

NONPRECEDENTIAL DISPOSITION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 July 24, 2024*

Decided July 26, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-1343

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BRIAN MILLER,
Defendant-Appellant.

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

No. 13-cr-10098-JES

James E. Shadid,
Judge.

ORDER

Brian Miller appeals the denial of his motion under 18 U.S.C. § 3582(c)(1)(A)(i) seeking compassionate release based on what he maintains is an unusually long sentence. Because the district court did not abuse its discretion, we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Federal agents arrested Miller in 2013 after uncovering evidence that he had cut a hole in a bathroom wall in his home, through which he watched and recorded minor girls—friends of his daughter—while they showered. Federal criminal charges followed, and after a bench trial in May 2014, the district court found Miller guilty of 22 counts of using a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction. *See* 18 U.S.C. § 2251(a), (e). The court rejected Miller’s argument that the minors were not engaged in “sexually explicit conduct.” Such conduct, the court explained, includes “lascivious exhibition” of the genitals or pubic area, 18 U.S.C. § 2256(2)(A)(v), and case law made clear that Miller’s videos qualified as “lascivious” because they were intended to provoke a sexual response in the viewer. *See United States v. Russell*, 662 F.3d 831, 843 (7th Cir. 2011). The court sentenced Miller to 22 concurrent sentences of 216 months in prison and 22 concurrent 15-year terms of supervised release. We affirmed the judgment on direct appeal. *See United States v. Miller*, 829 F.3d 519, 526 (7th Cir. 2016). Miller filed a collateral attack in 2018 and a compassionate release motion in 2021, both of which were unsuccessful.

In December 2023, Miller filed a second compassionate release motion, which raised arguments similar to those he made on direct appeal. This time, however, Miller pointed to our decision in *United States v. Howard*, 968 F.3d 717 (7th Cir. 2020), to argue that the contents of his video recordings do not fit within the statutory definition of sexually explicit conduct. According to Miller, this means that his sentence is “unusually long” under U.S.S.G. § 1B1.13(b)(6) because today, he would be acquitted and therefore not subject to any prison time. The district court rejected Miller’s argument and denied the motion, citing two independent grounds. First, the court explained, *Howard* involved depictions of the offender, not the fully dressed and sleeping minor, engaged in sexually explicit conduct, and so it was inapposite to Miller’s case involving depictions of nude minors. And second, even if Miller’s sentence somehow constituted an extraordinary and compelling reason for early release, the sentencing factors under 18 U.S.C. § 3553(a) weighed against reducing his sentence. Specifically, the court cited (1) the “egregious nature” of Miller’s conduct—the extensive, multi-step effort he made to surreptitiously record his victims; (2) his criminal history, which included a prior conviction for battery; (3) the need to promote respect for the law; and (4) the need to protect the public from future criminal conduct.

On appeal, Miller does not contend with the district court’s conclusion that the § 3553(a) factors weighed against his early release. This is an independent and sufficient ground for denying compassionate release, irrespective of whether Miller presented an extraordinary and compelling reason. *See United States v. Rucker*, 27 F.4th 560, 563

(7th Cir. 2022); *United States v. Ugbah*, 4 F.4th 595, 598 (7th Cir. 2021) (“It is enough to state one reason adequate to support the judgment.”).¹ And because Miller does not challenge this ground on appeal, he forfeits any argument that the district court abused its discretion when it denied his motion based in part on the § 3553(a) factors. See *Webster v. CDI Ind., LLC*, 917 F.3d 574, 578 (7th Cir. 2019); *United States v. Bryant*, 750 F.3d 642, 651 (7th Cir. 2014).

AFFIRMED

¹ In any event, even if *Howard* supported Miller’s argument that his sentence is extraordinarily long—and it does not—this would not establish an extraordinary and compelling reason. “Judicial decisions, whether characterized as announcing new law or otherwise, cannot alone amount to an extraordinary and compelling circumstance allowing for a sentence reduction” under § 3852(c)(1)(A). *United States v. Brock*, 39 F.4th 462, 466 (7th Cir. 2022).