

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

UNITED STATES OF AMERICA

V.

RAUF ABDUL SALAM,

Defendant.

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Case No. 7:12CR00073-002

OPINION AND ORDER

JUDGE JAMES P. JONES

Jonathan Jones, Assistant United States Attorney, Roanoke, Virginia, for United States; Christine Madeleine Lee, Assistant Federal Public Defender, Roanoke, Virginia, for Defendant.

Defendant Rauf Abdul Salam, sentenced by the late District Judge Glen E. Conrad in 2014, 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 likely would receive a significantly shorter period of imprisonment than that which he is currently serving. For the reasons that follow, I will grant the motion.

I.

In 2014, following a jury trial, Salam was convicted of one count of conspiracy to possess with intent to distribute 1,000 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. The particular drug quantity and type resulted in a base offense level of 32 under the United States Sentencing

Guidelines Manual (USSG) with a four-level enhancement under USSG §3B1.1(a) for his leadership role in the conspiracy. Salam was also found to be a career offender under USSG § 4B1.1. As a result, Salam's total offense level was 37 and his criminal history category was VI. His sentencing range was 360 months to life. Although Salam's guideline range was higher, he was also subject to a mandatory minimum sentence of 240 months based on a prior felony drug conviction.

Salam appeared for sentencing on July 14, 2014. At the hearing, defense counsel acknowledged that Salam "technically . . . qualifie[d] as a career offender." Sent'g Hr'g Tr. 3, ECF No. 272. But given the age of the past convictions, the court agreed it would not be "fair to treat [Salam] as a career offender," and that departure was warranted. *Id.* at 22. Accordingly, the court departed downward, treating Salam as though he did not have the career offender designation, to a total offense level of 36 and a criminal history category of V, which produced a post-departure range of 292 to 365 months. The court ultimately sentenced Salam at the low end of the range to a term of imprisonment of 292 months. Salam is currently housed at FCI Coleman Low. His projected release date is January 16, 2034.

In 2016, Salam filed a pro se motion for reduction of his sentence under 18 U.S.C. § 3582(c)(2). This statute authorizes the court to reduce a defendant's term of imprisonment if the reduction was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission," and "if such a reduction

is consistent with the applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). The defendant relied on Amendment 782, which reduced the base offense assigned to most drug quantities in USSG § 2D1.1 by two levels. On August 30, 2016, Judge Conrad denied the motion. *United States v. Salam*, No. 7:12CR00073, 2016 WL 4540876, at *2 (W.D. Va. Aug. 30, 2016). The court determined that the defendant was not eligible for relief under § 3582(c)(2) because his guidelines range as a career offender was not affected by Amendment 782. *Id.*

However, three years after Judge Conrad issued his last opinion in this case, 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, Salam argues that if he were sentenced today, he could not be sentenced as a career offender and he would therefore receive the benefit of Amendment 782. His base offense level would be 30 (instead of 32), his total offense level would be 34 (instead of 36), and his criminal history category would be V, resulting in a guideline range of 235–293 months.¹

¹ Under the First Step Act, Congress reduced the enhanced mandatory minimum penalty from 240 months to 180 months and amended the requirements for a prior offense to trigger the enhanced mandatory minimum. *See United States v. Fennell*, No. 7:13-cr-00059, 2021 WL 5149915, at *5 n.8 (W.D. Va Nov. 4, 2021) (citing Pub. L. No. 115-391, § 401, 132 Stat. 5194, 5220–21 (Dec. 12, 2018)). Specifically, in order to enhance a

Salam further asks this court for a below-guideline sentence based on his exemplary behavior while incarcerated. After almost nine years, he has incurred no disciplinary infractions and has submitted a letter from his prison counselor praising his “excellent work ethic” and extraordinary conduct. Def.’s Mot. Ex. 5, ECF 411-5. Salam requests a sentence reduction of 112 months, to a total sentence of 180 months imprisonment.

In its response in opposition, the government argues that Salam has not exhausted his administrative remedies. Moreover, Salam’s original sentence of 292 months is still within the guidelines range that would apply were he sentenced today. The government contends that the importance of the finality of judgments weighs against granting relief here. The government points out that Judge Conrad in sentencing Salam considered the relevant facts surrounding Salam’s criminal history and the nature and circumstances of his offenses and arrived at a sentence that he

sentence under § 841(b)(1)(A), the predicate conviction must now be a “serious drug felony,” meaning that the offender must serve a term of imprisonment of more than 12 months. 21 U.S.C. § 802(57). Salam argues that his prior conviction relied on by the government does not qualify as a “serious drug felony” because he served only nine months in jail for the offense. Presentence Investigation Report (PSR) ¶ 57, ECF No. 265. The United States correctly notes that, “although the government relied on a 2004 conviction that would no longer qualify as a [21 U.S.C.] § 851 predicate, Mr. Salam has a separate conviction that would still qualify, even after the definitional changes to the predicate crimes: a 1991 conviction for possession of cocaine with distributive intent, for which Mr. Salam was initially sentenced to seven years in custody and for which he was revoked multiple times and given additional prison time, most recently in 2004.” Resp. Opp’n 13, ECF 415; PSR ¶ 53, ECF No. 265.

found to be sufficient but not greater than necessary to serve the statutory purposes. The government urges me not to disturb Salam’s existing sentence.

