

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-10257

Plaintiff-Appellee,

D.C. No.

v.

2:08-cr-00064-JCM-EJY-1

STEVEN GRIMM,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted June 6, 2023**
San Francisco, California

Before: MILLER and KOH, Circuit Judges, and CHRISTENSEN,** District Judge.

Defendant-Appellant Steven Grimm appeals the district court's decision denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i).

* 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 Dana L. Christensen, United States District Judge for the District of Montana, sitting by designation.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Reviewing for abuse of discretion, *see United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir. 2021) (per curiam), we affirm.

The district court did not plainly err by evaluating Grimm’s motion under the standard set forth in 18 U.S.C. § 3582(c)(1)(A)(i). Where a party fails to raise an issue before the district court, we review for plain error. *United States v. Yijun Zhou*, 838 F.3d 1007, 1010 (9th Cir. 2016). “An error is plain if it is clear or obvious under current law.” *United States v. De La Fuente*, 353 F.3d 766, 769 (9th Cir. 2003). Grimm argues for the first time on appeal that, because he has religious objections to receiving any of the available COVID-19 vaccinations, the district court should have applied the burden-shifting tests set forth under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc to 2000cc-5; the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb to 2000bb-4; and/or the Free Exercise Clause of the First Amendment. Grimm did not identify any cases in which a court at any level applied the standards set forth under RLUIPA, RFRA, or the Free Exercise Clause of the First Amendment in the context of a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). Because the error Grimm alleges was not “clear or obvious under current law,” the alleged error cannot be plain. *De La Fuente*, 353 F.3d at 769.

The district court did not abuse its discretion in concluding that Grimm failed to establish “extraordinary and compelling reasons” warranting a sentence reduction under § 3582(c)(1)(A)(i). The record supports the district court’s finding that “Grimm’s underlying health conditions, unvaccinated status, and mere potential for a COVID reinfection do not present an extraordinary and compelling reason to grant compassionate release” in light of Grimm’s previous infection with COVID-19 while incarcerated, the Bureau of Prisons’s risk mitigation efforts, and the fact that there were no positive cases among inmates at Grimm’s facility at the time he filed his motion.

AFFIRMED.