

United States v. Holden: US District Court for the District of Oregon

April 67, 2020

DISCUSSION [*5]

As noted, Defendant moves for an order reducing his sentence to time served pursuant to the [First Step Act \(FSA\), 18 U.S.C. § 3582\(c\)\(1\)\(A\)](#), on the grounds that he has serious degenerative physical conditions or, in the alternative, that the **COVID-19** pandemic provides an independent ground for release.

I. FSA Compassionate Release Standards

"[A] judgment of conviction that includes [a sentence of imprisonment] constitutes a final judgment' and may not be modified by a district court except in limited circumstances." [Dillon v. United States, 560 U.S. 817, 824-25, 130 S. Ct. 2683, 177 L. Ed. 2d 271 \(2010\)](#)(quoting [18 U.S.C. § 3582\(b\)](#)). Compassionate release provides an exception in extraordinary cases.

Prior to December 21, 2018, the provision of Title 18 relating to compassionate release of prisoners provided:

[T]he court, upon motion of the Director of the Bureau of Prisons, 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 **[*6]** by the Sentencing Commission. **1**↓

[18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)\(2018\)](#).

On December 21, 2018, the FSA amended [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) to provide:

[T]he 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 . . . 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.

[First Step Act of 2018, PL 115-391, December 21, 2018, 132 Stat. 5194](#) (emphasis added).

The applicable Sentencing Commission policy statement relating to the FSA is found at [U.S.S.G. § 1B1.13](#). [Application Note 1 to § 1B1.13](#) sets out the extraordinary and compelling reasons as follows:

1. Extraordinary and Compelling Reasons.- . . . extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant [*7] .--

(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.

* * *

(D) Other Reasons.--As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an **[*8]** extraordinary and compelling reason other than, or in combination with, the reasons described in [subdivisions \(A\) through \(C\)](#).

Emphasis in original.

A defendant seeking a reduction in his terms of imprisonment bears the burden to establish both that he has satisfied the procedural prerequisites for judicial review and that compelling and extraordinary reasons exist to justify compassionate release. [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#).

II. Court's Authority to Modify Defendant's Sentence

As noted, "[a] judgment of conviction that includes [a sentence of imprisonment] constitutes a final judgment' and may not be modified by a district court except in limited circumstances." [Dillon, 560 U.S. at 824-25 \(2010\)](#)(quoting [18 U.S.C. § 3582\(b\)](#)). See also [United States v. Penna, 319 F.3d 509, 511 \(9th Cir. 2003\)](#) (courts generally may not correct or modify a prison sentence after it has been imposed unless expressly permitted by statute or by [Rule 35 of the Federal Rules of Criminal Procedure](#)). The FSA, however, provides a limited exception for courts to modify a final judgment of conviction either

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 [*9] facility, whichever is earlier.

[18 U.S.C. § 3582\(c\)\(1\)\(A\)](#)(emphasis added).

A. Date of Defendant's Request for Compassionate Release under the FSA

It is undisputed that Defendant submitted a request to the Bureau of Prisons (BOP) for compassionate release pursuant to [§ 3582\(c\)\(1\)\(A\)](#) and that he did not submit his request until March 24 or 25, 2020. It is also undisputed that the BOP has not yet denied Defendant's March 24 or 25, 2020, request nor have 30 days passed from the time the BOP received Defendant's request.

The record also reflects Defendant is being considered for early release pursuant to the Elderly Offender Pilot Program (EOPP) under the [Second Chance Act \(SCA\), 34](#)

[U.S.C. § 60541](#). Although it is not entirely clear how Defendant came to be considered for release under the EOPP, the record reflects on February 25, 2020, Defendant's case manager at FCI Sheridan, Jamie Pedraza, emailed the Warden of FCI Sheridan as follows:

[Defendant] is a 79-year-old male serving 87 months for Conspiracy to Commit Mail and Wire Fraud; Wire Fraud and Engaging in Monetary Transaction with Criminally Derived Property and Money Laundering Conspiracy. To date, he has served 60% of his sentence and meets all criteria set forth under the FSA Elderly Offender **[*10]** Pilot Program. Additionally, he has been approved to relocate and reside with his daughter in Orting, Washington. He has a current PRD of 12-17-2021. The unit team is requesting a DHD placement on, or after, 9-2-2020. Thank you for your consideration.

