

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2562

UNITED STATES OF AMERICA

v.

GERALD WELCH,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:12-cr-00076-008)
District Judge: Honorable Paul S. Diamond

Submitted on Appellee's Motion for
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 3, 2026
Before: SHWARTZ, FREEMAN, and CHUNG, *Circuit Judges*

(Opinion filed September 21, 2026)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Gerald Welch, a federal prisoner proceeding pro se, appeals the District Court’s denial of his motion for compassionate release. We will summarily affirm.

I.

In 2015, Gerald Welch pleaded guilty to one count of conspiracy to distribute five or more kilograms of cocaine and one count of possession with intent to distribute five or more kilograms of cocaine. *See* 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846. His presentence report indicated a prior state court conviction for felony possession with intent to distribute—for which he was sentenced to 1-2 years in prison—and another state court conviction for felony gunpoint robbery. Then-current federal law mandated a 20-year minimum sentence because of Welch’s prior drug felony. 21 U.S.C. § 841(b)(1)(A) (2012). Because of his two prior convictions, Welch qualified as a career offender under the sentencing guidelines, and his guidelines range was 262-327 months. The District Court imposed a sentence of 240 months.

Welch has been in custody since November 2012, and now seeks to appeal the denial of his second motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i).¹ The Government’s first motion for summary affirmance was denied and the appeal was stayed, pending the Supreme Court’s decision in *Rutherford v. United States*, No. 24-820 and *Carter v. United States*, No. 24-860 (cert. granted in both June 6,

¹ Although Welch’s notice of appeal appeared to have been untimely filed, the Government does not dispute Welch’s late receipt of the District Court’s order or “object to the timeliness of the appeal.” C.A. Doc. 5, at 1 n.1. Accordingly, as we noted previously, *see* Order of Feb. 19, 2026, we will consider the merits of this appeal. *See United States v. Muhammad*, 701 F.3d 109, 111 (3d Cir. 2012) (explaining that the governing time limitation is not jurisdictional and thus “may be waived”).

2025). After the Supreme Court issued its decision on May 28, 2026, *see Rutherford v. United States*, 146 S. Ct. 1320 (2026), the Government filed a renewed motion for summary affirmance, and the Court lifted its stay of the appeal.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a District Court’s order denying a motion for compassionate release for abuse of discretion and will not disturb that decision unless the District Court “committed a clear error of judgment.” *United States v. Pawlowski*, 967 F.3d 327, 330 (3d Cir. 2020) (citation omitted). Upon review, we will summarily affirm because the appeal fails to present a substantial question. *See* 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

III.

Under 18 U.S.C. § 3582(c) a defendant can move for a reduction in sentence if “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i). Welch first contended that, because the 2018 Farm Bill modified the federal Controlled Substances Act to exclude hemp, while Pennsylvania state law does not exclude hemp, Pennsylvania law criminalizes conduct not included in the federal statute. As a result, he argued that his state offense should not count as a predicate offense for either the Guidelines’ career-offender provision or § 841’s recidivism provision.

The District Court correctly rejected Welch’s career-offender enhancement argument, because we have held that a “controlled substance” under the relevant section of the Sentencing Guidelines is a drug regulated by *either* state or federal law, and thus it

does not matter if marijuana was more broadly defined under the Pennsylvania state law. *See United States v. Lewis*, 58 F.4th 764, 771 (3d Cir. 2023).

The claim related to § 841 also fails because, under § 841, a predicate offense for sentence enhancement is a “serious drug felony” as defined in 18 U.S.C. § 924(e)(2)(A), and the Supreme Court has held that “under § 924 past state drug possession offenses may qualify as [predicate offenses] if the federal and state schedules matched when the state crimes occurred.” *Brown v. United States*, 602 U.S. 101, 120 (2024). Since the federal and state definitions of marijuana matched when Welch’s crimes occurred, he has not established any “extraordinary and compelling” reasons that warrant a sentence reduction, because his state conviction remains a valid predicate offense upon which his § 841 mandatory minimum sentence was enhanced, regardless of any subsequent changes to federal law.

Welch also claimed that he is entitled to compassionate release because the First Step Act of 2018 reduced the mandatory minimum sentence for violations such as his under § 841(b)(1)(A) from 20 to 15 years. However, his claim is foreclosed because we, as well as the Supreme Court, have concluded that the Act’s change to the mandatory minimum cannot constitute “extraordinary and compelling circumstances” in this context.² *See Rutherford*, 120 F.4th at 376, 380; *Rutherford*, 146 S. Ct. at 1326 (stating,

² Although the *Rutherford* cases specifically considered the language of Section 403 of the First Step Act, and the changes Welch relies upon in his compassionate-release motion were enacted by Section 401 of the First Step Act, Section 401 contains the same non-retroactive language as Section 403. *See id.*; *see* Pub. L. No. 115-391, § 401(c), 132 Stat. 5194, 5221 (2018) (“This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a

“the sentencing disparity created by Congress’s nonretroactive change to § 924(c)’s mandatory penalties [cannot] serve as an extraordinary and compelling reason that warrants a reduction”).

For these reasons, we will summarily affirm the judgment of the District Court.

sentence for the offense has not been imposed as of such date of enactment.”).