

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Government,

-v.-

RASHAWN DAVIDSON,

Defendant.

08-CR-821 (RMB)
15-CR-288 (RMB)
15-CR-310 (RMB)

DECISION & ORDER

I. Introduction

This Decision and Order resolves two pending applications submitted by CJA counsel Thomas H. Nooter, Esq. on behalf of defendant Rashawn Davidson (“Davidson”). The first application, dated May 22, 2024, seeks a reduction of Mr. Davidson’s current (Guidelines) sentence of 165 months, pursuant to Amendment 821 of the Federal Sentencing Guidelines (“Amendment 821”), 18 U.S.C. § 3582(c)(2) and U.S.S.G § 1B1.10. *See also* Def. Motion for Resentencing, 15-CR-288, dated May 22, 2024 (“Def. Mot.”), at 4 (ECF No. 1558). The second application seeks a “compassionate release” reduction of Davidson’s current sentence, pursuant to 18 U.S.C. § 3582(c)(1)(A). *Id.* at 1. Defense counsel “adopt[ed] and incorporate[d] by reference” the compassionate release application which was originally filed by Mr. Davidson *pro se* on April 17, 2024.¹ *Id.* at 3.

¹ Mr. Davidson was convicted following a jury trial. On May 24, 2018, he was sentenced for “conspiracy to distribute and possess with intent to distribute narcotics,” “distribution and possession with intent to distribute crack,” and for various violations of his conditions of supervised release. *See, e.g.*, Judgment, 15-CR-288, dated May 24, 2018, at 1–2 (ECF No. 824). Davidson has served 91 months of his 165-month sentence. *See* Supplemental Presentence Investigation Report, 15-CR-288, filed Jan. 8, 2024 (“PSR”), at 1–2, 6 (ECF No. 1482).

For the reasons set forth below, the Court resentences (and lowers) Mr. Davidson’s term of incarceration from 165 to 153 months on dockets 15-CR-288 and 15-CR-310. All other components of Mr. Davidson’s original sentences on May 24, 2018 are unchanged.

II. Legal Standards

Amendment 821 “eliminates up to 2 criminal history points, called ‘status points,’ if a defendant received status points [at sentencing] for committing the offense while under a criminal justice sentence.” *United States v. Ewing*, 2024 WL 1250685, at *1 (S.D.N.Y. Mar. 21, 2024). By eliminating status points, Amendment 821 “changes the way a defendant’s criminal history category is calculated.” *United States v. Beltre*, 2024 WL 1424557, at *1 (D. Conn. Apr. 3, 2024). When a defendant “has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, . . . the court may reduce the term of imprisonment.” 18 U.S.C. § 3582(c)(2).²

A court may grant a motion for compassionate release if (1) “the defendant has exhausted administrative remedies,” (2) “the defendant’s circumstances are extraordinary and compelling,” and (3) “the § 3553(a) sentencing factors favor a sentence reduction.” *United States v. Isaac*, 2024 WL 1597614 (2d Cir. Apr. 12, 2024); *see also* U.S.S.G. § 1B1.13 (2023).

“[I]n considering the section 3553(a) factors, [courts] should assess whether those factors outweigh the ‘extraordinary and compelling reasons’ warranting compassionate release.” *United States v. Ebberts*, 432 F. Supp. 3d 421, 430–31 (S.D.N.Y. 2020); *see also United States v. Hernandez*, 2021 WL 5286653 (2d Cir. Nov. 15, 2021). Danger to the public may “override any

² Amendment 821 went into effect on November 1, 2023 and was made retroactive by the United States Sentencing Commission. *See* U.S.S.G. § 1B1.10(d); 28 U.S.C. § 994(u).

extraordinary and compelling reasons justifying [compassionate] release.” *United States v. Serrano*, 2020 WL 5259571, at *4 (S.D.N.Y. Sept. 3, 2020).

