

**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 18 U.S.C. § 3582(c)(1)(A) MOTION**

Defendant Dara Buck moves for “emergency” early release under 18 U.S.C. § 3582(c)(1)(A), based on several alleged medical conditions in light of the COVID-19 pandemic as well as alleged family circumstances. (Doc. 48.) But, Buck’s claims do not qualify as “extraordinary and compelling” under U.S.S.G. § 1B1.13, nor do the 18 U.S.C. § 3553(a) factors support early release.

Factual and Procedural Background

In July 2022, Buck waived indictment, and under a written plea agreement to an information, pled guilty to conspiracy to commit an offense against the United States, in violation of 18 U.S.C. § 371. (Docs. 1; 24; 28; 30; 40 ¶¶ 1-2.) With a total offense level of 27 and a criminal-history category of I, her prison range under the advisory sentencing guidelines was 70 to 87 months. However, because the statutorily authorized maximum sentence of five years was less than the minimum of the applicable guideline range, Buck’s guideline term of imprisonment was 60 months. (Doc. 40 ¶¶ 30, 33, 51, 52.) In January 2023, the Court varied downward and sentenced Buck to 42 months’ imprisonment. (Docs. 42; 44.) Buck did not

directly appeal.

Now, Buck moves for early release under § 3582(c)(1)(A). (Doc. 48.) She is currently incarcerated at FPC Alderson, located in Alderson, West Virginia with a projected release date of April 12, 2026.¹

Legal Analysis

A. Statutory Background

Title 18, United States Code, § 3582(c)(1)(A), as amended by the First Step Act on December 21, 2018, provides in part:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted 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, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . .

¹ BOP Inmate Locator, *available at* <https://www.bop.gov/inmateloc/> (last visited May 25, 2023). Projected release date indicates release from BOP custody and may not reflect date by which BOP will consider defendant for placement in a halfway house, a residential reentry center or home confinement.

The 30-day administrative exhaustion requirement is a mandatory claim-processing rule, meaning that, while not jurisdictional, a district court must dismiss when the issue is raised by the Government. *See United States v. Harris*, 989 F.3d 908, 911-12 (11th Cir. 2021) (discussing how § 3582(c)(1)(A) imposes an exhaustion requirement on prisoners to pursue before moving on their own behalf in district court) (citing *United States v. Alam*, 960 F.3d 831, 833 (6th Cir. 2020)); *United States v. Johnson*, No. 20-13919, 2021 U.S. App. LEXIS 24962, at *11 (11th Cir. Aug. 20, 2021) (holding it was not error for district court to deny defendant’s § 3582(c)(1)(A) motion when he did not first administratively exhaust his remedies); *see also Alam*, 960 F.3d at 834 (holding § 3582(c)(1)(A)’s 30-day administrative exhaustion requirement is claim-processing rule which “must be enforced” when “properly invoked”); *United States v. Franco*, 973 F.3d 465, 467 (5th Cir. 2020) (“We conclude that the requirement is *not* jurisdictional, but that it *is* mandatory.”).

Further, 28 U.S.C. § 994(t) provides: “The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.” Accordingly, the relevant policy statement of the Commission is binding on the Court. *See United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021) (“In short, we hold that 1B1.13 is an applicable policy

statement that governs all motions under Section 3582(c)(1)(A). Accordingly, district courts may not reduce a sentence under Section 3582(c)(1)(A) unless a reduction would be consistent with 1B1.13.”), *cert. denied*, 142 S. Ct. 583 (2021).

The Sentencing Guidelines policy statement appears at § 1B1.13, and provides that the Court may grant release if “extraordinary and compelling circumstances” exist, “after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,” and the Court determines that “the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” “[T]he important operative provisions of the policy statement are found in the application notes.” *See Bryant*, 996 F.3d at 1260. In application note 1 to the policy statement, the Commission identifies the “extraordinary and compelling reasons” that may justify compassionate release:

1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2) [regarding absence of danger to the community], extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive

impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) 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.

(D) Other Reasons.—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

As noted above, this definition of “extraordinary and compelling reasons” is binding. *See Bryant*, 996 F.3d at 1262; *see also United States v. Wilks*, 464 F.3d 1240, 1245 (11th Cir. 2006) (“Commentary and Application Notes of the Sentencing Guidelines are binding on the courts unless they contradict the plain meaning of the text of the Guidelines.”) (internal quotation marks omitted). Consistent with note 1(D), BOP promulgated Program Statement 5050.50 (“PS 5050.50”), available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf, amended effective January

17, 2019, to set forth its evaluation criteria.

