

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Case No. 11-cr-64-1-SM
Opinion No. 2023 DNH 132

Adrian-Tiberiu Oprea

O R D E R

Adrian-Tiberiu Oprea is a federal prisoner currently being held at the Federal Correctional Institution in Berlin, New Hampshire.¹ Invoking the provisions of 18 U.S.C. § 3582(c), he petitions the court to modify his existing sentence to add a term of supervised release to the end of his period of incarceration. That seemingly odd request is driven by Oprea's desire to benefit from certain programs created under the First Step Act (FSA) and administered by the Bureau of Prisons (BOP). Specifically, Oprea says he has earned a substantial number of

¹ Parenthetically, the court notes that in his various appearances in this court, petitioner appears as "Adrian-Tiberiu Oprea." The Bureau of Prisons, however, reports his name as "Oprea Adrian-Tiberiu." See, e.g., Oprea v. Warden, FCI Berlin, No. 23-cv-141-SM, Declaration of Maury Yeakel (document no. 6-2), para 4, n.1. In this order, the court will refer to him simply as "Oprea."

FSA time credits by successfully completing various BOP-administered, evidence-based recidivism reduction programs. According to Oprea, 365 of those accumulated time credits would ordinarily be applied toward his early release to supervision. Oprea's problem is this: he was not originally sentenced to a period of supervised release. In this proceeding, he seeks to change that.

The government objects, saying Oprea's inability to apply earned FSA time credits does not constitute an "extraordinary and compelling" reason to alter his sentence. See 18 U.S.C. § 3582(c)(1)(A)(i). Moreover, says the government, Oprea has failed to demonstrate that he is not a danger to the community or that his release would be consistent with the sentencing factors described in 18 U.S.C. § 3553(a). The court disagrees and, for the reasons given, Oprea's motion seeking resentencing under 18 U.S.C. § 3582 is granted.

Background

Oprea is a citizen of Romania, currently serving a 180-month term of imprisonment, with no term of supervision. He is the subject of an Immigration and Customs Enforcement ("ICE") detainer that was lodged against him in April of 2022. He is not, however, subject to a final order of removal.

With the benefit of accumulated good time credits, his anticipated "Final Statutory Release Date" is September 10, 2024. See Oprea v. Warden, FCI Berlin, 23-cv-141-SM ("Oprea I"), Sentence Monitoring Computation Data (document no. 6-3) at 1. Oprea has no history of disciplinary action in the past 12 months, he is a low security inmate, and the BOP reports that he has not engaged in any known acts of violence or gang-related activity. Additionally, the BOP itself has assessed that he presents a minimum risk of recidivism. None of that is in dispute. See Oprea I, Response to Request for Administrative Remedy (document no. 7-2) at 2-3.

If Oprea had originally been sentenced to serve a term of supervised release (as he surely would have been in the ordinary course), he would be able to apply up to 365 of the FSA time credits that he has earned toward his early release to supervised release (assuming, of course, he meets other program eligibility criteria). That, says Oprea, would shorten his period of incarceration and move his anticipated release date forward by one year, to September 23, 2023. See Oprea I, Petition (document no. 1) at 7. Critically, however, when this court sentenced Oprea it consciously declined to impose a term of supervision because he is not a citizen of the United States and faces likely deportation at the completion of his sentence.

See Transcript of Sentencing Hearing (document no. 128-2) at 33 (“Given the likelihood of deportation following completion of the defendant’s sentence, the Court will not impose a period of supervised release.”). Consequently, there is no term of supervision to which Oprea might be released early.

Indeed, the FSA specifically contemplates the logical proposition that only inmates sentenced to serve a term of supervision may apply earned FSA time credits to secure early release to that term of supervision. See 18 U.S.C. § 3624 (g) (3) (“If the sentencing court included as a part of the prisoner’s sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.”) (emphasis supplied). See also 28 C.F.R. § 523.44(d) (“The Bureau may apply FSA Time Credits toward early transfer to supervised release under 18 U.S.C. 3624(g) only when an eligible inmate has . . . a term of supervised release after imprisonment included as part of his or her sentence as imposed by the sentencing court.”) (emphasis supplied). See generally Saleen v. Pullen, No. 3:23-CV-147 (AWT), 2023 WL 3603423, at *1 (D. Conn. Apr. 12, 2023).

Given that Oprea was not sentenced to serve a term of supervised release, it is impossible for him to apply earned FSA time credits toward early release to supervision. Hence, his apparently counterintuitive request that the court impose upon him a new, more restrictive sentence that includes a term of supervision.

