NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

No. 25-13539
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BERNARD MOORE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:16-cr-20836-PCH-3

Before JORDAN, KIDD, and ED CARNES, Circuit Judges.

PER CURIAM:

In 2017, a jury convicted Bernard Moore of multiple drug-related offenses, in violation of 21 U.S.C. §§ 841 and 846; of possession of a firearm as a convicted felon, in violation of 18 U.S.C. §

922(g)(1); and of possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2.

At Moore's sentencing hearing, the district court concluded that he qualified for 18 U.S.C. § 924's 15-year mandatory minimum and sentenced him to a total sentence of 240 months imprisonment. *See* 18 U.S.C. § 924(e)(1) (requiring a person who violates 18 U.S.C. § 922(g) to serve a mandatory minimum imprisonment sentence of 15 years if the defendant has three prior convictions for violent felonies or serious drug offenses, or both, "committed on occasions different from one another"). Moore appealed his sentence, and we affirmed. *See United States v. Moore*, 954 F.3d 1322, 1325, 1338 (11th Cir. 2020).

Moore then filed a 28 U.S.C. § 2255 motion to vacate his sentence, which the district court denied. And in July 2025, he filed a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). According to Moore, at the time of filing that motion he had served "8 years, 8 months, and 11 days in federal custody." The district court denied the motion. Moore filed a motion for reconsideration, which the district court also denied.

Moore, proceeding *pro se*, timely appealed. And the government filed a motion for summary affirmance. The government's motion is GRANTED, and we affirm.

I.

We "review *de novo* whether a defendant is eligible for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)." *United States v.*

Giron, 15 F.4th 1343, 1345 (11th Cir. 2021). If a prisoner is eligible, we review for abuse of discretion a "district court's denial of a prisoner's § 3582(c)(1)(A) motion." *Id.* "A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making its determination, or makes clearly erroneous factual findings." *Id.* We also review for abuse of discretion a district court's denial of a motion for reconsideration. *United States v. Llewlyn*, 879 F.3d 1291, 1294 (11th Cir. 2018).

Cases that call for summary affirmance include ones where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case[] or where . . . the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).[1] This is one of those cases.

II.

Moore contends that the district court erred in denying his compassionate release motion in three ways. He argues that the district court 1) "refused to consider" a decision of the Supreme Court of the United States as "a relevant change in law"; 2) "misread" U.S.S.G. § 1B1.13(b)(6), "transforming a policy benchmark into a jurisdictional bar"; and 3) "mischaracteriz[ed] a minor, defensive act with a broom handle as proof of dangerousness, thereby

[1] We are bound by decisions of the former Fifth Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

discounting eight years of rehabilitation and preparation for reentry."

A district court may grant a sentence reduction under § 3582(c)(1)(A) if (1) an extraordinary and compelling reason exists, (2) a sentence reduction would be consistent with the policy statements contained in U.S.S.G. § 1B1.13, and (3) the 18 U.S.C. § 3553(a) factors weigh in favor of a sentence reduction. *United States v. Tinker*, 14 F.4th 1234, 1237–38 (11th Cir. 2021); *see also Concepcion v. United States*, 597 U.S. 481, 495 (2022) (noting that Congress "expressly" placed a limitation on district courts' discretion to modify a sentence "by requiring courts to abide by the Sentencing Commission's policy statements").

Because Moore's first and third arguments involve the policy statement found in U.S.S.G. § 1B1.13(b)(5), we address those first and discuss his argument under § 1B1.13(b)(6) last.

A. Section 1B1.13(b)(5)

The policy statement in § 1B1.13(b) lists qualifying circumstances that constitute an extraordinary and compelling reason to warrant a sentence reduction: the defendant's medical circumstances, the defendant's advanced age, the defendant's family circumstances, or if the defendant was the victim of abuse while serving a term of incarceration. U.S.S.G. § 1B1.13(b)(1)–(4).

Section 1B1.13(b)(5) also provides a catch-all "other reasons" category that allows a court to consider "any other circumstances" of the defendant "or combination of circumstances that, when considered by themselves or together with any of the [previously

listed] reasons . . . are similar in gravity to those [reasons previously] described[.]" *Id.* § 1B1.13(b)(5); *see also id.* § 1B1.13(c) (providing that where "a defendant *otherwise establishes* that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction") (emphasis added).