III. Analysis

Amendment 821

Defense counsel contends that Mr. Davidson is eligible for a retroactive sentence reduction pursuant to Amendment 821 and that Mr. Davidson’s original Sentencing Guidelines range of 168 to 208 months “should be readjusted based on the imposition of ‘status points’ to his criminal history, which pursuant to the amendment have been removed.” Def. Mot. at 1, 3. This “would result in Mr. Davidson’s criminal history category dropping to level III from level IV.” *Id.* at 4. The resulting “sentencing [guidelines] range for the grouped counts should be 151 to 188 months,” in place of the Guidelines Range at sentencing which was 168 to 208 months. *Id.*

The Government agrees that Mr. Davidson is eligible based upon Amendment 821 for “a resentencing anywhere within the amended sentencing range . . . of 151 to 188 months’ imprisonment.” See Gov’t Response, 15-CR-288, dated June 12, 2024 (“Gov’t Resp.”), at 1 (ECF No. 1561). The Government points out—and defense counsel agrees—that Mr. Davidson’s sentence may not be reduced to “less than the minimum of the amended guideline range,” i.e., it may not be any lower than 151 months. *Id.*; see Def. Reply, 15-CR-288, dated June 27, 2024 (“Def. Reply”), at 2 (ECF No. 1572) (“I concede that the United States Supreme Court [in *Dillon v. United States*, 560 U.S. 817 (2010)] has foreclosed the possibility of the Court imposing a sentence lower than the newly-adjusted Guidelines sentencing range.”).³

³ The parties have also agreed that the Court may issue an appropriate order reducing Mr. Davidson’s sentence on the papers and that there is no need for an in-court hearing or proceeding. Gov’t Resp. at 3–4; see also Fed. R. Crim. P. 43(b)(4).

The U.S. Probation Department concurs that Davidson is “eligible for a sentence reduction” because his status point recalculation results in an “amended criminal history category” of III instead of IV. *See* PSR at 2–3. And, Probation agrees that Davidson’s amended Guideline’s Range is 151 to 188 months. *See id.* at 3.

The Court finds that Davidson is eligible to receive a (retroactive) sentence reduction. Davidson’s revised Guidelines Range is 151 to 188 months’ imprisonment because the removal of status points under Amendment 821 results in lowering Davidson’s criminal history category from level IV to level III. A “reduction is consistent with the applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). The Court has reviewed and considered, among other things, the factors set forth at 18 U.S.C. § 3553(a) in determining the extent of reduction of Mr. Davidson’s term of imprisonment and concludes that Davidson’s sentence should be lowered to 153 months of incarceration. *See* U.S.S.G. § 1B1.10 app. note 1(B)(i), (ii). “All other terms of the judgment in this case shall remain unchanged.” Gov’t Resp. at 3.

Compassionate Release

The Court has also reviewed Davidson’s application for compassionate release. The Court finds that Mr. Davidson has not presented extraordinary and compelling circumstances warranting compassionate release and that, even if Davidson had presented extraordinary and compelling circumstances, the 18 U.S.C. § 3553(a) sentencing factors, including danger to the community, weigh against compassionate release.

No Extraordinary and Compelling Circumstances

Davidson’s application does not succeed for several reasons. First, Davidson’s application for compassionate release raises many of the same arguments that he raised in his 2020 compassionate release application, which was denied by the Court on February 17, 2022. *See* Decision & Order, dated Feb. 17, 2022 (“2022 D&O”) (ECF No. 1230). Both compassionate

release applications are based upon medical issues and conditions of confinement. Davidson contends that he is “prediabetic” and “suffers from myasthenia gravis which is a chronic condition which places him at a higher risk of serious illness from COVID-19” and that he has “experienced unusually harsh conditions as a consequence of the lockdown measures undertaken to control the spread of COVID-19.” Def. Mot. Ex. 2 at 12, 21, 30.

