

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	Case No.: 19-10438
)	
DECLAN HARRINGTON, et. al.,)	
)	
Defendants.)	
_____)	

DEFENDANT’S SENTENCING MEMORANDUM

Defendant, Declan Harrington, by and through his counsel, hereby submits his Sentencing Memorandum for the Court’s consideration and requests a sentence, as calculated and reviewed pursuant to 18 U.S.C. §§ 3553 and 3661, that is sufficient but not greater than necessary to achieve the statutory goals of sentencing.

The facts and circumstances of this case and the history and character of Mr. Harrington call for a sentence of 24 months of incarceration on Count 11, followed by 12 months of supervised release; time served on Counts 1-5, 9-10, followed by 24 months of supervised release, to be served concurrently with the 12 months supervised release under Count 11. The recommended sentence is consistent with the government’s sentencing recommendation.

I. Overview

A. Introduction

An analysis of each of the factors enumerated in 18 U.S.C. § 3553(a), including the specific offense conduct, Harrington’s background and history, the need for deterrence, the prospect of recidivism, the impact on innocent third parties, and the direction of Congress to avoid sentencing disparities with similarly situated defendants supports a the recommended sentence. The sentence

would best achieve the objectives listed in 18 U.S.C. § 3553(a)(2), as it would reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public. Such a sentence would also satisfy 18 U.S.C. § 3553(a)'s parsimony clause, which requires that the sentence be "sufficient but not greater than necessary" to accomplish the stated goals of sentencing.

B. Statement of Facts

Declan Harrington pled guilty to one count of Conspiracy to Commit Computer Fraud and Abuse and Wire Fraud in violation of 18 U.S.C. § 371, and 18 U.S.C. § 1343; five counts of Wire Fraud in violation of 18 U.S.C. § 1343; one count of Computer Fraud and Abuse in violation of 18 U.S.C. § 1030(a) and 18 U.S.C. § 1030(c)(2)(B)(ii); and one count of Aggravated Identity Theft in violation of 18 U.S.C. § 1028A. The underlying conduct took place between November 5th, 2017, to November 13th, 2019. Co-Defendant Eric Meiggs, others, and Harrington conspired to steal cryptocurrency using a process called "SIM-swapping." "SIM-swapping" is when a cell phone's phone number is reassigned from one phone to another, without the authorization of the cell phone carrier or the person who controls the number.

Meiggs would identify potential "SIM-swap" victims who own large amounts of cryptocurrency and he would then relay this information online to others. Harrington's role in the conspiracy was to serve as one of the Sim-swappers and take over phones that would receive the victims' authentication information. That information would then get relayed to Meiggs and others. Meiggs and others who would use it to access their victims' cryptocurrency accounts and social media accounts. Meiggs, others, and Harrington would share the profits from successful "SIM-swaps." The Presentence Investigation Report ("PSR") identified that a total amount of \$330,000 was stolen by Meiggs and others using this process.

II. Application of the 18 U.S.C. § 3553(a) Sentencing Factors

A. History and Characteristics of Declan Harrington

Harrington is a 22-years-old young man. He comes before the Court with no criminal record. He was born and raised in Massachusetts. Although he enjoys strong family support, he has had a difficult childhood marred by excessive alcohol abuse by his biological father and physical abuse by his stepfather. The turbulent condition at home caused him to run away from home at age 16. He was previously diagnosed with Asperger's syndrome, Attention Deficit Hyperactivity Disorder, and Attention Deficit Disorder. He was taking medication until about the end of 2018.

Beginning from age 13 until his arrest in this case, Harrington used marijuana on regular basis. He had but one relapse during his pretrial release and has managed to avoid using marijuana in the past three years.

Harrington attended Rockport High School until 12th grade but did not graduate. He is interested in obtaining his GED.

Since September 2019, Harrington has worked full-time at Shirts Illustrated in Salem as a printer press operator. He often works over-time exceeding 40 hours every week. Prior to his current employment, he has worked as a driver for UPS and a temporary worker as a masonry assistant at a chimney repair company.

1. Responsibility for Offense Conduct

Harrington acknowledges the harm he has caused to the victims of his crime. He has taken the first step by taking full responsibility for his conduct. He acknowledges his poor choices and poor judgment. As evidenced by his conduct in the past three years, he is committed to improving his life and bettering himself.

2. Harrington Has Made Significant Progress Since His Arrest

Harrington has maintained a consistent, gainful employment since September 2019. He has managed to remain drug free, except for a single episode of relapse. He has complied fully with the conditions of his release for three years. He has demonstrated he can lead a crime-free life while making a positive contribution to society. Harrington plans to earn his GED and obtain vocational skills while serving his sentence.

