

United States Court of Appeals
Fifth Circuit
FILED
July 12, 2021

**United States Court of Appeals
Fifth Circuit**

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Fifth Circuit**

No. 20-10897
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL BLAINE FAULKNER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CR-249-2

Before JOLLY, HO, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Michael Blaine Faulkner, federal prisoner # 03829-078, appeals the denial of his 18 U.S.C. § 3582(c)(1)(A) motion for compassionate release. He contends that the district court erred by relying on U.S.S.G. § 1B1.13, p.s., in denying his motion because § 1B1.13 does not apply to § 3582(c)(1)(A)

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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motions brought by prisoners. We do not consider Faulkner’s claim, raised for the first time on appeal, that the district court erred by declining to grant him a transfer to home confinement under the Coronavirus Aid, Relief, and Economic Security Act. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

We review the district court’s denial of Faulkner’s § 3582(c)(1)(A) motion for an abuse of discretion. *See United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020). Faulkner must show that the district court “base[d] its decision on an error of law or a clearly erroneous assessment of the evidence.” *Id.* (internal quotation marks and citation omitted).

Following the denial of Faulkner’s motion, we held that a district court is not bound by § 1B1.13 in considering a § 3582(c)(1)(A) motion brought by a prisoner. *See United States v. Shkambi*, 993 F.3d 388, 392-93 (5th Cir. 2021). Because the district court treated § 1B1.13 as binding and dispositive, it abused its discretion. *See id.* at 393; *Chambliss*, 948 F.3d at 693.

The denial of Faulkner’s § 3582(c)(1)(A) motion is VACATED, and the case is REMANDED for further proceedings consistent with this opinion.