

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Scott David Farah

Petitioner

10-cr-44-01-PB

V^{||}

United States of America

Respondent

Brief In Support Of Compassionate

Release Pursuant to 18 USC 3582(c)(1)(A)(i)

RECEIVED
US COURT OF APPEALS
FIRST CIRCUIT
CLERK'S OFFICE
2020 JAN 29 PM 2:08

Mr. Farah, "the Petitioner" in the above captioned matter, brings the appeal of the denial of his motion pursuant to 18 U.S.C. 582 (c)(1)(A)(i), because the District Court abused its discretion by not giving him an opportunity to respond to the government's opposition and not applying the law fairly. Moreover, the government misapplied and misunderstood the amended 3582(c)(1)(A).

Background

On April 2, 2019, Mr. Farah applied to the Warden at the Federal Correctional Institution at Loretto PA, where he is imprisoned. he requested that the Warden file a motion on his behalf for a reduction of his sentence or reduced the remainder of his sentence

to home confinement, based on his ailing father and the fact that he was sentenced based on information he provided to the government, in violation of U.S.S.G. 1B1.8(a).

On May 8, 2019, after more than 30 days had lapsed, the Warden responded stating that Mr. Farah's request was denied.

On May 21, 2019, Mr. Farah filed his motion pursuant to 18 U.S.C. 3582(c)(1)(A)(i).

The government objected to Mr. Farah's motion on August 5, 2019.

On August 6, 2019, one day after the government objected and five days before Mr. Farah received the copy of the government's objection in the mail, the District Court denied Mr. Farah's motion without giving him an opportunity to respond or to provide additional documentations which will prove "extraordinary and compelling reasons" he claimed warrant a reduction.

Jurisdiction

This court has jurisdiction pursuant to 28 U.S.C. 1291 and the District Court had jurisdiction pursuant to 18 U.S.C. 3582(c)(1)(A)(i).

Argument

Mr. Farah has been trying for many hears to have the District Court hear his claim concerning his sentence, because the District Court used the information he provided to deny him a sentence recommended by the government of 120 months, pursuant to a 5K1.1 motion. The district judge used the information he provided and departed upwards, in violation of U.S.S.G. 1B1.8(a) and that is Mr. Farah's first "extraordinary and compelling reason". See United States v. Conway 81 F. 3d. 15,16 (1st Cir. 1996) finding that "Defendant makes a colorable claim that his Fifth Amendment rights to due process and not to be made a witness against himself were violated when the court based its decision to deny downward departure and to give him the maximum sentence under the applicable guideline range, on self incriminating information he had divulged pursuant to a plea agreement to provide the government with substantial assistance in exchange for immunity and a motion for downward departure."

Mr. Farah's second "extraordinary and compelling reason" is that he needs to care for his elderly and ailing father, the government in its opposition stated that caring for an elderly parent is not extraordinary and compelling, but the government is plainly wrong. In United States v. Bucci LEXIS 178308(D. Mass 2019). Honorable Judge Young found otherwise..."Mr. Bucci's circumstances are similar to those that the Sentencing Commission specifically articulated as examples of "extraordinary and compelling reasons" in its policy guidance. See U.S.S.G. §1B1.3 n. 1. Mr Bucci is the "only caregiver," id § 1B1.13 n. 1(C)(ii), for an ailing, close

member of his family; his mother...This court sees no reason to discount this unique role simply because the incapacitated family member is a parent and not a spouse". This is exactly what the district court allowed the government to use as reasons to deny Mr. Farah an opportunity to be heard. The District Court has consistently denied Mr. Farah any opportunity to be heard, demonstrating biasness towards him consistently.

The Honorable and respected Judge Young further stated "While many inmates share the plight of having an incapacitated spouse or partner at home, the Sentencing Commission has made clear that courts ought to consider that circumstances an "extraordinary and compelling reason for compassionate release only when the defendant is the "only available caregiver" for an incapacitated parent (perhaps a more unique occurrence given the inmates may have siblings or other family members able to care for their parents), then, it is likewise an "extraordinary and compelling reason warranting compassionate release".

