

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 16, 2021

Lyle W. Cayce
Clerk

No. 21-30323
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SHAWN GRACIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:14-CR-131-8

Before STEWART, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Shawn Gracin, federal prisoner # 33741-034, moves for leave to proceed in forma pauperis (IFP) in his appeal of the denial of his second motion or motion to reconsider the denial of his first motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Gracin argues that

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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the district court abused its discretion in denying the motion for compassionate release. *See United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020).

By moving in this court to proceed IFP, Gracin challenges the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into Gracin's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

Gracin's arguments do not support the conclusion that the district court abused its discretion by basing its decision on an error of law. He has cited no authority in this circuit suggesting that a district court can grant a § 3582(c)(1)(A) motion for compassionate release and reduce a prisoner's sentence on the basis of alleged errors in the calculation of the guideline range. His arguments are insufficient to show that the district court abused its discretion in denying his motion for compassionate release, and he has failed to raise a nonfrivolous issue for appeal. *See Chambliss*, 948 F.3d at 693; *Howard*, 707 F.2d at 220.

Accordingly, we DISMISS Gracin's appeal as frivolous and DENY the motion to proceed IFP on appeal. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.