

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-60125-CR-COHN

UNITED STATES OF AMERICA,

v.

STEVEN GASS,

Defendant.

ORDER GRANTING MOTION FOR SENTENCE MODIFICATION

THIS CAUSE came before the Court on Defendant Steven Gass's Motion for Sentence Modification Pursuant to 18 U.S.C. § 3582(c)(1)(A) and 34 U.S.C. § 60541(g) ("Motion") [DE 31]. The Court has considered the Motion, the Government's Response [DE 33], Defendant's Reply [DE 36], the Government's Supplemental Response [DE 38], and the record in this case, and is otherwise advised in the premises.

On May 7, 2010, Defendant plead guilty to six counts of bank robbery, in violation of 18 U.S.C. § 2113(a). DE 23. The Court subsequently sentenced Defendant to 156 months' imprisonment to be followed by two years' supervised release. DE 30. Defendant now seeks to modify the remainder of his sentence to home confinement on electronic monitoring because, while serving his prison term, he was diagnosed with an aggressive, malignant tumor located in his rectal wall. DE 31 at 4. The tumor was successfully removed, but it was also necessary for physicians to remove an affected portion of Defendant's rectum and anus. Id. This procedure left Defendant dependent on a colostomy bag and subject to enhanced hygiene requirements and heightened monitoring to prevent infection. Id.

In his Motion, Defendant seeks relief under the Federal Prisoner Reentry Initiative, 34 U.S.C. § 60541(g), as well as compassionate release under 18 U.S.C. § 3582(c)(1)(A). In its Response, the Government correctly notes that 34 U.S.C. § 60541(g) grants the Attorney General, not the Court, the discretion to release certain elderly offenders to serve the latter part of their sentence on home confinement. DE 33 at 3. Accordingly, the Court focuses its analysis on whether Defendant's medical condition warrants compassionate release under 18 U.S.C. § 3582(c)(1)(A).

The First Step Act of 2018, Pub. L. 115-391, modified 18 U.S.C. § 3582(c) to authorize a Court, in certain circumstances, to modify a term of imprisonment upon a defendant's motion. A defendant can now file a motion seeking compassionate release under this section in two situations: (1) after he 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 (2) after "the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility." 18 U.S.C. § 3582(c). In such cases, the Court may reduce the term of imprisonment if it finds, "after considering the factors set forth in section 3553(a) to the extent that they are applicable . . . 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 . . ." Id.

The Commission's relevant policy statement appears at U.S.S.G. § 1B1.13. That statement repeats the text of Section 3582(c)(1)(A) and adds that the Court should reduce the term of imprisonment only if "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." Application Note 1 provides that "extraordinary and compelling reasons" exist when, *inter alia*, a

defendant is “suffering from a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.”

The Government argues that “[D]efendant’s condition does not qualify for relief as it does not substantially diminish the ability of the [D]efendant to provide self-care within the environment of a correctional facility **and** from which he is not expected to recover.” DE 38 at 4 (emphasis added). In other words, the Government argues that because Defendant has “recovered” from colorectal cancer, his condition cannot qualify as an extraordinary and compelling reason for a sentence modification. Defendant argues that while he has beaten cancer, his current condition is nevertheless “both serious and difficult to manage in a prison setting, marked neither by enhanced sanitary conditions appropriate for colostomy-dependent patients or heightened monitoring necessary to prevent secondary effects of infection or recurrence of a malignancy.” DE 31 at 11.

The Court finds that Defendant is entitled to compassionate release under Section 3582(c)(1)(A). First, he has satisfied the procedural prerequisites for judicial review. Defendant initially submitted a request for modification of sentence to prison staff on December 27, 2018, more than thirty days before he filed the Motion on February 7, 2019. DE 31 at 5. Second, Defendant has shown that his physical and medical condition substantially diminishes his ability to provide self-care within the environment of a correctional facility. And this is not a condition that Defendant will ever recover from—he will be device dependent and subject to enhanced hygiene and monitoring requirements for the rest of his life. Finally, the Court finds that Defendant is

not a danger to the safety of any other person or to the community. While he has an extensive record of bank robberies, under Section 3142(g), the Court considers the nature and circumstances of those offenses, which in this case, did not involve a firearm or violence. Also relevant to the Court's analysis is Defendant's advanced age and the fact that he has completed a substantial portion of his original sentence and will serve the remainder on restrictive home confinement.

In sum, having reviewed Defendant's record, the factors set forth in 18 U.S.C. § 3553(a), and the nature and seriousness of the danger to any person or community that may be posed by a modification of Defendant's sentence, the Court has determined that a modification of Defendant's sentence is warranted under 18 U.S.C. § 3582(c).

Accordingly, it is

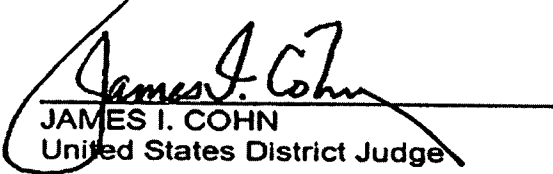
ORDERED AND ADJUDGED as follows:

1. Defendant Steven Gass's Motion for Sentence Modification Pursuant to 18 U.S.C. § 3582(c)(1)(A) and 34 U.S.C. § 60541(g) [DE 31] is **GRANTED**.

2. Effective **thirty (30) days** from the date of this Order, Defendant's remaining term of imprisonment is **MODIFIED** to home confinement on electronic monitoring. All other portions of Defendant's sentence, including his term of supervised release, shall remain unchanged.

3. An amended judgment will be entered.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,
Florida, this 30th day of April, 2019.


JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF
and pro se parties via U.S. mail to address on file