Def.'s Second Suppl. Br., Ex. 9 at 1.

At the hearing on April 1, 2020, Defendant suggested the Court could consider the February 25, 2020, email recommending Defendant for the EOPP as a request for compassionate release pursuant to the FSA, in which case 30 days have elapsed from the time Defendant submitted that request to the BOP for early release. The EOPP is a program administered by the BOP pursuant to the SCA, [34 U.S.C. § 60541](#). Specifically, the SCA authorizes the Attorney General to "conduct a pilot program to determine the effectiveness of removing eligible elderly offenders . . . from Bureau of Prisons facilities and placing such offenders on home detention until the expiration of the prison term to which the offender was sentenced." [34 U.S.C.A. § 60541\(g\)\(1\)\(A\)](#). The SCA permits the Attorney General to release eligible offenders from BOP facilities "upon written request from either the Bureau of Prisons or an eligible elderly offender." [34 U.S.C.A. § 60541\(g\)\(1\)\(B\)](#). The SCA also permits the Attorney **[*11]** General to waive the requirements of [18 U.S.C. § 36242](#) "as necessary to provide for the release of some or all eligible elderly offenders . . . from Bureau of Prisons facilities to home detention for the purposes of the pilot program." [34 U.S.C.A. § 60541\(g\)\(1\)\(C\)](#). Finally, the SCA provides:

A violation by an eligible elderly offender . . . of the terms of home detention . . . shall result in the removal of that offender from home detention and the return of that offender to the designated Bureau of Prisons institution in which that offender was imprisoned immediately before placement on home detention . . . or to another

appropriate Bureau of Prisons institution, as determined by the Bureau of Prisons.

[34 U.S.C.A. § 60541\(g\)\(2\)](#).

The SCA is a statutory scheme separate from the FSA. The SCA is administered solely by the BOP and does not require the BOP to obtain permission from the sentencing court before it approves inmates for release to home detention because a release pursuant to the SCA is a change only in the location of an inmate's confinement rather than a reduction in an inmate's sentence. See [18 U.S.C. § 3621\(b\)](#)(the BOP is required to "designate the place of the prisoner's imprisonment."). See also [United States v. Ceballos, 671 F.3d 852, 855 \(9th Cir. 2011\)](#) ("While a [district court] judge has wide discretion in determining [*12] the length and type of sentence, the court has no jurisdiction to select the place where the sentence will be served. Authority to determine place of confinement resides in the executive branch of government and is delegated to the Bureau of Prisons.")(quoting [United States v. Dragna, 746 F.2d 457, 458 \(9th Cir. 1984\)](#)). A placement to home detention by the BOP pursuant to the SCA, therefore, differs substantially in kind and scope from a defendant's request for reduction of sentence pursuant to the FSA like Defendant seeks in his pending Motion.

The Court notes the record in this case reflects only that the BOP considered Defendant for home placement pursuant to the EOPP under the SCA. The February 25, 2020, email from Pedraza to the Warden of FCI Sheridan indicates Defendant was considered for placement in home detention, but the email does not indicate Defendant requested or was considered for a reduction in his sentence pursuant to the FSA. The Court, therefore, concludes on this record that Defendant has not

established the February 25, 2020, email (or any other document in the record before March 24 or 25, 2020) constituted a request for reduction of Defendant's sentence pursuant to the FSA. Moreover, due to the fundamentally different [*13] nature of the FSA and the SCA, the Court declines to deem Defendant's February request to be one for a reduction in sentence within the parameters of the FSA.

Accordingly, the Court concludes the February 25, 2020, email does not constitute a request to the BOP that began the 30-day period under the FSA exhaustion provision, [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#).