Moore makes two arguments invoking the catch-all policy statement found in § 1B1.13(b)(5). First, he contends that the "district court erred by categorically excluding a constitutional change in law from its compassionate release analysis," where it should have considered the "constitutional change" as part of his circumstances "in determining whether extraordinary and compelling reasons exist" under § 1B1.13(b)(5). Second, he contends that the district court mischaracterized the factual scenario surrounding his disciplinary citation in its analysis of his rehabilitation, which according to him was "outcome-determinative" because "rehabilitation is a critical consideration under § 1B1.13(b)(5)."

First, Moore doesn't argue that the district court abused its discretion in assigning too little weight to what he calls "a relevant change in law supporting extraordinary and compelling reasons" for a sentence reduction. He argues that the district court "refus[ed] to weigh *Erlinger* at all,"[2] and instead viewed his reliance on

[2] In Moore's view, under *Concepcion v. United States*, 597 U.S. 481 (2022), "a change in constitutional law like *Erlinger v. United States*, 602 U.S.

Erlinger as a collateral attack to the constitutionality of his sentence. *See generally Erlinger v. United States*, 602 U.S. 821, 835 (2024) (holding that the Constitution requires that a unanimous jury, not a judge, find beyond a reasonable doubt that a defendant's prior offenses were committed on different occasions for the ACCA enhancement to apply).

But he's wrong. The district court did consider Moore's constitutional challenge in its § 1B1.13(b)(5) analysis. As an alternative holding, the district court concluded that "*even considering* [Moore's] purported rehabilitation together with his proposed release plan and *constitutional challenge*, these circumstances are not similar in gravity to a medical or family circumstance, advanced

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821 (2024), is a 'relevant fact' that must be considered in a compassionate release proceeding." *See generally Concepcion*, 597 U.S. at 486–87 (holding that a "district court adjudicating a motion [for a sentence reduction] under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison)" and explaining that unless "Congress or the Constitution limits the scope of information," a district court is free to use its discretion as to what it should "consider in deciding whether . . . to modify a sentence"). But in *Concepcion*, the government conceded that the prisoner was eligible for a sentence reduction, and so the only question there was what information the district court could consider in reducing his sentence. *See id.* at 488. Not so here. In this case, the issue is "whether [Moore was] eligible for compassionate release in the first place. And on that score, Congress has expressly cabined district courts' discretion by prohibiting a reduction in sentence unless a court finds that extraordinary and compelling reasons warrant it." *Rutherford v. United States*, No. 24–820, 2026 WL 1485535, at *2 (U.S. May 28, 2026) (quotation marks and citation omitted).

age, or being the victim of abuse while in custody."[3] The district court did not err in concluding that Moore failed to establish that he met the requirements that would entitle him to relief under the catch-all provision. *See generally Rutherford*, 2026 WL 1485535, at *8 ("While the terms 'extraordinary' and 'compelling' leave room for judgment, they are not so flexible as to encompass any consideration. Their meaning depends on context[.]").

Because the district court did in fact consider Moore's constitutional challenge to his sentence in its § 1B1.13(b)(5) analysis, his argument that the district court *should* have weighed *Erlinger* is frivolous. *See generally Trump v. Clinton*, 161 F.4th 671, 693 (11th Cir. 2025) ("An appeal is frivolous when the legal claim at issue lacks an underlying factual basis, or when appellants ignore the governing law and rely on clearly frivolous arguments.") (quotation marks and brackets omitted). Because the district court did consider *Erlinger* in its compassionate release analysis, we need not decide whether it was required to do so.

Second, Moore contends that the court clearly erred in finding insufficient evidence of his rehabilitation based on a single disciplinary citation.[4] He argues that the court failed to evaluate the

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[3] We note that the Supreme Court has not expressly held that *Erlinger* applies retroactively. *See generally Erlinger*, 602 U.S. 821.

