

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 18-40105-04-JTM

TOYA AVERY,
Defendant.

MEMORANDUM AND ORDER

The matter is now before the court on defendant Toya Avery's motion for compassionate release (Dkt. 147) under the First Step Act and 18 U.S.C. § 3582(c)(1)(A). Avery seeks a reduction of her sentence to time served, in light of her physical condition (Hidradenitis Suppurativa, a chronic skin condition causing abscesses; an undiagnosed and possibly malignant mass on her neck; obesity; hyperthyroidism and Hepatitis C) and the risk she faces from the COVID-19 virus. The defendant has the burden to show she should be released under § 3582. *United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016). Even if a defendant otherwise shows that "extraordinary and compelling" reasons support a release, she must demonstrate that such a result is consistent with the sentencing factors set out in 18 U.S.C. § 3553(a). The defendant's motion is not opposed by the United States, and the defendant represents (Dkt. 147, at 14) that the United States Probation Office has approved her plan of release under which she would live with her mother.

From the material submitted to the court, it concludes that Avery faces a substantial risk from the COVID-19 virus, and has presented compelling reasons for a potential compassionate release. Further, the court finds that a time-served sentence is consistent with the relevant Section 3553 factors. Avery was convicted of her participation in an attempt to transport drugs across the country, but the evidence did not show a continuing drug enterprise, and the offense did not involve any actual violence or potential violence arising from the possession of any firearm. Finally, the defendant has served a substantial portion of her 30 month sentence.

IT IS ACCORDINGLY ORDERED this day of September, 2020, that the defendant's Unopposed Motion for Compassionate Release (Dkt. 147) is hereby granted and her sentence of imprisonment is reduced to time served; defendant's earlier *pro se* Motion (Dkt. 144) is denied as moot in light of the present Order.

J. Thomas Marten
J. Thomas Marten, Judge