

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 20-10292

Plaintiff-Appellee,

D.C. No.

v.

4:17-cr-01472-JAS-BGM-1

DAVID ALLEN MARKILLIE,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
James A. Soto, District Judge, Presiding

Submitted January 20, 2021**

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

The clerk order at Docket Entry No. 35 is vacated. Appellee's motion to consolidate is denied. This case will proceed separately from Appeal No. 20-10151.

In this appeal, David Allen Markillie appeals from the district court's order

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Markillie argues that the district court improperly relied on U.S.S.G. § 1B1.13 when denying his motion for compassionate release. We need not determine whether, as Markillie contends, that Guideline applies only to § 3582(c)(1)(A) motions brought by the Director of the Bureau of Prisons. Regardless of the applicability of U.S.S.G. § 1B1.13, the district court properly denied the motion on the basis of statutory factors set forth in § 3582(c)(1)(A)(i) and 18 U.S.C. § 3553(a). The district court concluded that a reduced sentence was not appropriate in light of the nature and circumstances of the offense and the need to protect the public, as well as Markillie's failure to show extraordinary and compelling reasons. *See* 18 U.S.C. § 3582(c)(1)(A)(i) (compassionate release may be granted if "extraordinary and compelling reasons," and the § 3553(a) sentencing factors, warrant it); *see also* 18 U.S.C. § 3553(a)(1), (a)(2)(C). Furthermore, the district court addressed Markillie's arguments, adequately explained its decision to deny relief, and did not make any clearly erroneous factual findings.

Markillie's motion to expedite is denied as moot.

AFFIRMED.