons.’” Id. Thus, “the Commission's analysis can guide discretion without being conclusive.” Id. District courts, however, have discretion to look “into § 1B1.13—and no further—when they see fit.” United States v. Villasenor, 2021 WL 5356032, at *1 (6th Cir. Nov. 17, 2021).

As § 3582(c)(1)(A) makes plain, a defendant’s reasons must be “extraordinary”—meaning exceptional or uncommon. United States v. Shah, 2020 WL 1934930, at *2 (E.D. Mich. Apr. 22, 2020); United States v. Sapp, 2020 WL 515935, at *3 (E.D. Mich. Jan. 31, 2020). They must also be “compelling”—meaning “so great that irreparable harm or injustice would result if the relief is not granted.” Sapp, 2020 WL 515935, at *3 (internal quotation and alteration omitted). And they must “warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i).

Bauer bears the burden of establishing that she is entitled to a sentence reduction under 18 U.S.C. § 3582, see United States v. Karr, 2020 WL 774363, at *6 (E.D. Ky. Feb. 18, 2020), and she cannot meet her burden.

II. Bauer Cannot Demonstrate Extraordinary and Compelling Reasons to Justify Compassionate Release

Bauer claims that she is entitled to compassionate release after serving less than half of her sentence because her spouse is burdened caring for her son, and her spouse has suffered

financial hardship. (DN 31, PageID#196). Bauer’s motion fails to establish extraordinary and compelling reasons for at least three reasons.

First, at the time of sentencing the court was aware that Bauer’s son was autistic and that she provided the bulk of his care. (DN 20, ¶ 83). In fact, at the sentencing hearing Bauer begged the court not to send her to prison, stating “my son’s autistic, and I take him to school every day, and I bring – I pick him up every day. I take care of my son . . . I fully take care of him.” (DN 29, PageID#24-25). The Sixth Circuit has held definitively that “facts that existed when the defendant was sentenced cannot later be construed as ‘extraordinary and compelling’ justifications for a sentence reduction.” United States v. Lemons, 15 F.4th 747, 750 (6th Cir. 2021) (citing United States v. Hunter, 12 F.4th 555, 571 (6th Cir. 2021)).

Second, the Application Note to Section 1B1.13 states that the “death or incapacitation of the caregiver of the defendant’s minor child or minor children” is an extraordinary and compelling circumstance. U.S.S.G. § 1B1.13(1)(C)(i). Bauer’s spouse is neither dead nor incapacitated. He is merely struggling with additional responsibilities while Bauer is imprisoned.

Third, even if the court considered care for Bauer’s child a potentially extraordinary and compelling circumstance, Bauer has failed to show that she is the only available caregiver for her child, which is fatal to her claim. United States v. Michael, 3:16-CR-00101, DN 410, PageID# 3043-3044 (W.D. Ky. Oct. 17, 2022) (Jennings) (defendant “has not demonstrated that he is the only available caregiver for his family members. Thus . . . the court finds that Michael has not shown extraordinary or compelling via family circumstance to alter his sentence”); United States v. Cole, 2021 WL 194194, at *2 (E.D. Mich. Jan. 20, 2021) (motions for compassionate release have been denied “when defendants cannot show that they would be the only available

caregiver of a minor child, even if their incarceration imposes substantial burdens on a spouse or co-parent to a minor child”). See also United States v. Corley, 2021 WL 119640, at *1 (M.D. Tenn. Jan. 13, 2021) (citing United States v. Lisi, 440 F. Supp. 3d, 246, 252 (S.D.N.Y. 2020) (noting that compassionate release based on family circumstances . . . typically requires a finding that the Defendant is the only available caregiver)).

Bauer’s spouse is not unavailable; he is available and struggling with burdens imposed upon him by the foreseeable consequences of Bauer’s decision to attempt to defraud the United States of America nine separate times during a global pandemic. Moreover, Bauer’s mother and two adult children seem to be perfect candidates to assist with her child’s care while she remains incarcerated, but there is no indication that any or all of them are unavailable. (See DN 20, ¶¶ 79-82).

III. The 3553(a) Factors Preclude Early Release

Even if Bauer could demonstrate extraordinary and compelling circumstances, her Motion must be denied after considering the 18 U.S.C. § 3553(a) sentencing factors. The nature and circumstances of Bauer’s offense weigh heavily against reducing her sentence, 18 U.S.C. § 3553(a)(1), considering she made multiple attempts to steal nearly a quarter million dollars from taxpayers in the middle of a nationwide economic crisis. Her history and characteristics also preclude early release. Her criminal history spans her entire adult life, and as the court noted during the sentencing hearing, “(t)his is not your first rodeo. You’ve been in a lot of trouble.” (DN 29, PageID#185). She has committed criminal offenses while on probation, she has had probation revoked, and she violated the terms of her post-conviction bond in this case. (DN 20, ¶¶ 10, 55-70).

Bauer already received a sentence of less than half the advisory Guideline range. A further fifty percent reduction³ would fail to reflect the seriousness of her offense, promote respect for the law, or provide just punishment for her offense, 18 U.S.C. § 3553(a)(2)(A), and would not provide adequate deterrence. 18 U.S.C. § 3553(a)(2)(B). Given Bauer’s lifelong propensity for crime and her history of probation revocations and bond violations in this case, a sentencing reduction would fail to protect the public from Bauer’s further crimes. 18 U.S.C. § 3553(a)(2)(C).

Finally, a fifty percent reduction in Bauer’s sentence would cause unwarranted sentence disparities with similarly situated defendants. 18 U.S.C. § 3553(a)(6). In fact, courts have routinely denied compassionate release for defendants who have served less than fifty percent of their sentence. See e.g. United States v. Hamman, 2020 WL 3047371 (D. Or. June 8, 2020) (denying compassionate release despite significant medical issues because defendant only served fifty percent of sentence); United States v. Richardson, 2020 WL3104909 (S.D. W. Va. June 11, 2020) (“to relieve Defendant of over fifty percent of his imposed sentence . . . would constitute an unwarranted sentencing disparity among similarly situated defendants”).

For all these reasons, Bauer’s Motion should be denied.

Respectfully submitted,

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³ Bauer has served less than 6 months of her 12 month and 1 day sentence.

Certificate of Service

I hereby certify that a copy of the foregoing was sent by electronic transmission through the Court's ECF system on December 19, 2022, and was sent by first class mail on or about December 19, 2022, to:

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