

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

CASE NO.:

V.

2:12-CR-297-KOB-JEO

Kelly Patrick Riggs

MOTION FOR SENTENCE REDUCTION PURSUANT TO
18 U.S.C. §3582 (c)(1)(A)(i)

Mr. Riggs moves this court to reduce his sentence to time served based on the Bureau of Prisons inability to provide medical care to all prisoners who continue to become infected with the Coronavirus; his inability to protect himself in a prison setting during the global pandemic; his qualification for immediate release under the First Step Act, had the Bureau of Prisons properly applied his earned time credits; and because he now has less than sixty (60) days left to complete his original sentence, with his current halfway house date applied. Mr. Riggs' circumstances satisfy the "extraordinary and compelling reasons" standard set out in both 18 U.S.C. §3582 (c)(1)(A)(i) and U.S.S.G. §1B1.13. In light of the factors in 18 U.S.C. §3553 (a), Mr. Riggs moves this court to reduce his sentence to time served.

I

JURISDICTION

On December 21, 2018, the President of the United States signed the First Step Act of 2018 into law. The newly enacted law amended 18 U.S.C. §3582 (c)(1)(A) to give the sentencing judge jurisdiction to consider a defendant's motion for a sentence reduction based on extraordinary and compelling reasons. The Court has jurisdiction whenever "the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a

motion on the defendant's behalf," or after "the lapse of 30 days from the receipt of such a request by the Warden of the defendant's facility, whichever is earlier." See the First Step Act of 2018, §603(b), Pub. L. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018). Mr. Riggs has attempted to exhaust his administrative remedies within the Bureau of Prisons ("BOP"). The Warden at FCI Seagoville recharacterized Mr. Riggs' March 11, 2020, request and forwarded it to his unit team; his request was denied on March 17, 2020. See attached. Mr. Riggs refiled his request as an appeal to the denial on April 4, 2020. The Bureau of Prisons ("BOP") has not responded because a lack of staff has caused a breakdown in the administrative relief process. Even if Mr. Riggs could pursue additional appeals within the administrative processes of the BOP, a period of over 30 days has elapsed since the Warden's receipt of Mr. Riggs' request for Compassionate Relief. This gives the Court jurisdiction. See 18 U.S.C. §3582 (c)(1)(A).

II

Authority to Reduce a Sentence Under

18 U.S.C. § 3582 (c)(1)(A)(i)

This Court "may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C. §] 3553 (a) to the extent they are applicable, if it finds that...extraordinary and compelling reasons warrant such a reduction...[,] and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." See 18 U.S.C. §3582 (c)(1)(A)(i). In 28 U.S.C. §994(t), Congress delegated to the Sentencing Commission the authority to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." Here, the examples of "extraordinary and compelling reasons" include:

(A) Medical Condition of the Defendant

(ii) The defendant is-

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the

environment of a correctional facility and from which he or she is not expected to recover.

(B) **Age of the Defendant** - The defendant

- (i) is at least 65 years old;
- (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and
- (iii) has served at least 10 years or 75% of his or her term of imprisonment, whichever is less. See Application Note 1 to U.S.S.G. §1B1.13.

The Sentencing Commission's standard has parallels under the BOP program statement on Compassionate Release, P.S. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205 (g) (Jan. 17, 2019) (providing Compassionate Release consideration for elderly inmates with medical conditions). The BOP's program statement remains relevant only if its criteria are broader than the standards set by the Sentencing Commission. See Application Note 1(D) to U.S.S.G. §1B1.13 (recognizing that the Director of the BOP can designate additional "extraordinary and compelling reasons other than, or in combination with, the reasons described in" the commentary). For example, the BOP provides for a reduction in sentence for:

Elderly inmates with Medical Conditions. Inmates who fit the following criteria:

- Age 65 and older.
- Suffer from chronic or serious medical conditions related to the aging process.
- Experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility.
- Conventional treatment promises no substantial improvement to their mental or physical condition.
- Have served at least 50% of their sentence.

BOP Program Statement 5050.50 4.b.

III

Relevant Facts and Procedural History

The indictment in Case #2:12-CR-297-KOB-JEO charged Mr. Riggs with one (1)

count under 18 U.S.C. §2422(b) and one (1) count under 18 U.S.C. §1470. Mr. Riggs entered into a binding plea agreement on both counts.

