

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 11 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 23-10017

Plaintiff-Appellee,

D.C. No.

1:19-cr-00064-LEK-1

v.

RAPHAEL SAKARIA,

MEMORANDUM*

Defendant-Appellant.

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

Submitted October 3, 2023**
Honolulu, Hawaii

Before: BERZON, MILLER, and VANDYKE, Circuit Judges.

Raphael Sakaria appeals the district court's decision denying his motion for sentence reduction and compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i).

We have jurisdiction under 28 U.S.C. § 1291, and 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).

“We review 18 U.S.C. § 3582(c)(1) sentence reduction decisions for abuse of discretion.” *United States v. Chen*, 48 F.4th 1092, 1094 (9th Cir. 2022). A district court abuses its discretion if it applies an incorrect legal standard or if its “application of the correct legal standard [is] (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.” *United States v. Sivilla*, 714 F.3d 1168, 1173 (9th Cir. 2013) (quoting *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009)).

The district court did not abuse its discretion in denying Sakaria’s motion for sentence reduction and compassionate release. Under section 3582(c)(1)(A), a district court may “reduce [a] term of imprisonment . . . if it finds that . . . extraordinary and compelling reasons warrant such a reduction,” and that “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *See also United States v. Keller*, 2 F.4th 1278, 1283–84 (9th Cir. 2021) (per curiam). In determining whether extraordinary and compelling reasons warrant a sentence reduction, “district courts may consider non-retroactive changes in sentencing law, in combination with other factors particular to the individual defendant.” *Chen*, 48 F.4th at 1098. Here, the district court did just that. The court assumed that, had Sakaria been sentenced today, he would have received a sentence 10 to 12 months shorter than the sentence he is currently serving. The court concluded, however, that this did not amount to an extraordinary and

compelling reason under section 3582(c)(1)(A)(i), “especially given the nature and circumstances of [Sakaria’s] offense that involved a significant drug trafficking conspiracy.” That analysis was neither illogical nor implausible.

Sakaria argues that, once the district court assumed that he would have received a shorter sentence had he been sentenced today, the court had no choice but to grant his motion. In effect, Sakaria asks us to transform a non-retroactive change in sentencing law—which the district court *may* consider in its discretion—into a fully retroactive change that the district court *must* apply. But we have explained that “allowing defendants to petition for compassionate release, based in part on the sentencing disparities created by [a non-retroactive change in sentencing law], does not automatically make every defendant who received a . . . sentence [under the superseded law] eligible for a sentence reduction.” *Chen*, 48 F.4th at 1100. Rather, where a defendant moves for compassionate release, “the determination of what constitutes extraordinary and compelling reasons for sentence reduction lies squarely within the district court’s discretion.” *Id.* at 1095.

AFFIRMED.