

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No.: 3:14-CR-14-TAV-HBG-1
)
LINDA F. PESTERFIELD,)
)
Defendant.)

ORDER

Before the Court is defendant’s motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), filed on defendant’s behalf by her mother and attorney-in-fact, Teresa Primo [Doc. 747]. Defendant has presented documents that confirm that she has been diagnosed with metastatic colorectal cancer which, as of September, 2018, had reached Stage IIIB and had spread to her lymph nodes [Doc. 753-2 p. 9]. The Bureau of Prisons (“BOP”) has denied defendant relief on two occasions [*Id.* pp. 18, 21], and the government urges this Court to deny defendant’s motion without prejudice to allow her to file a new request with the BOP [Doc. 749]. However, for the reasons stated below, the Court will grant defendant’s motion.

Section 3582(c)(1)(A) provides that:

[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may

impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction

There appears to be some confusion about when defendant first requested compassionate release from the BOP; however, the record reflects that defendant filed a request on October 5, 2018 [Doc. 753-2 p. 17]. On January 8, 2019, the BOP denied defendant's request based on advice from defendant's physician that her life expectancy was more than two years and that her condition was curable [*Id.* p. 18]. Defendant requested reconsideration of that decision in February, which the BOP again denied on March 5, 2019 [*Id.* pp. 19–21]. Defendant states that she appealed that decision on March 13, 2019 [Doc. 753 p. 5], and the Court has received no indication that that appeal has been resolved. Based on defendant's request and subsequent appeals, the Court finds that defendant has satisfied the exhaustion requirement of § 3582(c)(1)(A).

The Court next turns to the questions of whether “extraordinary and compelling reasons warrant” a reduction in defendant's sentence and whether such a reduction would be “consistent with applicable policy statements issued by the Sentencing Commission.” § 3582(c)(1)(A)(i)–(ii). The Sentencing Guidelines consider the following to be an extraordinary and compelling circumstance:

The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not

required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

U.S.S.G. § 1B1.13, comment. n.1(A)(i). In addition to the nature of defendant's medical condition, the Guidelines also urge courts to consider "the defendant's family circumstances[] and whether the defendant is a danger to the safety of any other person or to the community." *Id.*, comment. n.4.

Although the BOP's denials reflect its opinion that defendant's disease is curable, the record reflects that defendant has advanced stage, metastatic cancer that has progressed rapidly since her initial diagnosis last year. Because the Sentencing Guidelines include metastatic cancer—and do not require a specific prognosis of life expectancy—as an example of extraordinary and compelling circumstances, the Court finds that defendant's disease meets this criterion.

Other evidence in the record also weighs in favor of granting defendant's motion. Defendant states that she is largely confined to a bed and a wheelchair [Doc. 753 p. 6]. Given the many complications she has suffered as a result of her illness, defendant is unlikely to pose a danger to her community. Moreover, arrangements have already been made for defendant to live with her mother in Lenoir City, Tennessee, and to be treated by an oncologist there [*Id.* p. 2]. Defendant has served more than five years of her seven-year prison sentence, and in that time has completed several programs and obtained her G.E.D. [Doc. 753-2 pp. 25–30]. Defendant would have completed the BOP's Residential Drug Abuse Program, too, but failed after missing too many classes due to her illness, treatments, and hospitalizations [Docs. 753 p. 5; 753-2 pp. 22–23]. Had she completed that program,

she would have been eligible for release this year [*Id.*]. Instead, her current projected release date is April 2, 2020 [Doc. 753-2 p. 23].

In light of these considerations, the Court is satisfied that, even with defendant's as-soon-as-practicable release, the sentence imposed is "sufficient but not greater than necessary," to accomplish the goals of sentencing under 18 U.S.C. § 3553(a). Accordingly, defendant's motion [Doc. 747] is **GRANTED**. Defendant's term of imprisonment is hereby **REDUCED** to time served. Defendant shall be **RELEASED** from the custody of the Bureau of Prisons as soon as the release plan is implemented and appropriate travel arrangements can be made, in coordination with defendant's mother. Defendant shall begin serving the term of supervised release previously imposed. An amended judgement, which will reflect defendant's sentence as just described, will **ENTER**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE