

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA :
 :
 v. : Case No. 4:16-cr-25-CDL-MSH
 :
 CURTIS D. HULING, :
 :
 Defendant. :
 :

REPORT AND RECOMMENDATION

Pending before the Court is Defendant’s motion for compassionate release (ECF No. 57). For the following reasons, it is recommended that the motion be denied.

BACKGROUND

On January 23, 2017, Defendant pleaded guilty to one count of bank robbery. Change of Plea, ECF No. 27; Indictment, ECF No. 1. Before sentencing, the United States Probation Office (“USPO”) prepared a pre-sentence report (“PSR”) using the United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) (ECF No. 38). Based on Defendant’s status as a career offender, USPO calculated a Guidelines sentencing range of 151 to 188 months. PSR ¶ 65, ECF No. 38. On June 21, 2017, the Court sentenced Defendant to 168 months’ imprisonment followed by three years of supervised release. Judgment 2-3, ECF No. 41. The Court ordered the sentence to run consecutively to any state sentence that would be imposed in a Muscogee County, Georgia, case. *Id.* at 2.

On July 5, 2017, Defendant filed a direct appeal, but the United States Court of Appeals for the Eleventh Circuit affirmed his conviction. Notice of Appeal, ECF No. 44; Mandate, ECF No. 55.

The Court received Defendant's *pro se* motion for compassionate release on October 16, 2023 (ECF No. 57). Defendant's sole contention that he should be granted compassionate release is that his prior Georgia conviction for aggravated assault did not qualify as a predicate crime of violence under the career offender statute. *Id.* The Government responded to Defendant's motion on November 28, 2023 (ECF No. 59). His motion is ripe for review.

DISCUSSION

A district court “may not modify a term of imprisonment once it has been imposed except’ under certain circumstances.” *United States v. Harris*, 989 F.3d 908, 909 (11th Cir. 2021) (quoting 18 U.S.C. § 3582(c)). One circumstance is the compassionate release exception provided in § 3582(c)(1)(A). *Id.* at 909-10. Under that section, a prisoner may obtain compassionate release if, “after considering the factors set forth in [18 U.S.C. § 3553(a)],” the district court 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[.]”¹ 18 U.S.C. § 3582(c)(1)(A)(i). The

¹ In addition to extraordinary and compelling reasons warranting a reduction, compassionate release may also be granted to a defendant who is over 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c). 18 U.S.C. § 3582(c)(1)(A)(ii). This provision is inapplicable to Defendant.

Sentencing Commission’s policy statement for compassionate release is found at U.S.S.G. § 1B1.13. Under the policy statement, a defendant must show that he “is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)[.]” U.S.S.G. § 1B1.13(a)(2). Further, in relevant part, a defendant must show that “extraordinary and compelling reasons warrant the reduction[.]” *Id.* § 1B1.13(a)(1)(A). A defendant bears the burden of proving entitlement to compassionate release. *See United States v. Mantack*, 833 F. App’x 819, 819-20 (11th Cir. 2021) (per curiam) (citing *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014)).

Here, Defendant fails to show extraordinary and compelling reasons warranting compassionate release. The Sentencing Commission policy statement provides six circumstances that constitute extraordinary and compelling reasons for a sentence reduction. U.S.S.G. § 1B1.13(b). The first is a qualifying medical condition. U.S.S.G. § 1B1.13(b)(1). Defendant, however, does not rely on a medical condition, so this circumstance is inapplicable to him.

The second, third, and fourth circumstances qualifying as extraordinary and compelling reasons are the defendant’s age, family circumstances, and the abuse of the defendant while in custody. *Id.* §§ 1B1.13(b)(2), (3), (4). Here, Defendant is neither over the age of sixty-five, nor does he rely on family circumstances, and he has not alleged that he was the victim of abuse while in custody, so these circumstances are also inapplicable to him.

The fifth circumstance is “other reasons,” which, as amended on November 1, 2023, are “any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons” described in the first four circumstances “are similar in gravity to those” first four circumstances. *Id.* § 1B1.13(b)(5). This fifth circumstance is a new one added by the Sentencing Commission in its recent amendment to 1B1.13. Here, Defendant’s sole contention for compassionate release is that his prior Georgia conviction for aggravated assault did not qualify as a predicate crime of violence under the career offender statute. Mot. Compassionate Release. As of the date of this Recommendation, the Eleventh Circuit has not addressed what circumstances may be “similar in gravity” to those in the first four circumstances. Neither has a district court in the Eleventh Circuit given meaningful consideration thereof. Nonetheless, the Court finds Defendant’s sole contention for compassionate release is not “similar in gravity” to the first four circumstances. Instead, it appears to be an attempt to collaterally attack his conviction, which is not authorized by § 3582(c). *United States v. Guerrero*, No. 23-10248, 2023 WL 3961416, at *1 (11th Cir. 2023) (per curiam) (“[S]ection 3582(c) does not authorize a district court to consider collateral attacks on a prisoner’s conviction.”).²

The sixth circumstance is an “unusually long sentence,” which was also amended on November 1, 2023. U.S.S.G. § 1B1.13(b)(6). Fatal to Defendant’s argument,

² The Court notes the Eleventh Circuit rejected Defendant’s argument that his Georgia aggravated assault conviction did not qualify as a crime of violence for career offender enhancement. *United States v. Huling*, 741 F. App’x 702, 705 (11th Cir. 2018) (per curiam).

however, is that the sixth circumstance is only available when a defendant “has served at least 10 years of the term of imprisonment[.]” *Id.* Here, Defendant was sentenced on June 21, 2017. Judgment, ECF No. 41. Thus, he has served less than ten years and circumstance six is unavailable to him.

In summary, the Court finds Defendant has not shown any extraordinary or compelling reasons for compassionate release and, as a result, his motion should be denied.³

CONCLUSION

For the foregoing reasons, it is recommended that Defendant’s motion for compassionate release (ECF No. 57) be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives

³ As Defendant fails to show extraordinary and compelling reasons for compassionate release, the Court need not consider the factors set forth in 18 U.S.C. § 3553(a). *United States v. Giron*, 15 F.4th 1343, 1350 (11th Cir. 2021).

the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 22nd day of January, 2024.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE