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U. S. District Court
FILED
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Julia C. Dudley, Clerk
By: /s/ Susan Moody
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA	)	
	)	
	)	Case No. 7:08CR00017-001
	)	
v.	)	OPINION AND ORDER
	)	
RANDY ALAN MELTON,	)	JUDGE JAMES P. JONES
	)	
Defendant.	)	

R. Andrew Bassford, Assistant United States Attorney, Roanoke, Virginia, for United States; Andrea L. Harris, Assistant Federal Public Defender, Charlottesville, Virginia, for Defendant.

Defendant Randy Alan Melton, sentenced by the late District Judge Glen E. Conrad on October 10, 2008, has moved for a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, Pub. L. No. 115-391, § 603, 132 Stat. 5194, 5239 (2018). He contends that if he were sentenced today, he would receive a significantly shorter period of imprisonment than that which he is currently serving. He further contends that the risk posed to him by the COVID-19 pandemic constitutes an extraordinary and compelling reason for a sentence reduction. For the reasons that follow, I will grant the motion.

I.

Melton, now 56, pled guilty to one count of conspiracy to distribute more than 500 grams of methamphetamine. He was designated a career offender based on the instant offense combined with two prior convictions that he does not now contest. He was sentenced to 262 months imprisonment, the low end of his then-applicable Sentencing Guidelines range. Melton is housed at FCI Petersburg Low, and his current release date is September 30, 2026.

More than a decade after Melton was sentenced, the Fourth Circuit decided *United States v. Norman*, 935 F.3d 232 (4th Cir. 2019). There, the court held that conspiracy to distribute a controlled substance is not categorically a “controlled substance offense[]” for purposes of the career offender sentencing enhancement. *Id.* at 239. Therefore, were Melton sentenced today, he would not be sentenced as a career offender. His base offense level would be 34, his total offense level would be 31, his criminal history category would be IV, and his advisory guidelines range would be 151–188 months rather than 262–327 months. Thus, the low end of his Guidelines range today would be 111 months less than the sentence he is currently serving. The difference represents 42% of his current sentence and amounts to 9.25 years before accounting for good time credit.

Because Judge Conrad sentenced Melton to the low end of his then-Guidelines range, Melton asserts that a sentence at the low end of his now-applicable Guidelines

range is appropriate.¹ He has already served more than 164 months, not accounting for any good time credit earned. Because he has served more time than the low end of the now-applicable Guidelines range, he asks that his sentence be reduced to time served.

Melton also offers a second reason for a sentence reduction. He has been diagnosed with hyperlipidemia, and while he is fully vaccinated against COVID-19, he fears that his medical condition places him at increased risk from the coronavirus.

In its response in opposition, the government argues that a nonretroactive change in the Sentencing Guidelines does not present an extraordinary and compelling reason justifying a sentence reduction. The government asserts that a challenge such as the one raised by Melton can only properly be raised in the context of a habeas corpus petition under 28 U.S.C. § 2255. In the government's view, were the court to consider a change in sentencing guidelines to be a reason warranting compassionate release, that would circumvent the entire § 2255 scheme. In support of its position, the government cites non-binding authority from outside the Fourth Circuit. *See United States v. Hunter*, 12 F.4th 555, 557–58 (6th Cir. 2021); *United States v. Musgraves*, 840 F. App'x 11, 13 (7th Cir. 2021) (unpublished); *United States v. Artis*, 2021 WL 2518219, at *3 (W.D.N.C. June 18, 2021).

¹ The government agreed in Melton's Plea Agreement to recommend a sentence at the low end of the applicable Guidelines range.

The government further contends that Melton’s proffered health-related reason does not justify any reduction because hyperlipidemia is not recognized by the Centers for Disease Control and Prevention as a risk factor for severe illness from COVID-19. It further notes that Melton is vaccinated and argues that his skepticism about the effectiveness of his vaccine is unwarranted.

II.

The governing statute provides that a sentence may be reduced if “extraordinary and compelling reasons warrant such a reduction” and the reduction “is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The Sentencing Commission has not issued any applicable policy statements after the statute was amended by the First Step Act in 2018. Although I may not reduce Melton’s sentence pursuant to a non-retroactive change in sentencing law, the Fourth Circuit has held in *United States v. McCoy*, 981 F.3d 271, 284, 286 (4th Cir. 2020), that when deciding a compassionate release motion, a district court may consider *any* extraordinary and compelling reason raised by the defendant, including the length and disparateness of the sentence. The government contends that *McCoy* was wrongly decided, but it is controlling precedent that I am bound to follow.

