

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, <i>Plaintiff,</i>)	No. 1:13-CR-00115-RA-1
)	
v.)	James Tagliaferri’s
)	Motion for Expedited
JAMES TAGLIAFERRI, <i>Defendant.</i>)	Reconsideration of Motion
)	for Sentence Reduction
)	

Defendant James Tagliaferri, through counsel retained *pro bono*, respectfully moves this Court for expedited reconsideration of his previously filed motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by § 603(b)(1) of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194, 5239 (Dec. 21, 2018). Because Tagliaferri was recently transferred to a halfway house by the Federal Bureau of Prisons, this Court denied his motion “as moot.” Docket Entry 248. For the reasons discussed below, Tagliaferri’s motion is not moot. And, because Tagliaferri is eighty years old with failing eyesight, numerous other ailments, and less than one year remaining on his sentence, Tagliaferri respectfully requests expedited reconsideration of his motion for a sentence reduction.

I.

For eighty-year-old James Tagliaferri, every day matters. Having completed the great majority of his prison term, Tagliaferri seeks one small remedy that

Congress has provided for cases just like his: the opportunity to commence his term of community supervision early—at home, with the support of his partner Murna Byron—rather than spending the next several months (up to nearly a year) at a halfway house. In his previously filed motion, Tagliaferri specifically requested such a remedy. Docket Entry 237, Motion, at 1 (“Tagliaferri thus asks this Court to reduce his term of imprisonment to time served, and to release Tagliaferri so that Tagliaferri may begin his term of supervised release.”). In support, Tagliaferri spelled out his medical and other circumstances justifying the sentence reduction, none of which was seriously contested by the Government. *Id.* at 6–16.

It is true that, in the past week, Tagliaferri has been transferred to a halfway house: Dismas Charities, 300 Wendell Ct. SW, #300, Atlanta, GA 30336. But Tagliaferri has learned that, according to the halfway house administration, he is not even *eligible* for home detention until February 13, 2020. (The undersigned called the halfway house but was told by Tagliaferri’s counselor that she was unable to share any release information over the phone; the undersigned will update this Court should Tagliaferri’s status change.) Moreover, as discussed in Tagliaferri’s reply that was filed in support of his previously filed motion, even if Tagliaferri is released to home detention (whether within a few days or some time next year), his motion is *still* not moot, because the relief Tagliaferri seeks is the

termination of his sentence so that he can commence his term of community supervision. Docket Entry 245, Reply, at 7.

As long as Tagliaferri is serving his six-year term of incarceration—whether in BOP custody at a halfway house, or in constructive custody via the BOP Elderly Home Detention Program—Tagliaferri’s motion is not moot, because Tagliaferri seeks the *reduction* of his sentence. *See Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (a case is moot only when a party “no longer ha[s] a legally cognizable interest in the result”); *Lillbask v. Conn. Dep’t of Educ.*, 397 F.3d 77, 89–90 (2d Cir. 2005) (a case is not moot where the remedy sought remains available). Tagliaferri remains in BOP custody at the halfway house in Atlanta; his motion requesting a sentence reduction is not moot.

II.

Tagliaferri agrees with the Government that the Crime Victims Rights Act requires notification of a “public proceeding” pertaining to sentencing. There is no need, however, for this Court to hold a public proceeding in order to grant Tagliaferri’s requested relief. After all, there is no serious factual dispute about the nature of Tagliaferri’s medical conditions, his age, or his completion of the great majority of his sentence. Furthermore, now that BOP has permitted Tagliaferri to be transferred to a halfway house, there is no longer an incapacitation/public safety interest in denying Tagliaferri’s motion. Although the Government argues that

transfer to a halfway house counsels in favor of denying relief, it does the opposite: if there is no longer a need to keep Tagliaferri incarcerated (as BOP's actions reveal), then why not permit him to commence his term of supervised release and, for example, obtain much-needed medical care such as treatment for his macular degeneration and cataracts. Tagliaferri continues to suffer from deteriorating eyesight and has not yet been permitted to see an ophthalmologist while at the halfway house.

In short, there is no need for a public proceeding in order to grant Tagliaferri's requested relief. Nor have other courts seen the need to hold such a hearing. *See United States v. Richard Evans*, No. 4:15-cr-00015, Docs. 427, 428 (S.D. Tex. Mar. 13, 2019) (unpublished order entered five days after filing of motion seeking sentence reduction, granting reduction of sentence to time served without holding a hearing); *United States v. McGraw*, No. 2:02-cr-00018, 2019 WL 2059488, at *1-2 (S.D. Ind. May 9, 2019) (granting motion reducing sentence to time served after taking numerous written submissions but without holding a hearing).

III.

Tagliaferri still faces a three-year term of supervised release, during which Tagliaferri will be restrained in his liberty to the extent that this Court directs. All Tagliaferri seeks is the opportunity to start that term of supervised release now,

rather than some time next year, because of Tagliaferri's pressing health issues such as his rapidly failing eyesight. The Government's letter filed on October 25, 2019, proposes a multi-step litigation process that, as it is certainly aware, would span many months if not the entire remaining duration of Tagliaferri's sentence. If such a process became the norm, then the First Step Act's compassionate-release provisions would be essentially meaningless for any elderly defendant who sought the small remedy of a one-year (or in this case, less than one year) sentence reduction.

In sum, Tagliaferri respectfully moves this Court to reduce his sentence to time served and to release Tagliaferri from confinement so that Tagliaferri may commence his term of supervised release. In the alternative, Tagliaferri requests that this Court convert his remaining sentence to a sentence of home confinement, such that Tagliaferri may reside with his partner Murna Byron, but permit Tagliaferri to leave his residence for the purpose of necessary life activities such as seeking medical care, obtaining medical insurance and social-security benefits, and participating in religious activities. Because of Tagliaferri's advanced age and medical conditions, Tagliaferri respectfully requests an expedited ruling on this motion.

Respectfully submitted,

/s/ Kyle Singhal

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Counsel for James Tagliaferri

CERTIFICATE OF SERVICE

I certify that on October 29, 2019, I electronically filed this motion with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Kyle Singhal

Kyle Singhal

Counsel for James Tagliaferri