

NONPRECEDENTIAL DISPOSITION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 December 18, 2024*

Decided December 18, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1978

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

COREY KRUSE,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:18-cr-00121-JRS-MJD-1

James R. Sweeney II,
Judge.

ORDER

Corey Kruse, who was convicted of producing child pornography, appeals two rulings: first, the district court's denial of his motion for compassionate release, 18 U.S.C. § 3582(c)(1)(A), and second, the rejection of his motion to reconsider that denial. Kruse's appeal of the first ruling is untimely, and because the government asks

* 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).

us to enforce the deadline to appeal, we dismiss that appeal. We have jurisdiction to review the second ruling, but because the district court reasonably denied that motion, we affirm the ruling.

Kruse's first motion for compassionate release came three years after his sentencing. He had used hidden cameras to film children disrobing, bathing, showering, and redressing, and he pleaded guilty in 2020 to three counts of producing child pornography. 18 U.S.C. § 2251(a). The district court sentenced him to 192 months in prison on each count, running concurrently. In 2023, Kruse moved for compassionate release. He argued that the death of the primary caregiver to his minor child was an extraordinary and compelling reason for relief, 18 U.S.C. § 3582(c)(1)(A)(i), and that the sentencing factors of 18 U.S.C. § 3553(a) justified early release. The court denied the motion on January 22, 2024. It assumed that the death of the primary caregiver of Kruse's child was "extraordinary and compelling" under the statute, but it found that the sentencing factors under § 3553(a) weighed against release.

Kruse did not appeal within 14 days of the district court's denial (in this case, by February 5, 2024). Instead, in April 2024, Kruse sought an extension of time to move to reconsider, explaining that he had received the court's order denying his motion at the end of March—more than two months after it was issued. The district court could not have construed this motion as a request for more time to appeal. The Federal Rules of Appellate Procedure permit a district court to extend the deadline to appeal for good cause—but only for 30 days after the original deadline (in this case, until March 6). FED. R. APP. P. 4(b)(4). The court instead treated Kruse's filing as a request to file a motion akin to one under Rule 60(b) of the Federal Rules of Civil Procedure. It ordered Kruse to file that motion by May 4, and Kruse complied. In it, he reiterated his arguments from his first motion. The court denied Kruse's motion on May 21, explaining that Kruse essentially raised the same arguments as in his previous filing. Within 14 days of this ruling, Kruse appealed both the order from January 22 denying his compassionate-release request and the order from May 21 denying his motion to reconsider.

We begin our analysis by explaining that we may not review the order from January 22 denying Kruse's motion for compassionate release. To obtain appellate review of it, Kruse was required to appeal that order within 14 days of its entry (by February 5, 2024). *See* FED. R. APP. P. 4(b)(1)(A). But Kruse did not appeal within that time. As we said above, even his request for additional time to move to reconsider came too late to extend the time to appeal. The time limit governing criminal appeals is, however, not jurisdictional; it is a claim-processing rule that the government can waive

or forfeit. *United States v. Sutton*, 962 F.3d 979, 982 (7th Cir. 2020). But we must enforce the time limit when, as here, the government stands on its rights. See *United States v. Rollins*, 607 F.3d 500, 501 (7th Cir. 2010). We therefore dismiss this part of the appeal.

Kruse timely appealed the ruling in May rejecting his motion to reconsider the denial of his sentence-reduction request, but we pause to characterize properly that motion. The Federal Rules of Criminal Procedure do not have a counterpart to Rule 60(b) of the Federal Rules of Civil Procedure. *Rollins*, 607 F.3d at 502. Instead, criminal defendants may invoke the common-law practice of moving to reconsider rulings denying sentence-reduction requests, but they must do so within the time to appeal—14 days. *United States v. Beard*, 745 F.3d 288, 291 (7th Cir. 2014). Motions filed outside of the 14-day time limit, as here, are “ineffectual” attempts to reconsider a prior sentence-reduction request; instead courts should treat them as new motions for a sentence reduction. See *United States v. Redd*, 630 F.3d 649, 650 (7th Cir. 2011). Kruse’s motion to reconsider therefore was a new motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

So construed, the district court properly denied Kruse’s second motion. We review the denial of compassionate-release motions for abuse of discretion. *United States v. Rucker*, 27 F.4th 560, 562 (7th Cir. 2022). On appeal, Kruse maintains that the death of his child’s caretaker is “extraordinary and compelling” and the sentencing factors under § 3553(a) warrant release. But these are the arguments that Kruse made in his original motion. To consider these arguments on the merits now would “rejuvenate an extinguished right to appeal.” *United States v. Healy*, 376 U.S. 75, 77 (1964); see *Rollins*, 607 F.3d at 502. Further, although a defendant may file more than one motion for compassionate release, see, e.g., *United States v. Vaughn*, 62 F.4th 1071, 1071 (7th Cir. 2023), *United States v. Moore*, No. 23-2919, 2024 WL 890003, at *1 (7th Cir. Mar. 1, 2024), subsequent motions must be based on materially different conditions. District courts are empowered to dismiss repetitive requests, like Kruse’s second motion. See *In re Thomas*, 91 F.4th 1240, 1242 (7th Cir. 2024). Because in his second motion Kruse simply repeats the grounds for compassionate release that he raised in his first motion, the court reasonably denied the second motion.

DISMISSED in part and AFFIRMED in part