Thus, a district court cannot grant a § 3582(c)(1)(A) reduction unless the defendant meets three conditions: “first, that an extraordinary and compelling reason exists; second, that a sentencing reduction would be consistent with U.S.S.G. § 1B1.13 [including that the defendant is not a danger to another person or the community]; and third, that § 3553(a) factors weigh in favor of compassionate release.” *United States v. Giron*, 15 F.4th 1343, 1347 (11th Cir. 2021) (citing *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021)). A district court does not need to analyze these three conditions in any particular order. *See id.* “When denying a request for compassionate release, a district court need not analyze the § 3553(a) factors if it finds either that no extraordinary and compelling reason exists or that the defendant is a danger to the public.” *Id.*

In general, a defendant has the burden to show circumstances meeting the test for early release. *See United States v. Granda*, 852 F. App’x 442, 446 (11th Cir. 2021) (“What’s more, it was *Granda*’s burden to show that his circumstances warranted a reduction.”); *see also United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013).

B. Buck has not demonstrated that she administratively exhausted her remedies with BOP.

First, a defendant cannot bring a § 3582(c)(1)(A) motion in the district court until 30 days have passed from when he first filed an administrative request for a sentence reduction with BOP. *See* § 3582(c)(1)(A). The 30-day administrative exhaustion requirement is a mandatory claim-processing rule, meaning that, while

not jurisdictional, a district court must dismiss when the issue is raised by the Government. *See Harris*, 989 F.3d at 911-12 (discussing how § 3582(c)(1)(A) imposes an exhaustion requirement on prisoners to pursue before moving on their own behalf in district court) (citing *Alam*, 960 F.3d at 833; *Johnson*, 2021 WL 3701127, at *4 (holding it was not error for district court to deny defendant’s § 3582(c)(1)(A) motion when he did not first administratively exhaust his remedies).

Buck has not demonstrated nor provided evidence that she first exhausted her administrative remedies with BOP prior to filing this motion. Therefore, given that Buck has not met her burden demonstrating administrative exhaustion under § 3582(c)(1)(A), this Court should deny the motion. *See Granda*, 852 F. App’x at 446 (“What’s more, it was *Granda*’s burden to show that his circumstances warranted a reduction.”); *see also Hamilton*, 715 F.3d at 337.

C. Buck cannot demonstrate “extraordinary and compelling” reasons.

1. Medical conditions in light of COVID-19 claim.

Buck moves for early release due to several alleged “extreme” medical conditions, to include: “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, an arthritis in both shoulders, knees, back, and both feet.” Buck further alleges that her “history of health conditions increase the risk of complications from COVID-19.” (Doc. 48 at 1.) Her motion should be denied.

First, Buck never asserts, let alone demonstrates, that she is unable to engage in self-care within the BOP facility. *See* U.S.S.G. §1B1.13, app. n. 1(A)(ii)(I). To the contrary, BOP medical records from the past few months establish that Buck is under no restrictions, and her medical examinations, and pulmonary and cardiovascular indicators were generally within normal limits.² (Exh. A at 2, 11, 13-14, 19-21, 24-30, 37.) *See United States v. Oneal*, No. 20-13533, 2021 WL 5894858, at *2 (11th Cir. Dec. 14, 2021) (“§ 1B1.13 provides that an extraordinary and compelling reason exists if the defendant ‘is’ suffering from a serious physical or medical condition that diminishes the ability of the defendant to provide self-care in prison or from which he is not expected to recover, not if the defendant is at risk of suffering from such a condition.”); *see also United States v. Moreno*, No. 21-14411, 2022 WL 4127451, at *2 (11th Cir. Sept. 12, 2022) (holding that “health conditions that *might* make a COVID-19 infection worse do not rise to the level of an extraordinary and compelling reason”); *United States v. Marshall*, No. 21-13964, 2022 WL 2860549, at *3 (11th Cir. July 21, 2022) (“A preexisting medical condition that merely may exacerbate the symptoms of COVID-19 is not an extraordinary and compelling circumstance justifying compassionate release.”).

On May 6, 2023, Buck complained of chest pain and tested positive for COVID-19. That same day, Buck was moved to isolation, and during that time,

² Because the Court allowed Buck to self-surrender on March 6, 2023, medical records provided by BOP only account for just under three months of treatment.

remained asymptomatic. (Exh. A at 1-2, 23-30, 35.) On May 7, 2023, when asked what symptoms she was having, Buck stated “all of them,” but would not be specific as to the symptoms she was experiencing. (Exh. A at 30.)

