

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-10162

Plaintiff-Appellee,

D.C. No. 1:13-cr-00021-SOM-3

v.

MEMORANDUM*

LEVI SAELUA, Jr.,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Hawaii
Susan O. Mollway, District Judge, Presiding

Submitted February 14, 2023**

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

Levi Saelua, Jr. appeals pro se 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. Reviewing for abuse of discretion, *see United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021), we affirm.

* 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).

Saelua contends that the district court abused its discretion by denying compassionate release. We disagree. The record shows that the court applied the proper legal standard. *See id.* at 802. It acknowledged Saelua’s medical conditions, but reasonably concluded that any increased risk Saelua might face from COVID-19 was mitigated by his vaccination, recovery from a prior COVID-19 infection, and the absence of any active infections at his facility. The record also supports the court’s conclusion that changes to the sentencing laws did not constitute extraordinary and compelling circumstances. As the court explained, even accepting Saelua’s sentencing arguments, he “would still have many years to go on his sentence.”

Further, the district court did not abuse its discretion in concluding that the 18 U.S.C. § 3553(a) sentencing factors did not support release. As the court observed, Saelua had served only about 40% of his 25-year sentence and he had a broad and violent criminal history, as well as a troubling prison disciplinary record, that indicated he would likely pose a danger to the community upon release. On this record, the court was well within its discretion to deny relief. *See United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021).

AFFIRMED.