[4] Moore did not challenge in his opening brief the district court's conclusion that his circumstances — his rehabilitation, release plan, and claimed "*Erlinger* error" — were not "similar in gravity" to the reasons in § 1B1.13(b)(1)–(4). We decline to address his challenge to that conclusion

"nature and circumstances of [his] conduct" when it assessed his "dangerousness." And he argues that his "eight years of program participation, discipline, and preparation for reentry far outweigh [the] single, defensive act" of grabbing a broom handle during a prison riot in self-defense.

Again, the district court did, in fact, consider what Moore argues it did not. To repeat, the district court concluded that "even considering [Moore's] *purported rehabilitation* together with his proposed release plan and constitutional challenge, these circumstances are not similar in gravity to a medical or family circumstance, advanced age, or being the victim of abuse while in custody." Only after that conclusion did the court add that it thought Moore's recent disciplinary citation "cut[] against his assertion that his rehabilitation is 'beyond reproach.'"

And regardless of how the district court characterized Moore's admitted disciplinary citation for possession of a dangerous weapon, he didn't carry his burden to show the existence of an extraordinary and compelling reason warranting a reduction. *See Giron*, 15 F.4th at 1346 (acknowledging that it's the defendant's burden "to demonstrate extraordinary and compelling reasons for compassionate release"); *see also* 28 U.S.C. § 994(t) ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.").

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raised for the first time in his reply brief. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–83 (11th Cir. 2014).

The district court did not abuse its discretion in concluding that Moore's stated reasons fell "well short of establishing extraordinary and compelling reasons warranting a reduction in his sentence."

B. Section 1B1.13(b)(6)

Moore contends that the district court erred in treating the ten-year imprisonment requirement of U.S.S.G. § 1B1.13(b)(6) as mandatory rather than a flexible policy benchmark. The government is clearly correct as a matter of law that the district court did not err in finding Moore ineligible for a sentence reduction under § 1B1.13(b)(6) because he has not yet served ten years of his sentence. *See* 28 U.S.C. § 994(t) (directing the Sentencing Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied"); U.S.S.G. § 1B1.13(b)(6) (allowing an "unusually long sentence" to be "considered in determining whether the defendant presents an extraordinary and compelling reason" for a sentence reduction but only where the prisoner "has served at least 10 years of the term of imprisonment"); *see also United States v. Handlon*, 97 F.4th 829, 833 (11th Cir. 2024) ("Congress delegated the power to define what should be considered extraordinary and compelling reasons for a sentence reduction to the Sentencing Commission, not the courts.") (quotation marks omitted).[5]

[5] We note that the Supreme Court in *Rutherford*, recently invalidated U.S.S.G. § 1B1.13(b)(6) to the extent that § 1B1.13(b)(6) counsels that a non-retroactive statutory change – "considered by itself or in combination with

The district court did not err in treating U.S.S.G. § 1B1.13(b)(6)'s 10-year imprisonment requirement as mandatory.

III.

Finally, Moore abandoned any challenge to the district court's order on his motion for reconsideration by failing to adequately brief the issue in his opening brief. *See Sapuppo*, 739 F.3d at 683 (explaining that issues raised for the first time in a reply brief come too late and are deemed abandoned). And even if he had adequately briefed that issue, the district court did not err in denying his motion for reconsideration where Moore simply rehashed the same arguments he had raised in his motion for compassionate release. *See Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) ("A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.") (quotation marks omitted).

The government's motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED. [6]

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other factors – can[] make a prisoner eligible for compassionate release." 2026 WL 1485535, at *10. But here, Moore's § 1B1.13(b)(6) argument is based on "a change in constitutional law." Because Moore did not meet § 1B1.13(b)(6)'s ten-year requirement, we need not decide whether *Rutherford* extends to his argument.

[6] Moore's motion to hold his appeal in abeyance pending the Supreme Court's decision in *Fernandez v. United States* is DENIED as moot. *See Fernandez*

AFFIRMED.

v. United States, No. 24-556, 2026 WL 1485476, *3 (U.S. May 28, 2026) ("A prisoner who collaterally attacks the validity of his conviction must proceed through 28 U.S.C. § 2255, not 18 U.S.C. § 3582.").