Second, as indicated above, Buck has already recovered from COVID-19 and reports that she received two doses of the Pfizer-BioNTech COVID-19 vaccination. (Exh. A at 35; Exh. B.) *See United States v. Shell*, No. 21-13591, 2022 WL 2733369, at *3 (11th Cir. July 14, 2022) (“These precedents foreclose Shell’s claim because the district court found that her medical conditions were being adequately managed in prison, especially in light of her vaccination.”); *United States v. Burcks*, No. 20-14865, 2022 WL 275271, at *4 (11th Cir. Jan. 31, 2022) (holding that, where the record showed that defendant was fully vaccinated and had already recovered from COVID-19, “we find no error in—nor any reason to revisit—the district court’s determination that Defendant’s medical conditions do not satisfy the [extraordinary and compelling] standard”); *see also United States v. Barnes*, No. CR 113-199, 2021 WL 6112788, at *1 (S.D. Ga. Dec. 27, 2021) (“The Court is also satisfied that vaccination significantly reduces Defendant’s risk of further exposure.”).

The COVID-19 pandemic poses a general threat to every non-immune person in the country, so it does not constitute an “extraordinary and compelling” reason for release from prison. *See United States v. McChristian*, 851 F. App’x 1024, 1025 (11th Cir. 2021) (“[T]he district court correctly found that it was bound by the policy statements in § 1B1.13 when it found that COVID-19 itself was not an extraordinary and compelling reason to warrant a sentence reduction . . .”). The

guideline policy statement describes specific serious medical conditions afflicting an individual inmate, not generalized threats to the entire population. For that reason, to the extent it still exists, “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020); *see also United States v. Johnson*, 849 F. App’x 908, 909 (11th Cir. 2021) (quoting *Raia* with approval); *Harris*, 989 F.3d at 912 (affirming district court’s denial of early-release motion where inmate had no conditions on the CDC’s former “are at increased risk” list, suggesting that the COVID-19 pandemic, alone, is not an “extraordinary and compelling” reason for early release).

2. *Family-circumstances claim.*

There are two categories of family circumstances that qualify: “(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children[; or] (ii) [t]he incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.” U.S.S.G. § 1B1.13, n.l(C). “The BOP offers further guidance on the application of the family circumstances category in Program Statement § 5050.50. ‘[I]n the case of an incapacitated family member caregiver, the [defendant] must provide, inter alia, verifiable medical documentation of the incapacitation, a clear statement and documentation of a release plan, and letters or documentation confirming that the

family member was, in fact, caring for the child while the [defendant] was in prison and immediately prior to the incapacitation and that the family member is the only family member caregiver capable of caring for the [defendant's] children.” *United States v. Spencer*, No. CR 418-171, 2021 WL 43999, at *3 (S.D. Ga. Jan. 5, 2021) (quoting *United States v. Lambert*, No. CR 116-079, 2020 WL 5949627, at *2 (S.D. Ga. Oct. 7, 2020)).

Buck provides no evidence supporting that her family circumstances qualify as “extraordinary and compelling” under § 1B1.13, application note 1(C)(i). In fact, she provides no evidence at all. *See Lambert*, 2020 WL 5949627, at *2 (denying Lambert’s motion for compassionate release because he presented no verifiable evidence of incapacitation for the caregiver of his minor children). First, Buck admits that her children have a caregiver. Second, Buck does not allege that the caregiver died or is incapacitated; rather, she only claims that her aunt is ill and recovering from cancer, and “in the event of [Buck’s] untimely death due to [her] medical conditions, [her] aunt would not be able to care for [her] children for an extended period of time.” (Doc. 48 at 1.) Buck has not met her burden under the guidelines.

Relatedly, Buck has not shown that there are no other family members available to help her aunt care for her children. *See Spencer*, 2021 WL 43999, at *3 (“The Court finds that Defendant has failed to provide sufficient evidence that he is the only family member caregiver capable of caring for his children.”); *United States v. Barber*, No. 2:17-cr-189, 2021 WL 1857524, at *3 (S.D. Ala. May 10, 2021) (finding defendant had not met burden where defendant “does not explain why [mother] is not

capable of taking care of the minor children” and otherwise “does not offer any evidence that no other person is available to take care of the children”); *United States v. Laureti*, No. 16-60340, 2019 WL 7461687, at *2 (S.D. Fla. Dec. 17, 2019) (“The Defendant has failed to demonstrate that he is the only available caregiver for the children and there is no other family member or adequate care option that is able to provide primary care for the children.”); *see also United States v. Bowers*, No. 2:20-CR-30, 2021 WL 1187080, at *3 (S.D. Ga. Mar. 29, 2021) (holding defendant failed to demonstrate “extraordinary and compelling” reason where he admitted “he is not the only available caregiver for his children”).

D. Additionally, Buck’s motion should be denied based upon § 3553(a) considerations as well as being a danger to the community.