III. The Kinds of Sentences Available

Although the base offense level is only 7 points, the adjusted offense level is 27 after the application of various enhancements. The enhancements were applied based on the overall conspiracy that involved several people. As such, it did not fairly and accurately capture the specific conduct of Harrington. While the enhancements were technically applicable, the result exaggerated Harrington's role in the offense. For example, the 12-level enhancement was based on a loss amount of \$330K, the amount involved in the overall conspiracy. Despite Harrington limited role, he is subjected to the same 12-level enhancement as co-defendants who played significant or major roles.

After the 3-level reduction for acceptance of responsibility and based on Criminal History Category I, the PSR provided a guideline range of 51-63 months.

1. Mr. Harrington Should Qualify for a 2-Point Minor Role Reduction

Harrington should qualify for a 2-point minor role reduction pursuant to USSG § 3B1.2(b). His involvement in the conspiracy was limited than others. The amount of money he obtained from the criminal conduct was also limited. The comparatively minor role Mr. Harrington played within the overall conspiracy supports a reduction of the offense level by 2 points.

IV. The Need for a Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence, and Protect the Public from Further Crimes.

1. Harrington is not Likely to Reoffend

The Sentencing Commission has determined that **93.2%** of offenders who had never before been arrested did *not* recidivate. *Id.* “*Recidivism and the First Offender*,” available at: http://www.ussc.gov/Research_Publications/Recidivism/200405_Recidivism_First_Offender.pdf. The Commission found a defendant’s lack of criminal history is a significant factor that a court should take into account at sentencing. Harrington has zero criminal history point. The Sentencing Commission’s recidivism study established that offenders with zero criminal history points have a lower recidivism rate than offenders with one criminal history point, and that offenders with zero criminal history points and no prior contact with the criminal justice system have an even lower recidivism rate. *See* Tracey Kyckelhahn & Trishia Cooper, U.S. Sentencing Comm’n, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* at 6–9(2017) (https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf).

Finally, Harrington meets the definition of a “non-violent first offender” under the new amendment to the Sentencing Guideline. The new application note defines a “nonviolent first offender” as a defendant who (1) has no prior convictions or other comparable judicial dispositions of any kind; and (2) did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense.” Harrington meets this criteria and, by all measures, poses the very minimal risk of reoffending. In fact, given the horrifying experience of being in prison for the first time and the enormity of the consequences he faced as a result of this case, he will be extra vigilant and meticulous in the future in following

the law in all aspects of his life. In fact, he has already demonstrated he is capable of doing just that by his conduct while on pre-trial release.

A. Other Factors

In arriving at a fair and just sentence, the Court is required to consider the statutory factors under 18 U.S.C. § 3553(a) and may also consider other factors relevant to his sentencing.

1. Incarceration is More Significant for a “First Offender” than Upon a Repeat Offender

The Court can, and should, consider the fact that prison time is more significant for a “first offender” than it is upon a repeat offender who has previously served time in prison. This is a proper factor to consider under 18 U.S.C. § 3553(a). In *United States v. Baker*, 445 F.3d 987 (7th Cir. 2006), the Court held that a 78-month prison term would mean more to Baker, convicted of child pornography, than to a defendant who had been previously imprisoned. *Id.* The Seventh Circuit also noted this factor is consistent with 18 U.S.C. § 3553’s directive that this sentence reflect the need for “just punishment” and “adequate deterrence.” *Id.*

In *United States v. Willis*, 479 F.Supp.2d 927 (E.D.Wis. 2007), the district court sentenced Willis to one year and one day of imprisonment instead of the 120 months recommended by the sentencing guidelines, in part, on a finding that the “sentence provided a substantial punishment for someone like [Willis], who had never before been to jail and who engaged in no violence.” *Willis*, 479 F. Supp. 2d at 937. Likewise, in *United States v. McGee*, 479 F. Supp. 2d 910 (E.D. Wis. 2007), the district court imposed a sentence for heroin distribution below the advisory Guidelines range, in part, because McGee “had never before been to prison and ‘[g]enerally a lesser period of imprisonment is required to deter a defendant not previously subject to lengthy incarceration than it is necessary to deter the defendant who has

already served serious time yet continues to re-offend.” *McGee*, 479 F. Supp. 2d at 912 (*quoting United States v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005)).

Harrington asks this Court to take into account that he has *never* before been imprisoned for any length of time.

V. Conclusion

Harrington respectfully submits that upon analysis of each of the factors enumerated in 18 U.S.C. § 3553(a), including the specific offence conduct, Harrington’s background and history, the need for deterrence, the prospect of recidivism, the impact on innocent third parties, and the direction of Congress to avoid sentencing disparities with similarly situated defendants supports a sentence of 24 months of incarceration on Count 11, followed by 12 months of supervised release; time served on Counts 1-5, 9-10, followed by 24 months of supervised release, to be served concurrently with the 12 months supervised release under Count 11.

Declan Harrington,
By his counsel

/s/ Derege B. Demissie

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 18, 2022.

/s/ Derege B. Demissie
DEREGE B. DEMISSIE