

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

UNITED STATES OF AMERICA

v.

VICTOR GATES

**CRIMINAL ACTION
NO. 17-564**

MEMORANDUM OPINION

I. BACKGROUND

On April 9, 2019, Gates was sentenced to 40 months in prison for committing honest services mail fraud and making false statements. At sentencing, Gates indicated that he would be seeking bail pending appeal. His motion for bail pending appeal was denied, as was an appeal of that motion. *See United States v. Gates*, No. 19-2190 (3d Cir. June 5, 2020). Then, on February 17, 2020, Gates moved for compassionate release pursuant to 18 U.S.C. § 3582(c) and (d), on the basis that the Bureau of Prisons (“BOP”) had allegedly denied him access to medical testing and treatment for a respiratory condition. The government opposed Gates’s motion, citing Gates’s failure to exhaust the BOP’s internal administrative remedies for compassionate release requests, and the Court denied Gates’s motion. In the meantime, the Third Circuit also denied Gates’s appeal of his conviction. *United States v. Gates*, 2020 WL 1062195 (3d Cir. Mar. 5, 2020). Gates has since been diagnosed with lung cancer, and he now moves for compassionate release once more, on the basis of this diagnosis and of the dangers presented by COVID-19 to persons with underlying conditions. The government opposes Gates’s motion, again citing Gates’s failure to exhaust his administrative remedies.

II. DISCUSSION

The First Step Act's amendments to Section 3582(c) "allow incarcerated defendants to seek compassionate release from a court on their own motion, not just through the Bureau of Prisons." *United States v. Thorpe*, 2019 WL 6119214, at *1 (C.D. Ill. Nov. 18, 2019).

Specifically, Section 3582(c) "permits a [d]istrict [c]ourt to reduce sentences . . . on the ground that 'extraordinary and compelling reasons warrant such a reduction.' 18 U.S.C. § 3582(c)(1)(A)(i)," and the interpretative commentary to that section identifies "the defendant's medical condition" as a potentially "extraordinary and compelling" reason for release. *United States v. Handerhan*, 789 F. App'x 924, 925 (3d Cir. 2019).

Section 3582(c) does not, however, allow defendants to seek relief directly from the courts in the first instance. Rather, defendants must first "ha[ve] fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A). And, "[c]ourts have recognized [that] these two options impose a mandatory requirement that a defendant submit a request to the warden of [his] facility before filing in court." *United States v. Weidenhamer*, 2019 WL 6050264, at *2 (D. Ariz. Nov. 8, 2019) (citing *United States v. Solis*, 2019 WL 2518452, at *2 (S.D. Ala. June 18, 2019); *United States v. Dowlings*, 2019 WL 4803280, at *1 (S.D. Ga. Sept. 30, 2019)). In sum, a defendant seeking compassionate release must begin by making a request to the BOP, and if the BOP denies the defendant's request, then the defendant must administratively appeal such request before going to court; but, if the BOP does not respond to the defendant's request within 30 days, then the defendant may go to court without awaiting a denial or pursuing an internal appeal. *See id.* A defendant who fails to follow this

process is not entitled to relief under Section 3582(c). *See, e.g., United States v. Estrada Elias*, 2019 WL 2193856, at *2 (E.D. Ky. May 21, 2019) (explaining that the First Step Act “does not alter the requirement that prisoners must first exhaust administrative remedies before seeking judicial relief” and denying defendant’s motion on the basis of his failure to exhaust such remedies); *Solis*, 2019 WL 2518452, at *2 (denying request for compassionate release defendant had not “requested compassionate release from the BOP or otherwise exhausted his administrative remedies”).

Gates characterizes the government’s insistence that he exhaust his administrative remedies as “shocking” in light of “the Corona Virus situation [and] the serious medical conditions that [he] is now suffering.” The “problem” with going through the BOP, Gates explains, “is that the Warden and the prison have totally ignored [his] medical needs.” As such, “[his attorney] had to file this Motion for Mercy Release now because the prison has delayed, and if there is continued delay, this will remove any chance [Gates] might have of getting the appropriate medical care.” Though Gates notes that he has filed “repeated grievances” with the prison, he does not contend that any of these grievances constituted requests for compassionate release, or that he has internally appealed the prison’s denial of a such a request.¹ Gates has, however, appended to the instant motion a request for compassionate release made to the BOP on April 1, 2020 one day after he made his request to this Court. In closing, Gates argues that “[t]his is an emergency situation, and that is why it has to be brought directly to the Court.”

Gates, then, admits that he has failed to comply with Section 3582 but argues that the Court should consider the prison’s previous inattention to his medical needs as a constructive

¹ Gates attached one such grievance to his first motion for compassionate release. In that grievance, Gates alleged that the prison has denied him needed medical tests and treatment and seemingly requested medical attention, but he did not request release.

denial of compassionate release, or that the Court should ignore Section 3582's requirements because Gates's situation is critical and pressing. Gates does not, however, provide authority for the proposition that Section 3582(c) contemplates something short of actual compliance with its exhaustion requirements, notwithstanding a defendant's belief that his request to the BOP will be denied, or that his condition is uniquely exigent. Nor has Gates identified an ambiguity in the statutory language which would justify departure from the statute's plain text. *See Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001) ("Where the statutory language is plain and unambiguous, further inquiry is not required."). Indeed, Section 3582(c) is clear that "a court may not modify a term of imprisonment once it has been imposed *except that*" Section 3582(c)'s requirements have been satisfied. 18 U.S.C. § 3582(c) (emphasis added); *see also Engle v. United States*, 26 F. App'x 394, 397 (6th Cir. 2001) (explaining that a district court "may not modify a defendant's federal sentence based on the defendant's ill health" unless Section 3582(c)'s requirements had been met).

Because Section 3582's exhaustion requirements have not yet been met here, Gates's motion for compassionate release must be denied. However, such dismissal will be without prejudice, and if the BOP denies Defendant's request for compassionate release, he may refile once his administrative remedies have been exhausted.

An appropriate order follows.

April 3, 2020

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.

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AND NOW, this 3rd day of April 2020, upon consideration of Defendant's Second Motion for Mercy Release (ECF 131), the Government's Response thereto (ECF 132) and Defendant's Reply (ECF 133), **IT IS ORDERED** that Defendant's motion is **DENIED WITHOUT PREJUDICE**.

If the Bureau of Prisons denies Defendant's request for compassionate release, he may refile once his administrative remedies have been exhausted.

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.