

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2022

Lyle W. Cayce
Clerk

No. 21-50813
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE ALBERTO CADENA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:12-CR-38-1

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Jose Alberto Cadena, federal prisoner # 87232-280, was convicted in 2013 of aiding and abetting the smuggling of goods from the United States, in violation of 18 U.S.C. § 554, and possession of a firearm by a prohibited

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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person, in violation of 18 U.S.C. § 922. He was sentenced to consecutive 120-month terms of imprisonment on each count and a total of three years of supervised release. He now appeals the district court's denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), which he contends was warranted based on his health risks in view of the COVID-19 pandemic. Insofar as Cadena seeks to challenge his convictions and original sentences, we do not address those issues because they are raised for the first time in his reply brief. *See United States v. Aguirre-Villa*, 460 F.3d 681, 683 n.2 (5th Cir. 2006).

We review the denial of a motion under § 3582(c)(1)(A)(i) for an abuse of discretion. *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020). A district court abuses its discretion when it “bases its decision on an error of law or a clearly erroneous assessment of the evidence.” *Id.* (internal quotation marks and citation omitted).

Section 3582(c)(1)(A)(i) allows a district court to reduce a defendant's term of imprisonment if, after considering the factors set forth in 18 U.S.C. § 3553(a), the court finds a reduction to be consistent with applicable policy statements from the Sentencing Commission and justified by “extraordinary and compelling reasons.” In this case, the district court correctly noted that while the Sentencing Commission's policy statement at U.S.S.G. § 1B1.13 is not binding after *United States v. Shkambi*, 993 F.3d 388, 392–93 (5th Cir. 2021), it may inform the court's analysis in determining whether a defendant has shown extraordinary and compelling reasons warranting compassionate release. And the district court concluded that Cadena had not shown extraordinary and compelling reasons for relief. The district court then considered the factors set forth in § 3553(a), in particular § 3553(a)(1), (2)(A) and (B), and it concluded that a reduction in sentence would be inconsistent with those factors.

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Because the district court did not “base[] its decision on an error of law or a clearly erroneous assessment of the evidence,” *Chambliss*, 948 F.3d at 693–94, we find no abuse of discretion in its denial of Cadena’s motion for compassionate release.

AFFIRMED.