The Court previously found that Davidson’s medical conditions do not rise to the level of extraordinary and compelling circumstances. *See* 2022 D&O at 5. “Courts have consistently denied compassionate release when the defendant is fully vaccinated [against COVID-19], even when other health conditions are present,” and Davidson’s “medical records confirm [] that he is vaccinated against COVID-19.” *Id.* (citing *United States v. Farmer*, 2022 WL 47517, at *3 (S.D.N.Y. Jan. 5, 2022)). Prediabetes is not “among the underlying conditions that the CDC has identified as presenting an increased risk of serious illness [and] . . . do[es] not satisfy the extraordinary and compelling standard.” *United States v. Cajigas*, 2020 WL 6625210, at *2 (S.D.N.Y. Nov. 11, 2020); *see United States v. Corin*, 2020 WL 5898703, at *3 (S.D.N.Y. Oct. 5, 2020) (defendant “[did] not suffer from any of the medical conditions that would cause the Court to even contemplate granting him compassionate release on medical grounds.”). And, myasthenia gravis is not “life-ending or debilitating with a predictable, dire short-term prognosis.” *United States v. Ebberts*, 432 F. Supp. 3d 421, 426 (S.D.N.Y. 2020). Davidson’s medical records indicate that he is treated with “CellCept 500 mg BID . . . [and] low dose daily prednisone,” and that he has been “tolerating both medications without problems.” 2022 D&O at 2, 4. Where, as here, medical records show that conditions are being treated, the applicant’s “issues do not meet the extraordinary and compelling standard.” *United States v. Mutimura*, 2022 WL 220079, at *3 (S.D.N.Y. Jan. 25, 2022).

The Court also found previously that “generalized statements about the conditions of confinement do not constitute extraordinary or compelling reasons for compassionate release.” 2022 D&O at 6; *see Farmer*, 2022 WL 47517, at *3 (where defendant asserted “that the conditions of his confinement have been particularly harsh and restrictive, marked by months of lockdowns, isolation in quarantine, fear of infection, and a lack of access to programming”). While Davidson argues that he has experienced “unusually harsh conditions as a consequence of the lockdown measures undertaken to control the spread of COVID-19,” Def. Mot. Ex. 2 at 21, he acknowledges that “the pandemic is over.” Def. Mot. at 8. And, “[w]hile the Court acknowledges difficult conditions that prisoners have faced during the pandemic, BOP statistics indicate that [] inmates at FCI [Otisville] are [not] testing positive for COVID-19.” 2022 D&O at 6; *Inmate Covid Data*, BOP, https://www.bop.gov/about/statistics/statistics_inmate_covid19.jsp (last visited July 23, 2024).

The Court also finds that Mr. Davidson’s laudatory proposal concerning “the possibility of a post-release plan of employment that would involve taking care of his elderly [great] grandmother as a caregiver,” Def. Reply at 2, does not equate to extraordinary and compelling circumstances because it is vague, inchoate and unrealistic. *See United States v. Ortiz*, 2022 WL 16962291, at *2 (S.D.N.Y. Nov. 16, 2022) (holding that the defendant’s family circumstances are not extraordinary and compelling because the defendant does not offer details, i.e., “does not argue that his father is completely unable to care for himself” or “that [defendant] is the only available caregiver for his father”); *see* U.S.S.G. § 1B1.13(b)(3) (the defendant must establish that he “would be the only available caregiver for such family member”). In *United States v. Rodriguez*, 2024 WL 1464661 (S.D.N.Y. Apr. 4, 2024), the court found that no extraordinary and compelling circumstances existed when the defendant failed to submit “evidence” to show that his mother

“needs constant, live-in care” and did not “explain why, apart from inconvenience, some combination of [] relatives could not sufficiently attend to his mother’s medical needs.” *Id.* at *3. Davidson acknowledges that his great-grandmother’s “daughter[] has been the primary caregiver since 2019,” Def. Mot. Ex. 2 at 20, and he does not allege that his great grandmother “is completely unable to care for” herself. *Ortiz*, 2022 WL 16962291, at *2; *see Rodriguez*, 2024 WL 1464661, at *3.

18 U.S.C. § 3553(a) Factors, Including Danger to the Community, Weigh Against Compassionate Release

Even assuming, *arguendo*, that Davidson’s arguments amounted to extraordinary and compelling circumstances—which they do not—the 18 U.S.C. § 3553(a) sentencing factors, including danger to the community, “override any extraordinary and compelling reasons justifying his release.” *Serrano*, 2020 WL 5259571, at *4.

