

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANDRE MITCHELL BROWN,

Defendant-Appellant.

No. 21-10031

D.C. Nos. 3:17-cr-00104-SI-1  
3:17-cr-00104-SI

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Susan Illston, District Judge, Presiding

Submitted February 9, 2022\*\*  
San Francisco, California

Before: HURWITZ and VANDYKE, Circuit Judges, and ERICKSEN,\*\* District Judge.

Andre Brown sought compassionate release pursuant to 18 U.S.C.

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\* 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).

\*\*\* The Honorable Joan N. Erickson, United States District Judge for the District of Minnesota, sitting by designation.

§ 3582(c)(1)(A)(i), citing asthma and a COVID-19 diagnosis. Relying solely on the factors in 18 U.S.C. § 3553(a), the district court denied the motion, reasoning that Brown had not yet completed the Residential Drug Abuse Treatment Program (“RDAP”), had a history of violent offenses, and had only served about 22% of her sentence. Reviewing the district court’s decision for abuse of discretion, *see United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021) (per curiam), we affirm.

A district court may base its denial of a motion for compassionate release solely on the § 3553(a) factors. *See United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021). And, *Tapia v. United States*, which precludes sentencing courts from “imposing or lengthening a prison term to promote an offender’s rehabilitation,” 564 U.S. 319, 332 (2011), does not bar courts from considering programs like RDAP in deciding whether to reduce a sentence, *see United States v. Navarro*, 800 F.3d 1104, 1112 (9th Cir. 2015). Moreover, the district court’s factual finding that Brown had not yet completed the RDAP program was not clearly erroneous.

**AFFIRMED.**