

NONPRECEDENTIAL DISPOSITION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 April 15, 2024*

Decided April 17, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2627

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IVAN VANBUREN,
Defendant-Appellant.

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

No. 2:13-cr-16-JMS-CMM-1

Jane Magnus-Stinson,
Judge.

ORDER

Ivan Vanburen, a federal prisoner, appeals the denial of his motion for compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i), which he based primarily on recent medical evidence of his susceptibility to complications from COVID-19. Because the

* 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).

district court did not abuse its discretion in concluding that Vanburen failed to establish extraordinary and compelling reasons for release, we affirm.

In 2014, Vanburen pleaded guilty to one count of trafficking 500 grams or more of methamphetamine and crack cocaine. 21 U.S.C. §§ 841(a)(1), 846. He was sentenced to 240 months' imprisonment and 5 years' supervised release.

Vanburen moved for compassionate release in 2022, raising three arguments. First, he contended, he was at high risk of contracting a severe case of COVID and cannot benefit from the vaccine. He relied on his medical records, which he had updated since his unsuccessful first motion for compassionate release. These records show that he is receiving radiation treatment and hormone injections to treat prostate cancer. His records also state that he is asthmatic and uses a corticosteroid inhaler three times daily. He cited guidance from the Centers for Disease Control and Prevention ("CDC"), which says that cancer treatment and corticosteroids can compromise a patient's immune system, leaving the patient at heightened risk from COVID even after vaccination. Last, he argued that his risk is amplified by the prison's response to COVID: Staff and prisoners often do not wear masks, despite a rule requiring it; prisoners are not required to quarantine after a COVID exposure; and COVID treatments are not as readily available in prison as out. The government opposed relief.

Vanburen's next two arguments were not medically based. He maintained that if he were sentenced today, his Guidelines range would be 120 to 150 months in prison, rather than the 262 to 327 months in prison that the sentencing court used; thus, he said, his 240-month sentence was unreasonable. Finally, he argued that his record while incarcerated showed that he had been sufficiently rehabilitated to warrant release.

The district court denied his motion. On the medical issue, it recognized that Vanburen had furnished evidence of his "underlying medical conditions" (including asthma and cancer), and it accepted that immunocompromised people might not benefit from the COVID vaccines. But the court said that Vanburen had not submitted evidence that he is such a person: He was fully vaccinated, and he did not supply individualized evidence showing that his particular set of medical conditions and treatment left him unable to receive or to benefit from the vaccine. Further, in apparent reference to the COVID protocols in his prison, the court ruled that Vanburen had not shown that he would be at higher risk of a severe COVID infection in prison than out. *See United States v. Barbee*, 25 F.4th 531, 533 (7th Cir. 2022).

On the next two points, the court noted that circuit precedent foreclosed his argument about changes to the Guidelines, *see United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021), and that rehabilitation alone was not an extraordinary and compelling reason for compassionate release. *United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022). Because no grounds warranted release, the court did not evaluate whether release was justified under the factors in 18 U.S.C. § 3553(a).

On appeal, we review the denial of a motion for compassionate release for abuse of discretion. *United States v. Sarno*, 37 F.4th 1249, 1253 (7th Cir. 2022).

Vanburen contends that he provided evidence that he is unable to benefit from COVID vaccines. He first points to his medical records and the CDC guidance stating that people with his conditions may not be adequately protected from COVID even if vaccinated. He also maintains that the prison's operations (its disregard of masking rules, the absence of quarantining after COVID exposure, and the lack of COVID treatments) further elevate his risk of a severe case of COVID.

The district court did not abuse its discretion when it ruled that Vanburen failed to present extraordinary or compelling reasons for release. First, his medical conditions did not require release. The court properly acknowledged that Vanburen had underlying medical conditions, including asthma and cancer, and that the CDC has said that immunocompromised people generally do not benefit from the vaccine. But, as the court correctly noted, generalized medical information alone does not suffice. *See United States v. Newton*, 996 F.3d 485, 491 (7th Cir. 2021); *United States v. Joiner*, 988 F.3d 993, 995–96 (7th Cir. 2021). And the court also correctly observed that Vanburen did not provide individualized evidence showing that, because of his asthma and cancer (and corresponding treatments), he personally was unable to benefit from the vaccines that he has received. *See United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021); *Joiner*, 988 F.3d at 996. Second, the court reasonably found that Vanburen did not provide individualized evidence showing that his risk of a severe COVID infection outside of prison would be lower than inside, as was his burden. *See United States v. Vaughn*, 62 F.4th 1071, 1071 (7th Cir. 2023). Third, the court did not abuse its discretion in declining to grant compassionate release based on the Guidelines changes or his arguments about rehabilitation. Prospective changes to the Guidelines are not an extraordinary or compelling reason for release, *Thacker*, 4 F.4th at 574, and “rehabilitation alone cannot serve as a basis for early release.” *Peoples*, 41 F.4th at 842.

AFFIRMED