

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 20 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10329

Plaintiff-Appellee,

D.C. No. 2:13-cr-00318-TLN-1

v.

MEMORANDUM*

NICHOLAS ROBERT BOWEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted April 11, 2022**

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

Nicholas Robert Bowen appeals pro se from the district court's order denying his motion for compassionate release pursuant to 18 U.S.C.

§ 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Bowen contends that the district court applied an incorrect legal standard

* 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). Accordingly, Bowen's request for oral argument is denied.

when evaluating his motion, and that the evidence concerning his medical conditions, the Bureau of Prisons' failure to protect him from COVID-19, and his substantial rehabilitative efforts compelled the court to grant compassionate release. We conclude that the court did not abuse its discretion. *See United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021). The record shows that the court applied the correct legal standard, properly treating U.S.S.G. § 1B1.13 as persuasive but not binding.¹ *See id.* at 802. Moreover, the court thoroughly considered Bowen's arguments, and acknowledged Bowen's medical conditions and efforts to rehabilitate. It nevertheless reasonably concluded that relief was unwarranted because Bowen's release would pose a danger to the public and a reduction in his sentence would not be consistent with the 18 U.S.C. § 3553(a) factors. *See United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021) (district court may deny compassionate release based on the § 3553(a) factors without first deciding whether the defendant has shown extraordinary and compelling reasons for release). This conclusion was logical, plausible, and supported by the record. *See United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018).

Bowen's request to expedite this appeal is denied as moot.

AFFIRMED.

¹ Bowen's reliance on *United States v. Shipp*, 203 U.S. 563 (1906), is misplaced. That case provides no support for Bowen's argument that the district court applied an incorrect legal standard in evaluating his motion.