

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2022

Lyle W. Cayce
Clerk

No. 21-40515
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANDRE DAVIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:04-CR-61-1

Before WIENER, DENNIS, and HAYNES, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Andre Davis, federal prisoner # 11189-078, appeals the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). He contends that, even though the district court acknowledged that it was not bound by the policy statements of U.S.S.G. §

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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1B1.13, that court erred by considering only the existence of a medical condition and family circumstances when determining whether he established extraordinary and compelling reasons for a sentence reduction. *See United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021).

We need not resolve whether the district court committed *Shkambi* error by treating the policy statement in § 1B1.13 as binding, *see generally id.*; *United States v. Cooper*, 996 F.3d 283, 288 (5th Cir. 2021), because the district court independently determined that compassionate release was not warranted based on its consideration of 18 U.S.C. § 3553(a). *See Ward v. United States*, 11 F.4th 354, 360-62 (5th Cir. 2021); *cf. Cooper*, 996 F.3d at 288. The district court concluded that Davis's violent criminal history and the need to protect the public from further crimes outweighed any evidence in favor of granting his motion for compassionate release. 18 U.S.C. § 3553(a)(1) & (2). The court did not abuse its discretion in making such a determination. *See United States v. Chambliss*, 948 F.3d 691, 693-94 (5th Cir. 2020). The judgment of the district court is AFFIRMED.