First, the Court has already found that “Davidson poses a danger to the community.” 2022 D&O at 6. He was a “core member” of a criminal drug-trafficking organization that controlled “narcotics trafficking” in the Bronx. *Id.* at 7 (quoting PSR at ¶¶ 9–11). The so-called 213 DTO operations were a major source of crime and violence, including “35 shootings, of which 22 were fatal, as well as over 500 reports of shots fired” between 2011 and 2016. PSR at ¶ 10. “[T]he Court cannot say that Defendant—who was engaged in a substantial narcotics business, trafficking in large quantities of cocaine and heroin . . . does not pose a danger to the safety of any other person or to the community.” *United States v. Zubiato*, 2020 WL 3127881, at *2 (S.D.N.Y. June 12, 2020).

The Court has also found that “Mr. Davidson demonstrated a danger to the community even after his arrest.” 2022 D&O at 7. The Government explained that, prior to and during his trial, Davidson urged co-conspirators not to testify and intimidated witnesses by “publish[ing] their pictures on the internet, outing them as witnesses and encouraging threats against their life.” Gov’t

Ltr. in Opp., dated Sept. 3, 2020, at 7 (ECF No. 1085). According to the Government, “his [social media] post regarding [a] cooperating witness drew death threats against that witness.” *Id.* (citing Trial Tr., Feb. 6, 2017, at 1136–42 (ECF No. 666)).

Second, a compassionate release sentence reduction would afford insufficient deterrence of criminal conduct. The Government contends that Davidson is “an unrepentant career crack supplier” who “has committed felonies under every form of judicial supervision, including bail, probation, and federal supervised release.” *Id.* at 7, 8. Davidson is currently in prison for the third time for offenses related to distributing and possessing crack cocaine, and he committed the crimes for which he is currently incarcerated while on supervised release. *See* PSR at ¶¶ 36–37. A “history of recidivism weighs against his early release.” 2022 D&O at 7–8; *see United States v. Mojica*, 2020 WL 6746478, at *2 (S.D.N.Y. Nov. 16, 2020) (“The instant offense was Defendant’s second [] felony conviction. A previous [] sentence did not deter him. . . . Releasing Defendant . . . would insufficiently deter.”); *see also United States v. Disla*, 2023 WL 2632110 at *2 (S.D.N.Y. Mar. 24, 2023) (“[Defendant] has a significant criminal history record related to drug distribution. He repeatedly returned to drug dealing after convictions on drug offenses. . . . Issues of appropriate punishment and adequate deterrence weigh strongly against any further reduction in his sentence.”).

Third, releasing Davidson at this point presents a danger to the community and would not reflect the seriousness of his offenses, promote respect for the law, or provide just punishment. In *United States v. Batista*, 2020 WL 3249233 (S.D.N.Y. June 16, 2020), where the defendant distributed controlled and highly addictive substances in his community, “[m]odifying [defendant’s] term of imprisonment . . . would disserve the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, [or] provide just punishment.” *Id.* at *4

The Court acknowledges and encourages Mr. Davidson’s achievements in prison by taking “advantage of every rehabilitation program . . . available to him,” and “want[ing] to do better[,] [n]ot only for [him]self, but for [his] family and community.” Def. Mot. Ex. 2 at 25; Def. Mot. Ex. 3 at 2. But “the Court is concerned that, if released, [d]efendant would pose a danger to his community” and would not “protect the public from further crimes.” *United States v. Gil*, 2020 WL 2611872, at *2 (S.D.N.Y. May 22, 2020).

IV. Conclusion & Order

For the foregoing reasons, Mr. Davidson’s application for resentencing pursuant to Amendment 821 [ECF No. 1558] is granted and his application for compassionate release [*id.*] is respectfully denied.

The Court resentences Mr. Davidson to 153 months of incarceration on dockets 15-CR-288 and 15-CR-310. All other components of Mr. Davidson’s original sentences on May 24, 2018 are unchanged, including the 60-month term of supervised release and the related conditions of supervision on dockets 15-CR-288 and 15-CR-310 and the 12-month term of supervised release and the related conditions of supervision on docket 08-CR-821.

Date: July 23, 2024
New York, New York



RICHARD M. BERMAN, U.S.D.J