II.

The court begins with the mandatory threshold requirement for granting relief — administrative exhaustion. *See United States v. Muhammad*, 16 F.4th 126, 129 (4th Cir. 2021). A district court may modify a term of imprisonment either upon motion of the Bureau of Prisons (BOP) Director “or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility.” 18 U.S.C. § 3582(c)(1)(A); *United States v. Brewington*, No. 2:12CR00009-007, 2019 WL 3317972, at *1 (W.D. Va. July 24, 2019). Here, Salam made a request for compassionate release to the warden of his facility, and on May 21, 2020, the warden denied his request. Def.’s Mot. Ex 1, ECF No. 411-1.

The government argues, however, that Salam did not exhaust his administrative remedies as it pertains to his specific motion for release, as his request makes no mention of sentencing disparities or changes in sentencing laws. Instead, Salam’s request is based on health concerns posed by the COVID-19 pandemic. The government urges this court to adopt an issue-specific exhaustion requirement —

that is, a defendant must present a *particular ground* for compassionate release in his request to the warden before filing a motion based on that ground.

The Fourth Circuit has yet to specifically address whether “a defendant seeking compassionate release under § 3582(c)(1)(A) must present a particular ground for relief to the BOP in their administrative request before raising the same ground to the court.” *Fennell*, 2021 WL 5149915, at *3 (quoting *United States v. Rice*, No. 1:12-cr-00412, 2021 WL 2315447, at *2 (D. Md. June 7, 2021)). A number of district courts, including those in the Fourth Circuit, have held that § 3582(c) does not require issue-specific exhaustion. *See, e.g., Rice*, 2021 WL 2315447, at *2 (collecting cases); *United States v. Sherrod*, No. 19-20139, 2021 WL 3473236, at *2 (E.D. Mich. Aug. 6, 2021) (joining “the majority of district courts in holding that issue exhaustion is not required”); *United States v. Ferguson*, 536 F. Supp. 3d 139, 142–43 (E.D. Mich. 2021).

I find the reasons set forth in *Ferguson* to be compelling. “First, the statutory text does not contain an issue exhaustion requirement,” and “second, the Supreme Court has cautioned courts against imposing issue exhaustion requirements, especially where there is no adversarial administrative proceeding,” as is the case with all compassionate release motions. 536 F. Supp. 3d at 142. Accordingly, I find that Salam has properly exhausted his administrative remedies.

III.

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 Salam’s sentence pursuant to a non-retroactive change in sentencing law, the Fourth Circuit 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.

I find that the disparate severity of Salam’s sentence — nearly five years (58 months) longer than the sentence he would likely receive today, if sentenced at the lowest end of his guidelines range — is an extraordinary and compelling reason for a sentence reduction under § 3582(c)(1)(A). Although Judge Conrad departed downward from the career offender guidelines range, Salam’s status as a career offender prevented him from receiving a two-level reduction based on Amendment 782. However, after *Norman*, Salam can now benefit from that change to the sentencing guidelines. Furthermore, Salam would no longer be subject to a 240-

month mandatory minimum sentence and accordingly, a court sentencing Salam today could impose a term of imprisonment at the low end of his guideline range — 235 months imprisonment. Fifty-eight months is nearly 20% of his current 292-month sentence, and I conclude that is a significant disparity.

IV.

The government correctly notes, however, that these reasons alone are not enough to warrant reducing Salam’s sentence. I must “reconsider[] the § 3553(a) factors” to determine whether the sentence remains no greater than necessary to meet § 3553(a)’s factors “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 Salam’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.

Salam has not had a single disciplinary infraction in his nine years of incarceration. He has worked the entire time he has been in prison and has completed numerous courses of study and participated in drug education programs. According to his counselor with the Bureau of Prisons, Salam has “exhibited an excellent work ethic and has always been willing to go the extra mile.” Def.’s Mot. Ex. 5, ECF No. 411-5. He has a low-level security classification and has been categorized as a low recidivism risk. Additionally, Salam’s family and several

community members have written to the court, speaking about his remorsefulness and his plans for becoming a successful and law-abiding citizen upon his release. *See* Def.'s Mot. Exs. 6, 7, 8, ECF Nos. 411-6, 7, 8.

On the other hand, his offense conduct was serious. He was a leader of a large-scale drug distribution conspiracy and brought significant quantities of heroin to the Roanoke area from New Jersey. Even more concerning, he traded guns for drugs. Nevertheless, I find that Salam's prison record indicates a change in outlook. The § 3553(a) factors — particularly factors (1), (2)(A), (2)(B), (2)(C), (2)(D), and (6) — support reducing Salam's sentence to 235 months, but the seriousness of the offense does not warrant a departure below the now-applicable guidelines range.

V.

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, it is **ORDERED** as followed:

1. The defendant's motion, ECF No. 411, is GRANTED;
2. The defendant's previously imposed sentence of imprisonment is REDUCED to 235 months, but not less than time served, with all other provisions of the Judgment entered July 18, 2014, ECF No. 259, to remain in effect, including the length and conditions of supervised release; and

3. 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 4, 2022

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