On April 22, 2014, Mr. Riggs was sentenced to 120 months on counts one and two, to be served concurrently. At the time of sentencing, Mr. Riggs was 45 years old; he had no significant ailment and had donated his left kidney to a fellow veteran just two years prior.

Mr. Riggs is currently 51 years old. He has been in federal custody since his arrest on May 26, 2012, nearly 8 years of actual incarceration or 79.8% of his total term of imprisonment (as of April, 2020). The BOP has Mr. Riggs listed as a "chronic care" inmate.

IV

Argument

A. Mr. Riggs Has Established Extraordinary and Compelling Reasons That Warrant a Sentence Reduction.

There are extraordinary and compelling reasons, as defined in Application Note 1 (A) and (B) to U.S.S.G. §1B1.13, to reduce Mr. Riggs' sentence to time served. Mr. Riggs has only one remaining kidney and is at a higher risk of death from any serious foreign infection. He is currently incarcerated in close proximity with 190 other prisoners from which he cannot distance himself. Thus, Mr. Riggs is subject to a discernable threat even as the BOP's death toll rises. Although Mr. Riggs is not 75 years of age, he is subject to a medical emergency that the BOP cannot reasonably control; his physical health has deteriorated due to aging, and he has served over 75% of his sentence.

Under the current statutory regime, the existence of extraordinary and compelling circumstances confers on this court the authority to consider the 18 U.S.C. §3553 factors and determine whether the circumstances warrant a sentence reduction.

This Court should not give value to the BOP's denial of Compassionate Release due to its recharacterization of Mr. Riggs' request. The BOP has failed to reasonably consider Mr. Riggs' request based on its merit. Due to the BOP's lack of diligence, Mr. Riggs is still waiting for a meaningful response from the Warden of his facility. The statutory responsibility to decide whether to grant a motion to reduce a sentence falls to this court, not the BOP. Decisions about sentencing "[should] not be left to employees of the same Department of Justice that conducts the prosecution." Setser v. United States, 566 U.S. 231, 242 (2012); see also Id. at 240 ([T]he Bureau is not charged with applying §3553(a).") Under 18 U.S.C. §3582 (c)(1)(A)(i) and U.S.S.G. §1B1.13, it is the Court, not the BOP, that is charged with considering the "extraordinary and compelling reasons," then evaluating whether the sentencing factors under 18 U.S.C. §3553 (a) warrant a reduction in sentence.

The First Step Act's amendment to 18 U.S.C. §3582(c)(1)(A) reflects the Congressional intent to diminish the BOP's control over Compassionate Release by permitting defendants to file sentence reduction motions directly with the sentencing court. The BOP's administration of the Compassionate Release Program has long been the subject of criticism. The Department of Justice's Office of Inspector General has repeatedly found that the program results in needless and expensive incarceration and is administered ineffectively. Department of Justice, Office of the Inspector General, the Federal Bureau of Prison's Compassionate Release Program, at page 11 (April 2013) ("the BOP does not properly manage the Compassionate Release Program, resulting in inmates who may be eligible candidates for release not being considered."); Department of Justice, Office of the Inspector General, The Impact of an Aging Inmate Population on the Federal Bureau of Prisons, at page 51 (May 2015) ("Although the BOP has revised its Compassionate Release policy to expand consideration for early release to aging inmates, which could help mitigate the effects of a growing aging inmate population, few aging inmates have been released under it."). Prisoner advocates have also documented the human cost of the BOP's stinting view of Compassionate Release. See Human Rights Watch; Families Against Mandatory Minimums, the answer is no: Too Little Compassionate Release in U.S. Federal Prisons (Nov. 2012); and Kelly Patrick Riggs' Post Conviction Relief book series (2017-2020).

The First Step Act shifts the authority to this Court to decide whether Mr. Riggs' extraordinary and compelling reasons warrant a sentence reduction without deference to any administrative agency.