Congress never defined what constitutes "extraordinary and compelling other than that "rehabilitation of the defendant alone" is insufficient. 28 U.S.C. §994(t). Instead the statute directs the Sentencing Commission to promulgate "the criteria to be applied and a list of specific "extraordinary and compelling examples. The fourth criteria promulgated by the Sentencing Commission is a catch all provision that allows the BOP Director to determine "there exists in the defendant's case "extraordinary

and compelling reasons" other than, or in combination with the reasons described in subdivision (A) through (C) 1B1.13 9cmt n. 1 (D). "Extraordinary and compelling reasons" "need not have been unforeseen at the time of sentencing" §1 B1.13 cmt n. 2. And although "rehabilitation is not by itself and "extraordinary and compelling reasons the Commission implies that rehabilitation may be considered with other factors. See §1B1.13 cmt. n3.

Like Mr. Bucci, Mr. Farah explained to the court that his father is ailing and that he was the only available sibling to care for his father, the government claimed that Mr. Farah did not provide any documentary evidence to support such a claim but when he did the district court summarily denied his motion.

Some courts have held that the Current Policy Statement is not binding on courts with respect to compassionate release motion by a prisoner made after the First Step Act, because the policy statement only applies to motions filed by the BOP. See, e.g. United States v. Beck, 2019 U.S. Dist. LEXIS 108542, 2019 WL 2716505 at *5 (M.D.N.C. June 28, 2019) ("There is no policy statement applicable to motions for compassionate release filed by the defendants under the First Step Act. By its terms, the old policy statement applies to motion for compassionate release filed by the BOP Director and makes no mention of motions filed by defendants").

Therefore, the government's reliance under the Director of the

BOP's failure to determine that Mr. Farah's claim is "extraordinary and compelling" is flawed. Se Gov't Opp. at 3 ¶ 2.

Although the First Step Act may have made the policy statement not binding on the courts, notwithstanding that fact courts may still look at the policy statement for guidance. See United States v. York, 2019 U.S. Dist. LEXIS 119768, 2019 WL 3241166(E.D. Tenn. Jul. 18, 2019) ("While this particular policy statement has not yet be updated to reflect that defendants (and not just the BOP) may move for compassionate release, courts have universally turned to U.S.S.G. § 1B1.13 to provide guidance on the "extraordinary and compelling reasons" that may justify a sentence reduction".)

Mr. Farah Is NOT A Danger To The Comunity

The government relied solely on Mr. Farah's crime and conduct of conviction, notwithstanding the fact that he approached the government earlier on in the proceedings against him and assisted the government. Specifically the government stated:

The defendant's early acceptance of responsibility and his detailed explanations of how FRM and CLM operated, how he used the private lender component of FRM's business to operate a Ponzi scheme, and how he sustained that scheme through the use of an unsecured line of credit extended to him by Donald Dodge and drawn against private lender's funds without their knowledge or approval substantially assisted the United States in its investigation and prosecution of this matter. Specifically, it saved the United States valuable investigative resources and considerable time and gathering and analyzing evidence and permitted it to bring charges against the defendant Donald Dodge many months before it would have been able to without the defendant's assistance.

After making that statement concerning Mr. Farah the government now changes its tune that Mr. Farah poses a danger to the community, this unsubstantiated statement should not have been indisputably stella, he has had no disciplinary action taken against him by the Bureau of Prisons. Additionally, he is in charge of the GED program at Loretto PA where he prepares inmates for taking the exams, additionally he runs the prison ministry and teaches many other educational classes. He is serving his time in the lowest possibly custody level, a camp. The government will not allow anyone to serve time in a camp that is a danger to the community. Notwithstanding all of these accomplishments the government made a baseless claim that he is a danger to the community. If we should as a community never accepts a prisoner's rehabilitation than his sentence will never expire according to the government, it does not matter what he does, he is not entitled to any consideration that he may have changed. Notably, the same government stated that 120 months was a sufficient deterrent...so what has Mr. Farah done that the government thinks he is a danger to the community...it is in their own mind that they formulated his dangerousness.

Mr. Farah has already explained to the District Court where he intends to live, work and pay for his health insurance, something the district court ignored.

Conclusion

Mr. Farah asks that this court find that the District Court abused its discretion when it denied his motion by not giving him an opportunity to respond or defend his claim. Additionally that the government and the court misapplied and misunderstood the scope of the amended 3582. He asks that this court remands his motion to a different judge who could review his motion based on its merits and grant him the relief he requested 1) that the district judge used his information to depart upward at sentencing and 2) that the court finds it is "extraordinary and compelling" and reduce his sentence to take care of his elderly father.

Respectfully Submitted;



Scott David Farah

P.O. Box 1000

Cresson PA 16630

January 22, 2020

Certificate of Service

I, Scott Farah, hereby certify that I have mailed a copy of this motion to the clerk of courts for electronic filing and the government will be notified electronically.

