

NONPRECEDENTIAL DISPOSITION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 September 11, 2024*

Decided September 30, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-3131

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FLOYD D. THOMAS,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Indiana, Fort Wayne Division.

No. 1:14-CR-14 DRL

Damon R. Leichty,
Judge.

ORDER

Floyd Thomas appeals the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We affirm in part, vacate in part, and remand for further proceedings.

* 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).

Thomas pleaded guilty in 2019 to conspiracy to possess with intent to distribute cocaine, 21 U.S.C. § 846, and possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c). He was sentenced to 252 months' imprisonment and 5 years' supervised release.

In 2023, Thomas moved for a sentence reduction on the grounds that, if sentenced today, he would receive a far lighter penalty. He first argued that he was convicted based on a "stash house sting," a now disfavored law-enforcement practice. He further contended that his § 924(c) firearm charge would now be unlawful under *United States v. Taylor*, 596 U.S. 845, 851 (2022), in which the Supreme Court held that a conviction for attempted Hobbs Act robbery did not qualify as a crime of violence under § 924(c)'s elements clause. The district judge rejected the motion, concluding—with reference to *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023)—that his arguments were not an appropriate basis for compassionate release.

On appeal, Thomas challenges the district judge's conclusion in two ways. First, he points to a recent amendment (Amendment 814) that revised U.S.S.G. § 1B1.13 to expand the list of "extraordinary and compelling reasons" that support a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A)(i). The pertinent policy statement here, U.S.S.G. § 1B1.13(b)(6) (Nov. 2023), permits a sentence reduction for some defendants whose sentence is "unusually long" and who have served 10 years of that sentence. However, Amendment 814 did not go into effect until November 2023, one month after Thomas filed his motion for compassionate release. Although we have not had occasion to address the issue, the Eleventh Circuit – in a similar case – has declined to give retroactive effect to the application of Amendment 814 to § 1B1.13(b)(3)(C) in the context of a § 3582(c)(1)(A)(i) motion. *United States v. Handlon*, 97 F.4th 829, 833 (11th Cir. 2024). Regardless, even if the district judge could have applied the new policy statement, Thomas was ineligible for relief under it, having not yet served at least 10 years of his sentence. U.S.S.G. § 1B1.13(b)(6). He has been in custody since his arrest in February 2014, and he was sentenced in November 2019. So, at the time of his October 2023 motion for compassionate release, he was at least several months shy of serving 10 years of his sentence.

Second, Thomas challenges the district judge's application of our decision in *Von Vader*, 58 F.4th 369 (7th Cir. 2023). *Von Vader* precludes a petitioner from showing an "extraordinary and compelling" circumstance under § 3582(c)(1) based on a judicial decision. *Von Vader*, 58 F.4th at 371 (quoting *United States v. Brock*, 39 F.4th 462, 466 (7th Cir. 2022)). A fair reading of Thomas's brief shows that a judicial decision is not the

basis of his § 3582(c)(1) claim. Rather, he points to the fact that he was convicted based on a now-disfavored government practice widely regarded as unjust (even though still legal, since no judicial decision or other law has banned the practice). *Von Vader* did not preclude the district judge from exercising discretion to determine whether the government's cessation of a much-criticized practice is an extraordinary and compelling reason justifying relief. We therefore remand this case for the judge, in the first instance, to consider this question.

AFFIRM in part, VACATE in part, and REMAND for further proceedings.