Discussion

I. The Relevant Factors under Section 3553(a).

Section 3582 of Title 18 provides that the court may modify an imposed term of imprisonment if, after considering the factors set forth in 18 U.S.C. § 3553(a), it determines that “extraordinary and compelling reasons warrant such a reduction” and that “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(a)(1)(A)(i) (emphasis supplied).

Plainly, section 3582 contemplates the situation in which an inmate is seeking a reduction to his or her original sentence. What makes this case unusual is that Oprea is not seeking a reduction in his sentence – he is seeking a modest increase to that sentence. He is not asking this court to shorten his term of imprisonment, nor is he asking this court to order his early release from BOP custody. Rather, he seeks the

imposition of a brief period of supervision so that he will qualify for a BOP-administered program that could lead to his early release from prison if, but only if, the BOP deems it appropriate and consistent with governing program guidelines. Consequently, section 3582 does not fairly contemplate the type of request advanced by Oprea and sets forth factors that are not entirely germane to that request. Instead, those factors plainly contemplate the typical "compassionate release" situation in which an inmate seeks a sentence reduction and court-mandated early release from BOP custody. The court will, nevertheless, consider those factors - in part, because it is likely that the relief Oprea seeks (i.e., solely an augmentation of his sentence) may not be permissible under 18 U.S.C. § 3582.

The factors identified in 18 U.S.C. § 3553(a) include: the nature of the inmate's offense and his or her history and characteristics; the need for the sentence imposed (including the seriousness of the underlying offense, the need for just punishment and deterrence, the need to protect the public, and the desire to provide the inmate with educational and vocational training); the kinds of sentences available; the relevant sentencing range; any pertinent policy statement issued by the Sentencing Commission; and the need to avoid unwarranted sentence disparities.

II. The Sentencing Commission's Policy Statement.

In addition to the sentencing factors set forth in section 3553(a), the court must also consider "any pertinent policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(a). The currently-applicable Policy Statement under section 1B1.13 of the Sentencing Guidelines provides that "the court may reduce a term of imprisonment" if it determines that "extraordinary and compelling reasons warrant the reduction" and finds that the inmate is "not a danger to the safety of any other person or to the community." U.S.S.G. § 1B1.13, Policy Statement, section 1(A) and 2. Such extraordinary and compelling circumstances include the medical condition of the inmate, his or her age, their family circumstances, and "other reasons" that include "an extraordinary and compelling reason other than, or in combination with, the reasons described [above]." U.S.S.G. § 1B1.13, Policy Statement, Application Notes, section 1(D). But, as the court of appeals for this circuit has observed, that Policy Statement predates the First Step Act and contemplates only motions to amend inmates' sentences that are initiated by the BOP, not requests made by inmates themselves (as are now permitted).

The short of it is that the Sentencing Commission's current policy statement is not applicable to prisoner-initiated motions for compassionate release, and the Commission has not yet issued a policy

statement applicable to such motions. The policy statement referred to by the district court (that is, the current policy statement) is applicable only to compassionate-release motions brought by the BOP. We hold, therefore, that district courts – when adjudicating prisoner-initiated motions for compassionate release – have discretion, unconstrained by any policy statement currently in effect, to consider whether a prisoner’s particular reasons are sufficiently extraordinary and compelling to warrant compassionate release.

United States v. Ruvalcaba, 26 F.4th 14, 22-23 (1st Cir. 2022)

(emphasis supplied).² Consequently, the Court of Appeals concluded that:

it is within the district court’s discretion, in the absence of a contrary directive in an applicable policy statement, to determine on a case-by-case basis whether such changes in law predicated on a defendant’s particular circumstances comprise an extraordinary and compelling reason and, thus, satisfy the standard for compassionate release under section 3582(c)(1)(A)(i).

Id., at 28.

III. Circumstances Warrant Granting Relief.

The reasoning underlying the government’s opposition to Oprea’s motion is difficult to understand. The government’s memorandum approaches Oprea’s request for relief as if he is

² As the government notes, the Sentencing Commission has issued an amended policy statement (addressing inmate-initiated petitions for compassionate release), which will become effective in November of 2023.

seeking a "sentence reduction." See Government's Opposition (document no. 128) at 4. As noted above, he is not. Resentencing him to serve an additional period of supervised release will simply make him eligible to participate in the BOP-administered program that affords a limited number of qualifying inmates early release to supervision; it will not guarantee Oprea's early release. Only if Oprea meets all of the program's eligibility requirements - as determined by the BOP - will he be afforded early release. Indeed, for Oprea to qualify for early release to supervised release, the BOP must, among other things, determine that he poses "a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner." 18 U.S.C. § 3624(g)(1)(D)(ii). Inmates who pose a potential danger to the community - that is, those more likely to recidivate - are not eligible to apply earned FSA time credits toward early release. See 18 U.S.C. § 3624(g)(1)(D)(i) and (ii). And, of course, if released to supervision, Oprea is likely to be deported.

