

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12946
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILBERT MCKREITH,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:01-cr-06095-DMM-1

Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Wilbert McCreith appeals the district court's denial of his motion to reduce his sentence. After careful review, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In 1991, McKreith was convicted of using a firearm to rob a bank in Pennsylvania, in violation of 18 U.S.C. section 924(c). He was sentenced to 106 months' imprisonment and five years of supervised release. While in Florida on supervised release, he was convicted of seven counts of bank robbery, in violation of 18 U.S.C. section 2113(a), three counts of using a firearm during a bank robbery, in violation of 18 U.S.C. section 924(c)(1)(A), and two counts of possessing a firearm as a felon, in violation of 18 U.S.C. section 922(g)(1).

At the time McKreith was sentenced, each conviction under section 924(c) carried "a term of imprisonment of not less than 25 years," which had to run consecutively to any other term of imprisonment. *See* 18 U.S.C. §§ 924(c)(1)(a)(C)(i), (c)(1)(a)(D)(ii) (1998) (amended 2022). So, the district court sentenced McKreith to three consecutive twenty-five-year terms for his three convictions under section 924(c). Including the terms imposed for the other counts, McKreith's total sentence was 1,110 months' imprisonment.

In 2023, McKreith moved to reduce his sentence under 18 U.S.C. section 3582(c)(1)(A). He argued that a recent amendment to section 1B1.13 of the United States Sentencing Guidelines meant that he had an extraordinary and compelling reason for a sentence reduction—that there was an "unwarranted sentencing disparity" between McKreith and other defendants convicted for similar conduct. The amended guideline provided that, for a defendant with

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“an unusually long sentence” who had served at least ten years, a change in the law that produced “a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion [was] filed” could be relevant to whether the defendant had shown an extraordinary and compelling reason for modifying his sentence. *See* United States Sentencing Guidelines § 1B1.13(b)(6) (Nov. 2023).

McKreith argued that the amended guideline applied to his case because the First Step Act, which was passed after his sentence was imposed, eliminated the mandatory minimum of consecutive, twenty-five-year sentences for each violation of section 924(c). So, McKreith continued, his sentence under the Act would be much different from the one he actually received. *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

The district court denied the motion. It ruled that McKreith had established no “extraordinary and compelling grounds for relief” because his earlier section 924(c) conviction for the armed bank robbery in Pennsylvania meant his sentence for the three section 924(c) convictions in Florida would still have been subject to the same consecutive mandatory minimums even under the First Step Act. Also, “given the circumstances of his offense and criminal history,” the district court could not find that McKreith wouldn’t “present a danger to others if released.”

In 2024, McKreith again moved to reduce his sentence, arguing that it was unusually long and grossly disparate from the sentence he would receive under current law. He also argued that he

wasn't a danger to the community, citing his age, his time in prison, his lack of recent disciplinary issues, and his poor health. The district court again denied the motion, explaining that its ruling from a year earlier "remain[ed] unchanged."

STANDARD OF REVIEW

We review de novo whether a prisoner is eligible for compassionate release. *United States v. Giron*, 15 F.4th 1343, 1345 (11th Cir. 2021). After eligibility is established, we review for abuse of discretion the denial of a compassionate release motion. *Id.*

DISCUSSION

"A district court has no inherent authority to modify a defendant's sentence and may do so only when authorized by a statute or rule." *Id.* (citation modified). Section 3582(c)(1)(A) is such a statute. It authorizes district courts to reduce a prisoner's sentence for compassionate release where: (1) the section 3553(a) factors favor release; (2) there are "extraordinary and compelling reasons" for doing so; and (3) the prisoner is not a danger to the safety of any other person or to the community. *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021) (quoting 18 U.S.C. § 3582(c)). Each condition must be satisfied before a court may grant compassionate release. *Id.* "Because all three conditions . . . are necessary, the absence of even one would foreclose a sentence reduction." *Id.* at 1237–38.

Here, McCreith cannot show entitlement to relief because the district court's conclusion that he would present a danger to his

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community was not an abuse of discretion. McKreith's history of violence, both in and out of prison, supports the district court's conclusion that he was dangerous.

In 1991, he committed a violent felony, robbing a Pennsylvania bank using a firearm. He pleaded guilty to "knowingly . . . put[ting] in jeopardy the lives of the employees of the [bank], and other persons." He spent nearly a decade in federal prison for that offense.

After his release, McKreith went on a crime spree. Over a ten-month period, while still on supervised release, he committed seven bank robberies, including three where he brandished a firearm. The United States Probation Office prepared a presentence report with details about the robberies that illustrate how dangerous McKreith's criminal activity was. In each of the robberies, McKreith entered the bank during business hours wearing a ski mask and demanded the tellers give him money. Witnesses described his "attitude" as "hostile." He often carried a firearm, threatening to hurt or kill tellers and customers who didn't comply with his demands.

McKreith was arrested after the seventh robbery. Following his conviction, he returned to federal prison, where he continued to exhibit dangerous behavior. His disciplinary history includes at least "nine acts of violence, two incidents involving the possession of a weapon, and several other prohibited acts." Based on McKreith's behavior both outside and inside prison, we can't say

the district court abused its discretion when it found that McKreith would “present a danger to others if released.”

McKreith raises three arguments in response. First, he contends that extraordinary and compelling reasons, particularly a “gross disparity” between his sentence and the one that would be imposed under the First Step Act, support compassionate release. But we don’t have to reach that argument because the district court didn’t abuse its discretion by finding that McKreith would be a danger to the community if released and “the absence of even one” compassionate-release condition is dispositive. *See Tinker*, 14 F.4th at 1238; *cf. Giron*, 15 F.4th at 1347 (“When denying a request for compassionate release, a district court need not analyze the [section] 3553(a) factors if it finds either that no extraordinary and compelling reason exists or that the defendant is a danger to the public.”).

Second, McKreith argues that he “no longer presents a danger to the community.” He points to his prison record, which he argues “plainly shows that he has been a model prisoner.” But as we explained above, that isn’t true. While in prison, McKreith has repeatedly been disciplined for rule violations, including for unauthorized possession of a weapon. And, when not in prison, McKreith has proved even more dangerous; he’s been convicted of eight bank robberies, four of which involved the use of a firearm. Seven of those robberies occurred while McKreith was under federal supervision after he had already served a term in federal prison.

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So, McKreith hasn't shown that the district court abused its discretion by finding he would continue to endanger others if released again.

And third, McKreith argues that the factors from 18 U.S.C. section 3553(a)—such as “the need for the sentence imposed . . . to reflect the seriousness of the offense, . . . provide just punishment[,] . . . [and] afford adequate deterrence”—support reducing his sentence. *See* 18 U.S.C. § 3553(a). But, as with the extraordinary-and-compelling-reasons finding, we need not consider the section 3553(a) factors when McKreith cannot establish another necessary condition for sentence modification. *See Giron*, 15 F.4th at 1347. Here, McKreith has not shown that he would not be a danger to the community if released.

Because he has not shown entitlement to a sentence reduction, we affirm.

AFFIRMED.