



**U.S. Department of Justice**

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November 6, 2020

Via ECF

The Hon. Joel H. Slomsky  
United States District Judge

Re: United States v. Troy Wragg  
Crim. No. 15-398

Dear Judge Slomsky:

On July 16, 2020, this Court denied the motion of defendant Troy Wragg for compassionate release, under 18 U.S.C. § 3582(c)(1)(A)(i). In a 23-page opinion, the Court held that the medical conditions presented by the defendant (epilepsy, non-pulmonary hypertension, hyperlipidemia, mild obesity, and mental health issues) did not place him at significant risk for an adverse outcome were he to contract COVID-19. The Court further held that release is not warranted in any event upon consideration of the 3553(a) factors, stating:

Finally, the relevant Section 3553(a) factors do not support Defendant's release to home confinement. First, the Court has examined the nature and circumstances of the offense and Defendant's history and characteristics. See 18 U.S.C. § 3553(a)(1). Defendant was convicted of serious crimes, including wire fraud, securities fraud, and conspiracy, that resulted in the imposition of a 22-year sentence. (Doc. Nos. 1, 300.) Although Defendant's crimes were nonviolent, his fraudulent endeavors resulted in the theft of over \$54 million and devastated the lives of hundreds of victims. (Id.) Defendant also has shown a tendency to continue criminal activity, given that he committed an additional fraud while on pretrial release for the Mantria Ponzi scheme.

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Second, the Court has considered whether Defendant's proposed release reflects the seriousness of the offenses, promotes respect for the law, provides just punishment, affords adequate deterrence, and protects the public from further crimes by the Defendant. See 18 U.S.C. § 3553(a)(2). Defendant has served less than 2 years of a 22-year sentence for serious crimes. Allowing Defendant to finish the majority of his sentence at home would in no way reflect the egregious nature of his crimes, promote respect for the law, or provide just punishment. Additionally, given Defendant's history, there is no assurance that Defendant would be deterred from engaging in yet another fraud while on release.

Opinion (docket no. 307) at 21-22.

Wragg filed an appeal of this decision, which is pending in the Third Circuit at No. 20-2566.

On November 2, 2020, Wragg filed a new motion in this Court for compassionate release (docket no. 323). There, he asserts that his health has worsened, and that he tested positive for COVID-19 at FCI Fort Dix on October 29.

This Court does not have authority at this time to grant the motion, given the pending appeal. At most, it may issue an "indicative" ruling under Federal Rule of Criminal Procedure 37(a), or simply deny it. *United States v. Tartaglione*, 2020 WL 3969778, at \*2 (E.D. Pa. July 14, 2020) (Slomsky, J.).

Here, the government submits that no action granting relief should be taken, given the fact that Wragg is currently positive for COVID-19. Release should not occur in that circumstance, to protect public health, and the issue may be addressed after he recovers. *See, e.g., United States v. Bobroff*, 2020 WL 4271712, at \*3 (D. Colo. July 24, 2020) (release is not warranted where inmate tested positive and is being treated; "releasing Mr. Bobroff under the present circumstances would create a risk of infection for individuals who come into contact with him, such as his family members and Probation Office employees."); *United States v. Gates*, 2020 WL 3159184 (S.D. Miss. June 12, 2020) (inmate tested positive; "given his diagnosis, moving Gates out of quarantine and releasing him could pose additional risks to those with whom he comes into contact"); *United States v. Orozco*, 2020 WL 4201846, at \*1 (D.N.M. July 22, 2020) ("A positive test by itself does not, however, qualify as a medical condition that provides an extraordinary and compelling reason for a sentence reduction.").

The government will provide further briefing at the direction of the Court. But for now, we present additional information for the Court's benefit regarding the current circumstances.

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Prior to the COVID-19 diagnosis, there was no significant change in the defendant's medical situation. Now 39 years old, his condition of epilepsy (which is not a CDC risk factor related to COVID-19) remains his principal complaint. His most recent consultation regarding epilepsy was on October 7. At that time, the doctor wrote:

Troy Wragg is a 38-year-old male with a history of epilepsy, which was diagnosed many years ago. His epilepsy is poorly controlled, and he has very frequent seizures. The seizures can occur nocturnally as well as during the day. He has generalized convulsions and also appears to have occasional staring episodes. He states that as an outpatient in the past, he was better-controlled on a very high dose of Keppra 6000 mg daily. He does seem to have tolerated this. Since incarceration, he has been on a lower dose of Keppra and has also had lamotrigine and valproic acid added. He states that these have not been effective.

The doctor prescribed:

1. Increase Keppra to 2000 mg b.i.d. [twice a day] for one week, then 3000 mg b.i.d.
2. Taper and discontinue valproic acid over two weeks.
3. Continue Lamictal 100 mg daily. We will likely further titrate as required.
4. I suggest allowing the use of a wheelchair to prevent injury if possible.
5. He should follow up with me in one month.

Then, an outbreak of COVID-19 occurred at FCI Fort Dix. The institution had been largely successful in warding off the virus for over seven months, but then an outbreak occurred in late October in one specific unit (no. 5812). As of this writing, 214 inmates – nearly all of the inmates on that unit – have tested positive, and been isolated while they are treated/recover. In addition, another four inmates in a separate housing unit have tested positive. There has been no positive case anywhere else in the institution. Wragg was held in unit 5812, and he tested positive on October 29.

He is being monitored carefully, and the records suggest a mild case as of this writing. On October 31, he reported fatigue and body aches. On November 1, he reported no symptoms. On November 2, he again reported fatigue and body aches, along with loss of taste or smell, and nausea. Then on November 3 and 4, he reported no symptoms.

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Throughout, his vital signs have been good, including his oxygen saturation rate. At present, he is treated only with acetaminophen.

Again, the government will provide further briefing at the Court's direction, or at a later date after the appeal is concluded and if Wragg again seeks relief. It is very likely that the government will again oppose relief, for the reasons stated in the Court's earlier opinion. A vast number of courts has denied relief following an inmate's recovery from COVID-19, given that there is no scientific evidence of likely reinfection. *See, e.g., United States v. Risley*, 2020 WL 4748513, at \*6 (E.D. Cal. Aug. 17, 2020) ("Courts generally find that the risk of a second infection does not constitute sufficiently compelling grounds to justify compassionate release."); *United States v. Billings*, 2020 WL 4705285, at \*5 (D. Colo. Aug. 13, 2020) ("At this point, however, the possibility of reinfection, if not impossible, is strictly hypothetical. That uncertainty militates against an entitlement to compassionate release. . . . Indeed, in other cases where inmates have recovered from COVID without lingering symptoms, courts have found the theoretical risk of reinfection does not present a compelling reason warranting compassionate release.") (citing cases)). And the 3553(a) factors will continue to strongly militate against relief for the reasons this Court has articulated.

Respectfully yours,

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cc (via ECF): Todd M. Mosser, Esq.