Considering the factors identified in 18 U.S.C. § 3553(a) in light of Oprea's unique circumstances, the court concludes that none counsels against adding a brief period of supervised release to Oprea's sentence. Indeed, several factors counsel in favor of it. For example, making relief of the sort sought by Oprea available to federal inmates who were not sentenced to a

term of supervision will encourage otherwise-ineligible inmates to participate in the evidence-based recidivism reduction programs offered by the BOP under the First Step Act. See 18 U.S.C. § 3553(a)(2)(D). That, in turn, facilitates the general public policy goal of protecting the public from future criminal activity. See 18 U.S.C. § 3553(a)(2)(C). Absent such relief, one would expect that inmates without a term of supervised relief will be less likely to participate in such programs, to the detriment of society as a whole.

Turning next to the provisions of 18 U.S.C. § 3582, the court concludes that Oprea's particular circumstances combine to form extraordinary and compelling reasons to warrant a sentence modification. First, the government's assertion that Oprea has failed to demonstrate that he poses no danger to the community is contradicted by the BOP's own determination that Oprea poses a "minimum" risk of recidivism, based upon its experience, expertise, and observations. See Oprea I, Response to Request for Administrative Remedy (document no. 7-2) at 2-3. The government does not suggest any supportable or supported basis for its apparent contrary opinion.

Additionally, while an inmate's rehabilitation is not, by itself, an extraordinary or compelling reason for purposes of

resentencing, it seems to be a factor, see 28 U.S.C. § 994(t) - though the Court of Appeals has implied, in dicta, it is not a particularly strong factor, see, e.g., United States v. Ruvalcaba, 26 F.4th 14 (2022). So, to the extent it bears on the court's decision, it is worth noting that Oprea has successfully completed numerous BOP-administered evidence-based recidivism reduction programs, through which he has earned a significant number of FSA time credits - all while maintaining a clean disciplinary record.

Viewing the totality of the circumstances presented by Oprea's petition, the court finds that there are "extraordinary and compelling reasons" that warrant the modification of his sentence so that it includes a term of supervised release. See 18 U.S.C. § 3582(c). Indeed, but for Oprea's likely deportation, the court would have originally sentenced him to a significant period of supervision. Absent such relief, the goals of the First Step Act cannot be fully realized. Moreover, nothing in the record counsels against affording Oprea the opportunity to be considered by the BOP for early release under First Step Act.

In light of the foregoing, the court concludes that the relief Oprea seeks (as modified below) is both authorized and

appropriate. See generally United States v. Nunez-Hernandez, No. CR 14-20(8) (MJD), 2023 WL 3166466, at *1 (D. Minn. Apr. 27, 2023) (granting petitioner's request for resentencing and imposing one month of supervised release so petitioner might obtain early release from BOP custody into the custody of ICE, pursuant to 18 U.S.C. § 3624(g)(3)).

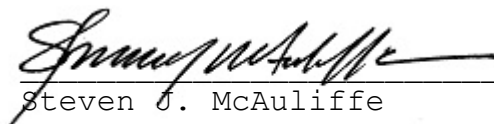
Conclusion

Based upon the record before the court, it appears that Oprea has faithfully participated in (and completed) numerous BOP-administered, evidence-based recidivism reduction programs under the First Step Act and accumulated a significant number of FSA time credits. He has also earned (and is projected to continuing earning) a significant number of good time credits. He has no history of discipline over the last 12 months; he has not participated in any gang-related activity or known acts of violence while incarcerated; he is a "low security" inmate; he has maintained a "minimum PATTERN recidivism score" under BOP testing; and he has served a significant portion of his 15-year sentence. Granting the relief he seeks is entirely consistent with, and advances the goals of, the First Step Act. Accordingly, pursuant to 18 U.S.C. § 3582(c)(1), the court concludes that resentencing Oprea to serve an additional period

of supervised release at the end of his term of imprisonment is warranted. His motion is granted (**document no. 125**).

Oprea's sentence shall be modified to reduce the period of incarceration by one month and to impose a period of supervised release of one year, subject to the standard and mandatory conditions imposed by this court. See 18 U.S.C. § 3582. See also United States v. Nienadov, 2023 WL 4139026 (S.D. Texas June 21, 2013) (reducing petitioner's incarcerative sentence by one month and adding a one-year period of supervised release so that he might benefit from the provisions of the First Step Act). An amended judgment shall be entered on the docket.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

October 20, 2023

cc: Adrian Tiberiu Oprea, pro se
Heather A. Cherniske, Esq.
U.S. Probation
U.S. Marshal