I find that the disparate severity of Melton’s sentence — more than nine years longer than the sentence he would likely receive today — is an extraordinary and

compelling reason for a sentence reduction under § 3582(c)(1)(A). One-hundred eleven months constitutes close to half of Melton's current sentence, and I conclude that it is a significant disparity. Earlier this year, in deciding another compassionate release motion that relied upon *Norman*, I found that a much smaller disparity of 20% and three years constituted an extraordinary and compelling reason for a reduction. *United States v. Jones*, No. 7:11CR00039-006, 2021 WL 3630459, at *3 (W.D. Va. Aug. 17, 2021).

A sentencing disparity alone is not enough to warrant reducing Melton's sentence. I must "reconsider[] the § 3553(a) factors" to determine whether the sentence remains no greater than necessary to meet § 3553(a)'s goals "in view of the extraordinary and compelling circumstances." *United States v. Kibble*, 992 F.3d 326, 332 (4th Cir.), *cert. denied*, 142 S. Ct. 383 (2021). I find based on Melton's history and characteristics that his current sentence is greater than necessary to serve the statutory purposes and that a lesser time in prison would afford adequate deterrence and protect the public.

Melton has not had a single disciplinary infraction in his more than thirteen years of incarceration. He has taken dozens of programming courses while in prison and has maintained consistent employment with the Trust Fund Department for the past eight years. He was reassigned to a lower security facility. Even the government concedes that "[c]ertainly, he has made the best of his time away from

society.” Resp. Opp’n 13, ECF No. 128. Melton has developed a plan of where he will live and work following his release. He asserts that he was baptized fourteen years ago, has found a strong religious faith, and hopes to be involved in a church and perform community service.

On the other hand, his offense conduct was serious, as was his criminal history at the time of his sentencing. He was on state probation for two previous drug trafficking offenses at the time of his arrest in this case. He had begun selling methamphetamine in 2003, and he admitted to distributing a pound of methamphetamine a week for nine months prior to his arrest. He was found with 700 grams of methamphetamine in his possession.

According to Melton’s Presentence Investigation Report, prior to the instant case, Melton had been convicted in state court of entering his estranged wife’s home against her wishes, and on one of those occasions, he was armed with a butcher knife. He also appeared at the residence of another woman after being forbidden to do so. He pled guilty to assaulting his wife in 2003, and he was alleged to have grabbed, choked, and bitten her. He has other prior convictions for driving on a suspended license, driving while intoxicated, trespass, grand larceny, possessing marijuana with intent to distribute, and failure to appear. The domestic violence and breaking-and-entering charges are particularly concerning to the court.

Nevertheless, it appears that Melton has turned his life around while in prison. He has apparently shown no violent tendencies while incarcerated. In fact, he has shown himself to be quite capable of following the rules. The more than thirteen years he has served is adequate to reflect the seriousness of his offense, protect the public, and deter him and others from future misconduct. I conclude that the § 3553(a) factors — particularly factors (1), (2)(A), (2)(B), (2)(C), (2)(D), and (6) — support reducing Melton’s sentence to 151 months.

III.

Upon motion of the defendant for a reduction in sentence under 18 U.S.C. § 3852(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a), and for the reasons stated on behalf of the defendant, it is **ORDERED** as followed:

1. The defendant’s motion, ECF No. 121, is GRANTED;
2. The defendant’s previously imposed sentence of imprisonment is REDUCED to a total of 151 months, but not less than time served, with all other provisions of the Judgment entered October 16, 2008, to remain in effect, including the length and conditions of supervised release;
3. This order is stayed for fourteen (14) days, for the verification of the defendant’s residence and/or establishment of a release plan, to make appropriate travel arrangements, and to ensure the defendant’s safe release.

- If more than fourteen (14) days are needed for the verification of the defendant's residence and/or establishment of a release plan, to make appropriate travel arrangements and ensure the defendant's safe release, the parties shall immediately notify the court and show cause why the stay should be extended; and
4. The Clerk shall provide a copy of this Opinion and Order to the Probation Office, which Office shall provide a copy to the Bureau of Prisons.

ENTER: January 3, 2022

/s/ JAMES P. JONES
Senior United States District Judge