

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MICHAEL GRASSO, JR.

CRIMINAL ACTION
NO. 17-436

ORDER

AND NOW, this 18th day of October 2021, upon consideration of Michael Grasso's *pro se* Motion for Compassionate Release (ECF 112), the Government's Response (ECF 113) and Grasso's Reply (ECF 114), it is **ORDERED** that the Motion is **DENIED**.¹

¹ This is the third time Grasso has moved for compassionate release. (ECF 87, 92.) The Court denied the first motion without prejudice because Grasso failed to satisfy 18 U.S.C. § 3582(c)(1)(A)'s procedural requirements. (Order Den. first Mot. for Release 2, ECF 90.) It denied the second motion because neither extraordinary and compelling reasons nor the 18 U.S.C. § 3353(a) factors warranted his release. (Mem. Den. Second Mot. for Release 1–4, ECF 98.) More recently, the Court also denied Grasso's motion to enforce the warden's release approval. (Order Den. Warden's Approval, ECF 106.)

In the Motion now before the Court, Grasso claims he should be released based on "materially changed circumstances." (Third Mot. for Release ¶ 2.) But many of the circumstances supporting the denial of Grasso's second motion remain today. First, Grasso claims the warden approved his release for home confinement but that the Residential Reentry Management office in Philadelphia wrongly overruled the warden based on the risk Grasso posed because of the difficulty of monitoring his compliance with supervised release terms concerning mail usage. (*Id.* at ¶¶ 4–5.) The Court already explained that it lacks power to grant Grasso's request for home confinement. (Mem. Den. Second Mot. for Release 2 n.1; Order Den. Warden's Approval 1 n.1.) Second, Grasso argues he is not a threat to the community, citing his lack of prior violence, violations, escape or affiliation with terrorist or violent groups. (Third Mot. for Release ¶ 8.) The Court also explained that the § 3353(a) factors weigh against Grasso's release because, among other things, he has "shown at every turn that, if released, he would quickly resume his decades-long criminal career," and the "only thing protecting the public from Grasso's scams and frauds is his incarceration." (Mem. Den. Second Mot. for Release 3–4.)

Third, Grasso claims a wrongly inflated criminal history score distorted his sentence. (Third Mot. for Release ¶ 11.) A motion for compassionate release is not the proper vehicle for Grasso to challenge his sentence. *See United States v. Henderson*, 858 F. App'x 466, 469 n.2 (3d Cir. 2021) (*per curiam*) (explaining that an argument for vacating a sentence based on an alleged classification error could be raised solely in a 28 U.S.C. § 2255 motion); *United States v. Albanese*, No. 97-359, 2021 WL 2400762, at *3 (E.D. Pa. June 11, 2021) (concluding an inmate's arguments that his sentence was

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

unlawful were “not appropriately raised” through a motion for compassionate release and explaining that “sentences can be challenged on direct appeal or in the habeas forum”). Fourth, Grasso points to his age of sixty-two, hypertension, spinal-nerve deterioration and status as his eighty-seven-year-old mother’s only caretaker as reasons warranting his release. *See* (Third Mot. for Release ¶¶ 4, 15–17; Rep. to Gov’t’s Resp. to Third Mot. 2). The Court already rejected these reasons as neither extraordinary nor compelling. (Mem. Den. Second Mot. for Release 2–3.)

Finally, Grasso, who received two doses of the Pfizer COVID-19 vaccine in February and March, claims that vaccine’s purported waning efficacy and the government’s acknowledged need for booster shots—coupled with the Delta variant’s prevalence—amount to extraordinary and compelling circumstances supporting his release. But COVID-19’s “mere existence” and the possibility of it spreading “to a particular prison alone cannot independently justify compassionate release.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). And Grasso’s argument is weakened by his vaccination earlier this year. *See United States v. Hannigan*, No. 19-373, 2021 WL 1599707, at *5–6 (E.D. Pa. Apr. 22, 2021) (collecting district court cases in the Third Circuit finding that the protection provided by a COVID-19 vaccine such as Pfizer’s “reduces the risk of serious illness . . . to such a degree that the threat of the pandemic alone cannot present an extraordinary and compelling reason for compassionate release”).