

NONPRECEDENTIAL DISPOSITION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 14, 2023*

Decided September 18, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-1808

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ERNEST F. CLARK,
Defendant-Appellant.

Appeal from the United States
District Court for the Eastern
District of Wisconsin.

No. 11-CR-30-2-JPS

J.P. Stadtmueller, *Judge.*

ORDER

Ernest Clark has filed multiple applications for compassionate relief under 18 U.S.C. §3581(c)(1)(A). The district court has denied all of them, and two years ago we affirmed one such order. *United States v. Clark*, 21-1200 (7th Cir. July 19, 2021) (nonprecedential disposition).

* 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).

Clark's current sentences add up to 162 years in prison, a consequence of his multiple armed bank robberies committed while on supervised release from a 188-month sentence for an earlier armed bank robbery. He contended in 2021 that this sentence is absurdly long and should be reduced. He also contended that he is at risk of COVID-19 while in prison, a risk that could be mitigated by his release. The district judge rejected both contentions, and we held that in doing so the judge did not abuse his discretion.

Clark's most recent application for release repeats these arguments, which the district judge rejected again. We need not repeat what we said in 2021 — though we add that, even now, Clark has not produced any evidence that his risk from COVID-19 would be less outside of prison than inside. (Given vaccines, institutional settings are no longer centers of uncontrolled infection. That Clark has refused to be vaccinated does not strengthen his argument for release.)

The current application for compassionate release adds a contention that the prosecutor at his trial engaged in misconduct. The district court found this assertion unsubstantiated (opinion at 9) and added that it is not a good reason for release under §3581(c)(1)(A). As we explained in *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023), “the sort of ‘extraordinary and compelling’ circumstance that §3582(c)(1) addresses is some new fact about an inmate’s health or family status, or an equivalent post-conviction development, not a purely legal contention for which statutes specify other avenues of relief — avenues with distinct requirements, such as the time limits in §2255(f)”. Prosecutorial misconduct could be a reason for reversal on appeal or collateral relief under 28 U.S.C. §2255, but it is not a subject that can be raised for the first time, more than a decade after trial, through a motion under §3581(c)(1)(A). *Von Vader* cites many similar decisions in this circuit. No more need be said.

AFFIRMED