

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted March 28, 2023*

Decided March 29, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2223

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TERRELL MCGEE,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 15-cr-30075-SMY

Staci M. Yandle, *Judge.*

ORDER

Terrell McGee, a federal prisoner, appeals the denial of his motion for compassionate release. The district judge did not abuse her discretion in concluding that McGee offered no extraordinary and compelling reason for release, so we affirm.

After assisting in the armed robbery of two gas stations, McGee pleaded guilty in 2017 to two counts of discharging a firearm during a violent crime, 18 U.S.C.

* We have agreed to decide the case without oral argument because the issues have been authoritatively decided. FED. R. APP. P. 34(a)(2)(B).

§ 924(c)(1)(A)(iii), among other offenses. He was sentenced to 300 months' imprisonment, the minimum sentence at the time for the second § 924(c) count. *Id.* § 924(c)(1)(C)(i) (2006). McGee appealed, but we granted his attorney's motion to withdraw and dismissed the appeal. *United States v. McGee*, 750 F. App'x 489, 489–90 (7th Cir. 2019) (citing *Anders v. California*, 386 U.S. 738 (1967)).

McGee moved in 2022 for compassionate release under 18 U.S.C. § 3582(c)(1)(A), arguing that the First Step Act's amendments to § 924(c) constituted an extraordinary and compelling reason for his release because he would face lower penalties if he were sentenced today. *See* Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221–22. The district judge denied the motion on the ground that our decision in *United States v. Thacker*, 4 F.4th 569, 576 (7th Cir. 2021), precluded consideration whether a nonretroactive legal change could be an extraordinary and compelling reason for release. And because McGee had not furnished an extraordinary and compelling reason for release, the judge added that she need not consider the sentencing factors of 18 U.S.C. § 3553(a) at all.

On appeal, McGee argues that the district judge abused her discretion by refusing to consider the sentencing factors. But the judge did not err: A judge may reduce a sentence upon consideration of the § 3553(a) factors only after finding that “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c); *see also United States v. Ugbah*, 4 F.4th 595, 598 (7th Cir. 2021). Here, that condition precedent was not met.

Next, McGee argues that we should overrule *Thacker*, which he says departs from decisions from other courts of appeals, *see, e.g., United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020), and improperly limits judges' discretion to decide what constitutes an extraordinary and compelling reason. We decline the invitation. McGee offers no compelling reason to overturn our precedent, *see Campbell v. Kallas*, 936 F.3d 536, 544 (7th Cir. 2019), and indeed we repeatedly have reaffirmed *Thacker's* reasoning. *See, e.g., United States v. King*, 40 F.4th 594, 595–96 (7th Cir. 2022); *United States v. Peoples*, 41 F.4th 837, 841–42 (7th Cir. 2022). Moreover, in *Thacker* we spelled out our rationale for rejecting the arguments that McGee raises here. In disagreeing with the decisions on which McGee relies, we acknowledged the “broad discretion” afforded district judges under the compassionate-release statute, but we emphasized that judges cannot use that discretion to circumvent “Congress's express determination ... that the amendment to § 924(c)'s sentencing structure apply only prospectively.” *Thacker*, 4 F.4th at 573–74.

We have considered McGee's remaining arguments, but none merits discussion.

AFFIRMED