Additionally, even if Buck were to demonstrate an extraordinary and compelling reason, her motion should still be denied based on the § 3553(a) factors. *See Giron*, 15 F.4th at 1347; *Tinker*, 14 F.4th at 1237-38; *United States v. Cook*, 998 F.3d 1180, 1184-85 (11th Cir. 2021). “[A] district court is not required to articulate its reasoning in great detail, as long as the record reflects that it considered the applicable § 3553(a) factors.” *United States v. Deorio*, No. 20-13723, 2021 U.S. App. LEXIS 24739, at *2 (11th Cir. Aug. 19, 2021) (citing *Cook*, 998 F.3d at 1185). Further, Buck cannot satisfy § 1B1.13(2), which requires a finding that “the defendant is not a danger to the safety of any other person or to the community” Based on analysis of these provisions, the motion should be denied.

As to Buck’s COVID-19 claim, the Court may consider the particular

circumstances she faces at her specific BOP facility. *See United States v. Minnis*, No. 19-CR-20182, 2021 U.S. Dist. LEXIS 75047, at *10-11 (S.D. Fla. Apr. 19, 2021). In that regard, Buck has not shown that the conditions of confinement at FPC Alderson are inclined to uniquely and adversely affect her to the point of justifying early release. As of May 24, 2023, FPC Alderson reports one open COVID-19 case.³

Considering § 1B1.13(2) and the § 3553(a) factors—including the nature of the offense, the history and characteristics of the defendant, and the need to protect the public and provide deterrence—this Court should deny Buck’s motion. Buck’s conduct in the present case is concerning. While serving as an active duty soldier in the United States Army (Chief Warrant Officer 2), Buck lead a prolific fraud scheme. (Docs. 1; 30; 40.) She and her co-conspirators submitted more than 150 fraudulent Payroll Protection Program loan applications for COVID-19 relief funds, as well as over a dozen fraudulent student loan discharge applications to the United States Department of Education. (Docs. 1 at 7, 9; 30 at 4, 6; 40 ¶¶ 7-11.) Based on the evidence in this case, in total, Buck was attributed with \$5,025,424 in intended loss, and a staggering \$3,680,247 in actual loss. (Doc. 40 ¶ 12.)

And, Buck already received the benefit of her favorable plea bargain. Moreover, just four months ago, the Court varied downward and sentenced Buck to 42 months’ imprisonment. (Doc. 44 at 2.) *See United States v. Lewis*, No. 21-10100,

³ Inmate COVID-19 Data, Bureau of Prisons, *available at* https://www.bop.gov/about/statistics/statistics_inmate_covid19.jsp#lastestCovidData (last visited May 25, 2023).

2021 U.S. App. LEXIS 32023, at *3 (11th Cir. Oct. 26, 2021) (holding district court did not abuse its discretion denying § 3582(c)(1)(A) when it considered that defendant “‘already benefitted from’ a downward variance”). Additionally, the Court showed more leniency when it allowed Buck to self-surrender to BOP instead of remanding her into custody at the sentencing hearing. Releasing Buck now, after only serving just over two months of her already-shortened sentence, would not further the sentencing goals under § 3553(a). Plus, even with good-time credit, she has just under three years remaining on her sentence. *See, e.g., United States v. Barnes*, 852 F. App’x 514, 515 (11th Cir. 2021) (“The amount of time served is a valid Section 3553(a) consideration for Section 3582(c)(1)(A) motions ‘[b]ecause a defendant’s sentence reflects the sentencing judge’s view of the § 3553(a) factors at the time of sentencing,’ so ‘the time remaining in that sentence may . . . inform whether’ relief ‘would be consistent with those factors.’” (quoting *United States v. Pawlowski*, 967 F.3d 327, 331 (3d Cir. 2020))); *United States v. Signore*, 859 F. App’x 528, 531 (11th Cir. 2021) (“[E]ven if Signore had established his eligibility, the district court was well within its discretion to deny relief based on the seriousness of his offense and the relatively short period of time that he had served in prison.”).

Lastly, Buck was sentenced in January 2023, three years into the pandemic. The PSR detailed her health history, including cervix cancer, ongoing issues with an enlarged uterus, migraine headaches, abdominal pain, irritable bowel syndrome,

chronic kidney disease, and degenerative disc disease.⁴ (Doc. 40 ¶ 41.) Not only did she have the opportunity to inform the Court at sentencing about her medical conditions in relation to the COVID-19 pandemic, but the Court would have been aware of both the pandemic and of Buck's medical concerns when it sentenced her. Releasing Buck early would not reflect the seriousness of her offense, provide just punishment, promote respect for the law, or protect the community.

Conclusion

For the foregoing reasons, the United States respectfully requests that Defendant's § 3582(c)(1)(A) motion (Doc. 48) be denied.

Respectfully submitted,

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⁴ Buck refused to sign a medical release to allow the U.S. Probation Office to confirm her alleged medical conditions and/or treatment and prescriptions. (Doc. 40 ¶ 41.)

CERTIFICATE OF SERVICE

On May 25, 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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