

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 29 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-50213

Plaintiff-Appellee,

D.C. No. 2:02-cr-00531-RSWL-1

v.

CENOBIO HUMBERTO HERRERA, Sr.,
AKA Bert Herrera, AKA Cenobio Herrera
Lanz, AKA Cenobio Humberto Lanz,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Cenobio Humberto Herrera, Sr., appeals from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion,

* 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).

see United States v. Aruda, 993 F.3d 797, 799 (9th Cir. 2021), and we affirm.

Contrary to Herrera’s arguments, the district court did not rely on any clearly erroneous material facts. Although the district court repeated a calculation error from the presentence report regarding the amount of drugs involved in Herrera’s offense, the mistake was of no consequence because even the correct amount would have triggered the maximum offense level in the Guidelines, which was the concern of the court. The district court also accurately stated that Herrera’s sister received a similar sentence, even if the Bureau of Prisons (“BOP”) had subsequently transferred her to home confinement. *See United States v. Earl*, 729 F.3d 1064, 1066 (9th Cir. 2013) (observing that a defendant “remains in BOP’s legal custody” while on home confinement).

The district court considered Herrera’s age and medical conditions and did not abuse its discretion in concluding that the 18 U.S.C. § 3553(a) sentencing factors weighed against release. *See* 18 U.S.C. § 3582(c)(1)(A) (district court must consider the applicable § 3553(a) sentencing factors on a motion for compassionate release); *United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018) (a district court abuses its discretion only if its decision is illogical, implausible, or without support in the record).

AFFIRMED.