

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 7, 2021

Lyle W. Cayce
Clerk

No. 20-40483
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EFREN RAUL VILLARREAL, *also known as* SEALED10, *also known as*
RAUL VILLARREAL EFREN,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:12-CR-18-10

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Efren Raul Villarreal appeals the denial of his 18 U.S.C. § 3582(c)(1)(A) motion for compassionate release from the 157-month prison sentence imposed following his guilty-plea conviction of conspiracy to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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possess with the intent to distribute 500 grams or more of methamphetamine and 50 grams of more of methamphetamine actual. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. According to Villarreal, because he has hypertension, diabetes, and has had a cancerous melanoma removed, he is particularly at risk for serious illness if infected with the Covid-19 virus.

We review the district court's denial of Villarreal's § 3582(c)(1)(A)(i) motion for abuse of discretion. *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020). In the order denying relief, the district court expressly acknowledged Villarreal's medical conditions and treatment, the relevant policy statements of the Sentencing Guidelines, the conditions created by the COVID-19 pandemic within the Bureau of Prisons, and the sentencing factors of 18 U.S.C. § 3553(a). *See* § 3582(c)(1)(A); *Chambliss*, 948 F.3d at 692.

In response to Villarreal's appeal, the Government raises the issue of whether Villarreal has Type 1 or Type 2 diabetes and asserts that, when a prisoner has Type 2 diabetes, the Government generally will agree that the prisoner has presented an extraordinary and compelling reason for compassionate release under the statute and relevant guideline policy statement. Villarreal, in response, asserts that he has Type 2 diabetes. The record does not include documentary evidence of the specific type of diabetes that Villarreal has. Because this court does not consider new evidence on appeal or facts that were not before the district court at the time of its decision, and because the Government acknowledges the relevance and strong persuasive value of this particular evidence, we VACATE the judgment of the district court and REMAND for further proceedings. We express no opinion on the disposition of Villarreal's motion on remand.