Respectfully Submitted;



Scott Farah

Pro-Se

Affidavit

I, Scott Farah, do herin declare under penalty of perjury pursuant to 28 USC 1746 that on January 22, 2020, I did deliver to prison officials here at the Loretto Prison Camp, with first-class, pre-paid postage affixed a brief in support of compassionate release, in connection with case 10-cr-44-01-PB. The filing was addressed to:

United States Court of Appeals
John Joseph Moakley Courthouse
1 Courthouse Way
Suite 2500
Boston MA 02210

Executed on this 22nd day of January, 2020



Scott Farah

Table Of Authorities

First Circuit	Page #'s
United States v. Conway 81 F. 3d 15, 16 (1st Cir. 1996)	3
District of Massachusetts	
United States v. Bucci LEXIS 178308 (D. Mass 2019)	3
Other Districts	
United States v. Beck 2019 WH 27.6505 at *5 (M.D. N.C. June 28, 2019)	5
United States v. York 2019 U.S. Dist. LEXIS 119768, 2019 WL 3241166 (E.D. Tenn Jul. 18 2019).	6
Statute	
28 U.S.C. 1291	2
18 U.S.C. 3582	2
28 U.S.C. 994(t)	4
Sentencing Guidelines	
U.S.S.G. 1B1.8(a)	3
U.S.S.G. 1B1.13	3, 5, 6
U.S.S.G. 5K1.1	3

2020 JAN 29 PM 1:34

RECEIVED
US COURT OF APPEALS
FIRST CIRCUIT
CLERK'S OFFICE

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Scott David Farah

Petitioner

10-cr-44-01-PB

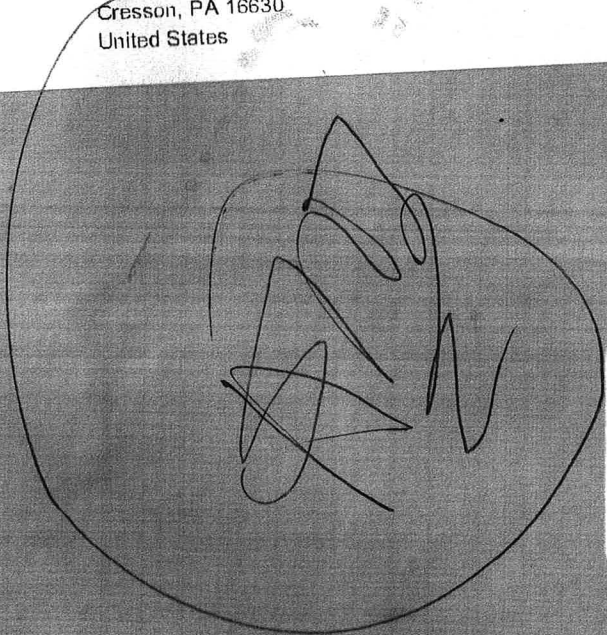
v/

United States of America

Respondent

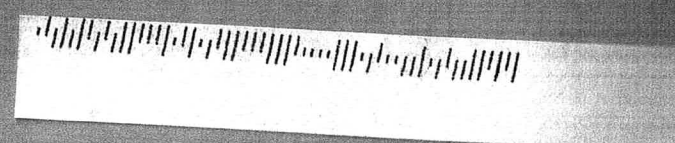
⇔ 11229-049 ⇔

Scott Farah
Fed I.D. #11229-049
Federal Correctional Institution
P.O. Box 1000*
Cresson, PA 16630
United States



⇔ 11229-049 ⇔

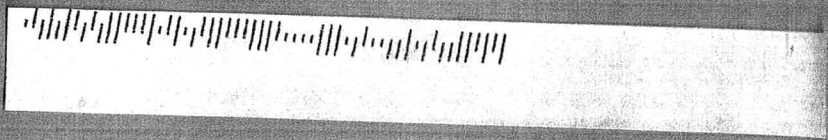
Us Court Of Appeals
John Joseph Moakley Court
1 Courthouse WAY
Suite 2500
Boston, MA 02210
United States





↔11229-049↔

Us Court Of Appeals
John Joseph Moakley Court
1 Courthouse WAY
Suite 2500
Boston, MA 02210
United States



**Federal Correctional Institution
PO Box 1000,
Cresson, Pa 16630**

"The enclosed letter was processed through special Mailing procedures for forwarding to you. The letter has neither been open nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, Please return the enclosure to the above address."

DATE: 1-23-20