

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 14 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-10380

Plaintiff-Appellee,

D.C. No.

1:14-cr-00913-LEK-1

v.

MARK FAAITA,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Submitted May 12, 2021**
San Francisco, California

Before: NGUYEN, OWENS, and FRIEDLAND, Circuit Judges.

Mark Faaita appeals from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied the motion based on its determination that Faaita posed "a danger to the safety of any other person or to the community" under U.S. Sentencing Guidelines

* 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).

Manual (“U.S.S.G.”) § 1B1.13(2). “This dangerousness finding is not statutorily required under 18 U.S.C. § 3582(c)(1)(A)(i), but is part of the Sentencing Commission’s policy statement in U.S.S.G. § 1B1.13(2).” *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021) (per curiam).

After the district court’s decision, we held that “the current version of U.S.S.G. § 1B1.13 is not an ‘applicable policy statement[]’ for 18 U.S.C. § 3582(c)(1)(A) motions filed by a defendant.” *Id.* at 802. “The Sentencing Commission’s statements in U.S.S.G. § 1B1.13 may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.” *Id.*

In light of our intervening decision in *Aruda*, we vacate and remand so that the district court can reassess Faaita’s motion for compassionate release under the standard set forth there. We offer no views as to the merits of Faaita’s § 3582(c)(1)(A)(i) motion.

Faaita’s motion to expedite is denied as moot.

VACATED AND REMANDED.