

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 19 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-10441

Plaintiff-Appellee,

D.C. No. 1:17-cr-00515-LEK-1

v.

KATHY FUNTILA, AKA Kathy Retter,

MEMORANDUM*

Defendant-Appellant.

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

Submitted July 12, 2022**

Before: SCHROEDER, R. NELSON, and VANDYKE, Circuit Judges.

Kathy Funtila appeals pro se from the district court's order denying her second 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 vacate and remand.

With respect to Funtila's first motion for compassionate release, the district

* 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).

court concluded that (1) Funtila had failed to exhaust her administrative remedies, but that her failure to exhaust was excused because exhaustion would have been futile, and (2) Funtila had not shown extraordinary and compelling reasons for compassionate release under U.S.S.G. § 1B1.13. The court denied Funtila’s second compassionate release motion, which it described as “almost identical to her first motion,” because she had again failed to provide any extraordinary and compelling reasons.

After the district court issued its orders, we decided *United States v. Keller*, 2 F.4th 1278 (9th Cir. 2021) and *United States v. Aruda*, 993 F.3d 799 (9th Cir. 2021). Because the district court did not have the benefit of these decisions when it reviewed Funtila’s motions, we vacate the district court’s orders and remand for the district court to reassess Funtila’s motion under the standards set forth in those opinions.

We offer no view of the merits of Funtila’s request for compassionate release.

VACATED and REMANDED.