

NONPRECEDENTIAL DISPOSITION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 January 30, 2024*

Decided February 2, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 23-3235

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TIMOTHY R. BABBITT,
Defendant-Appellant.

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

No. 13-cr-10100

Michael M. Mihm,
Judge.

ORDER

During the COVID-19 pandemic Timothy Babbitt sought compassionate release, see 18 U.S.C. §3582(c)(1)(A), principally on the ground that his medical conditions made him especially vulnerable to the disease. The district court denied that motion and we affirmed, for two reasons: first, Babbitt had not exhausted administrative remedies, as the statute requires; second, the district judge had not abused his discretion in concluding that Babbitt lacked an extraordinary and compelling reason for release. *United States v. Babbitt*, No. 20-2866 (7th Cir. June 23, 2021) (nonprecedential disposition).

* This successive appeal has been submitted to the panel that decided Babbitt's initial appeal. See Operating Procedure 6(b). Circuit Judge Kanne died after the first decision and has not been replaced on the panel; this appeal is being decided by a quorum of the panel. 28 U.S.C. §46(d). After examining the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir. R. 34(f).

Babbitt then filed two more motions for compassionate release. The United States concedes that he has exhausted administrative remedies. Once again, however, the district judge found that Babbitt has not shown an extraordinary and compelling reason for release. Once again we hold that this decision does not reflect an abuse of discretion.

Babbitt repeats his arguments about susceptibility to COVID-19. Yet circumstances are less dire now than in 2020, when he originally sought release. Babbitt has been fully vaccinated. He does not contend that the prison where he now resides is experiencing an outbreak. And it is hard to see how release from prison would provide him substantial assistance in resisting the disease. To the extent his conditions (such as obesity) dispose him to serious illness in prison should he be infected, they would do the same if he were to be released.

Babbitt has compiled a good record in prison and obtained a master's degree as well as numerous certificates. The district court concluded that these achievements, while commendable, fall short of the statutory requirement that they be extraordinary and compelling. That assessment is not an abuse of discretion.

Finally, Babbitt contends that, if released, he could help care for his 80-year-old mother. Under the revised policy statement in the latest version of the Sentencing Guidelines, release could be appropriate based on "[t]he incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent." U.S.S.G. §1B1.13(b)(3)(C) (effective Nov. 1, 2023). Babbitt does not contend that his mother is incapacitated or that he is the only potential caregiver.

His other arguments (such as his contention that his criminal history was calculated incorrectly at his sentencing in 2014) have been considered but do not require discussion.

AFFIRMED