**B. After Considering the 18 U.S.C. §3553 (a) Factors,
Mr. Riggs' Nearly 8 Years of Incarceration Constitutes
a Sentence Sufficient But Not Greater Than Necessary,
to Accomplish the Goals of Sentencing.**

Under the circumstances, the 8 years of incarceration that Mr. Riggs has served satisfies the purpose of sentencing. Under Pepper v. United States, 562 U.S. 476, 490-93 (2011), the Court can, and must, consider post-offense developments under 18 U.S.C. §3553(a), which provides "the most up-to-date picture" of the defendant's history and characteristics and "sheds light on the likelihood that [Mr. Riggs] will engage in future criminal conduct." *Id.* at 492. The Warden did not identify any disciplinary violations received by Mr. Riggs as a reason for not granting Compassionate Release. Here, the overriding factor under 18 U.S.C. §3553(a) that was not present at the time of sentencing, is Mr. Riggs' potentially deadly exposure to the Covid-19 virus while incarcerated. Although the circumstances of the present offenses and Mr. Riggs' criminal history qualified him for the imposed sentence this Court originally imposed, Mr. Riggs' potential exposure to a deadly disease at the time of sentencing provided no indication that he was likely to face a life threatening illness because of his incarceration. The current trend shows that the number of positive Covid-19 cases in the BOP is growing daily. The CDC has identified certain classes of people who are unusually susceptible to be overcome by the Coronavirus. As a general class of people, notwithstanding Mr. Riggs having only one kidney, consists of those who cannot practice social distancing and good personal hygiene. The World's health communities also advise people to wash regularly with alcohol-based hand sanitizer - an unauthorized commodity to all people in prison.

**C. Mr. Riggs' Post Incarceration Activities and Educational
Efforts Have Greatly Reduced the Probability of Recidivism.**

Prior to prison, Mr. Riggs had reached the pinnacle of his professional career. During his 8 years of incarceration, he has dedicated himself to diligent and intense study of Sociology, literature, philosophy, and

American Jurisprudence. He has risen from among the ranks of his peers and has become one of the most successful jailhouse lawyers America has ever known. He has written a growing collection of books that have helped thousands of prisoners understand the laws and the Constitution of the United States. He is a founding member of Release of Innocent Prisoners Effort, Inc., a 501(c)(3) non-profit corporation. Mr. Riggs also serves as a volunteer for Fair Shake, which assists ex-felons understand re-entry resources, and recently joined forces with The California Innocence Project.

Mr. Riggs has engaged in rehabilitative programs offered by the Bureau of Prisons such as:

- The non-residential drug abuse program
- Creative writing I and II.
- Legal Research I, II, and III.
- Criminal Justice Law I and II.

Mr. Riggs has also served as a trusted inmate worker, 1st grade, in a prison laundry. His duties included equipment maintenance, labor management, inventory, and scheduling. Mr. Riggs served as the instructor of Advanced Habeas Corpus Law at Oakdale FCI. He also has mentored several other inmates in their pursuit of writing and publishing their own books.

In summary, Mr. Riggs is now 51 years old, has experienced a deep-seated personal change, has developed a love for helping his fellow man achieve their goals, and as such does not pose a danger to any other person or the community. Mr. Riggs has secured employment with Freebird Publishers and they both currently await the moment when Mr. Riggs will be released and will set forth on the path that leads to his greatest potential.

CONCLUSION

Wherefore, Mr. Riggs moves this Court to reduce his total sentence, in Case No.: 2:12-CR-297-KOB-JEO, to time served, and for all other relief to which he may be entitled.

Submitted on April 13, 2020, by:

Kelly Patrick Riggs, Pro Se
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CERTIFICATE OF SERVICE

I certify that on April 13, 2020, I filed the foregoing motion with the Clerk of the Court, so that service may be completed to all parties by entering it into the CM/ECF system, via U.S. Mail, properly addressed and First Class postage prepaid and affixed thereto, by placing it in the only remaining mailing system that is available to inmates in the national lock-down triggered by the Covid-19 pandemic.

Kelly Patrick Riggs
Reg. #29821-001

TO THE COURT

The third step to seeking Compassionate Release consists of filing a motion directly to the district court.

The First Step Act of 2018 changed the law that governs Compassionate Release. Now, the Bureau of Prisons is no longer the gatekeeping authority. If you read the statute, 18 U.S.C. §3582(c)(1)(A), you will find that the law now allows a defendant, you, to file a motion with the district court. Along with this authorization comes the Supreme Court's doctrine that controls how the district courts evaluate Pro Se motions. Yes, you have the right to a liberal construction in preparing your motion to the court. With this in mind, know also that you must avoid recharacterization . So be sure that your motion says "Compassionate Release under 18 U.S.C. §3582 (c)(1)(A)(i)' somewhere.