

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

BILLY WAYNE MCCLINTOCK

Criminal Action No.

1:17-CR-237-ELR-1

GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION TO REDUCE SENTENCE

The United States of America, by Byung J. Pak, United States Attorney for the Northern District of Georgia, and Alex R. Sistla, Assistant United States Attorney, files this response to Defendant Billy Wayne McClintock’s Motion to Reduce Sentence for Compassionate Release Pursuant to 18 U.S.C.

§ 3582(c)(1)(A)(i) (Doc. No. 70, “3582 Motion”). McClintock is asking this court to grant him early release on account of his terminal illness. Because McClintock has established by credible evidence that he is suffering from a terminal illness, he has exhausted his administrative remedies, and does not present an ongoing danger to the safety of any person or the community, the government does not oppose McClintock’s motion.

In July 2017, following an investigation by the SEC and FBI, a grand jury in the Northern District of Georgia returned a seven-count indictment charging McClintock with one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349, and six counts of mail fraud, in violation of 18 U.S.C. § 1341. (Doc. 1). The charges arose from a multi-year Ponzi scheme operated by McClintock and an unindicted co-conspirator, Diane Alexander. While the scheme was ongoing, McClintock and Alexander defrauded hundreds of individuals out of

millions of dollars. In January 2018, a jury convicted McClintock of all seven charges. (Doc. 38). On June 28, 2018, this Court sentenced McClintock to a below-Guidelines sentence of 120 months' imprisonment and ordered that he pay approximately \$10.1 million in restitution. (Docs. 49, 52). The Court entered judgment on July 9, 2018 (Doc. 52). In April 2019, the Eleventh Circuit affirmed McClintock's convictions and sentence in an unpublished opinion.

On March 30, 2020, McClintock filed the present motion for compassionate release on multiple grounds, including the fact that he suffering from a terminal illness – myelo-dysplastic syndrome (a type of blood cancer) – and has less than 18 months to live. (3582 Motion at 2, 8-9.)¹ As relevant here, § 3582 provides that a court may reduce a defendant's sentence “after considering the factors set forth in [18 U.S.C. § 3553(a)] to the extent that they are applicable, 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.” 18 U.S.C. § 3582(c)(1)(A)(i). Section 3582 does not define what qualifies as an “extraordinary and compelling” reason, rather Congress delegated that responsibility to the United States Sentencing Commission. *See* 28 U.S.C. § 994(t). The Commission has explicitly identified that a defendant who suffers “from a terminal illness (*i.e.*, a serious and advance illness with an end of life trajectory),” including cancer, is one of several “extraordinary and compelling” reasons that may warrant a reduction in sentence or compassionate release. U.S.S.G. § 1B1.13, cmt. 1(A)(i) (noting that

¹ McClintock's motion is properly before the Court. The government agrees with McClintock that he has properly exhausted his administrative remedies. (*See* 3582 Motion at 6-8.)

such terminal illnesses include metastatic solid-tumor cancer, ALS, end-stage organ disease, and advanced dementia).

Having reviewed the medical records accompanying his motion, the government is satisfied that McClintock has substantiated that he suffers from a terminal illness with credible and undisputed evidence. McClintock has therefore established an “extraordinary and compelling reason” warranting the reduction of his sentence.

But a court may not reduce a defendant’s term of imprisonment, unless it also concludes the defendant is not a “danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” U.S.S.G. 1B1.13(2); *id.*, cmt. 1 (“Provided the defendant meets the requirement of subdivision (2), extraordinary and compelling reasons exist under an of the circumstances set forth below[.]”). Given McClintock’s medical condition, relatively advanced age, and the amount of time that has passed since the criminal conduct underlying his convictions occurred, the government does not believe that McClintock poses an ongoing danger to the safety of any person or the community. There is no evidence that McClintock engaged in any additional criminal conduct after the SEC and FBI began investigating him in 2012. Moreover, McClintock complied with the conditions of his pre-trial bond, which suggests that he would be amenable to whatever conditions the Court may impose if it grants his motion for release.

The government acknowledges that the Court’s decision must be made – to the extent they are applicable – against the backdrop of the § 3553(a) factors. *See* 18 U.S.C. § 3582(1)(A). The relevant factors, however, largely overlap with those

set forth in § 3142(g) in terms of evaluating the ongoing dangerous of the defendant. *Compare* 18 U.S.C. § 3553(a)(1), (2)(A), (2)(C) *with* 18 U.S.C. § 3142(g)(1), (2), (3)(A), (3)(C). Accordingly, for essentially the same reasons that McClintock no longer poses a threat to the safety of any individuals or the community, the § 3553(a) factors do not weigh in favor of keeping McClintock incarcerated in light of his terminal illness.

The government therefore does not oppose McClintock's motion for compassionate release.²

On this 17th day of April, 2020.

Respectfully submitted,

BYUNG J. PAK
United States Attorney

/s/ ALEX R. SISTLA
Assistant United States Attorney
Georgia Bar No. 845602
alex.sistla@usdoj.gov

² In an effort to comply with its obligations under the Crime Victims' Rights Act, 18 U.S.C. § 3771, the government attempted to notify the victims of McClintock's offenses regarding his present motion. Depending on the contact information available, the government notified the victims by sending an email, by calling them, and/or by sending a letter. As of the time of this filing, the government has received responses from approximately 25 victims, including several emails expressing their views. The victims who have responded have expressed a mixture of views – approximately 1/3 oppose McClintock's release; 1/3 do not oppose his release, and 1/3 are either indifferent or do not recall the specifics of his case. The government will forward to the Court's deputy courtroom clerk (with copy to defense counsel) copies of all email correspondence it has received thus far. The government will supplement if it receives any further correspondence.

CERTIFICATE OF COMPLIANCE AND SERVICE

This is to certify that the foregoing document was formatted in accordance with Local Rule 5.1C in Book Antiqua font, 13-point type, and that the undersigned has on this date provided a copy of the foregoing document by filing it electronically using the CM/ECF system, which automatically notifies all counsel of record of this filing.

April 17, 2020

/s/ ALEX R. SISTLA

ALEX R. SISTLA

Assistant United States Attorney