

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 26 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-30014

Plaintiff-Appellee,

D.C. No. 3:17-cr-00133-RRB-1

v.

MEMORANDUM*

DANNY RAY LOWE,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Alaska

Ralph R. Beistline, District Judge, Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Danny Ray Lowe 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, and we affirm.

Lowe argues that he is entitled to release given the COVID-19 outbreak at

* 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).

his prison and his high-risk medical conditions, and that his release would be consistent with the 18 U.S.C. § 3553(a) factors. The district court considered these arguments, but concluded that the risk Lowe poses to the public, which was not significantly mitigated by his release plan, and his recovery from COVID-19 weighed against release. Because the record supports this conclusion, the district court did not abuse its discretion by denying Lowe's motion. *See United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021) (stating standard of review); *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). Moreover, the record does not support Lowe's contention that the district court believed it was constrained by U.S.S.G. § 1B1.13. *See Aruda*, 993 F.3d at 802.

The government's motion to supplement the record is granted. Lowe's motion to strike the exhibit at Docket Entry No. 15-2 is denied. However, the Clerk will maintain under seal the motion and exhibit at Docket Entry No. 15.

AFFIRMED.