

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
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) 1:19-cr-10438-GAO
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ERIC MEIGGS)

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

When Eric Meiggs pled guilty nearly 18 months ago, he did so fully aware that he would be required to serve a sentence of at least two years in federal prison for his conviction on Count 11, Aggravated Identity Theft under 18 U.S.C. § 1028A. Despite that mandatory sentence, particularly significant for a slight, 24-year-old with no prior criminal record whatsoever, Mr. Meiggs chose to participate in the Court’s rigorous pre-sentencing rehabilitation program, RISE (Repair, Invest, Succeed, Emerge). His RISE participation required him to put in the work to make significant changes to his lifestyle even though, unlike any other of the dozens of RISE participants, he had no hope of avoiding incarceration altogether. That Mr. Meiggs made those changes shows that he is truly committed to the rehabilitation that began even before his arrest in this case.

Now four-and-a-half years removed from his offending, Eric Meiggs stands ready to be sentenced. Based on the specific and unusual sentencing factors in this case, the defense recommends a sentence of two years incarceration to be followed by a period of supervised

release. Such a sentence will accomplish the statutory sentencing factors of 18 U.S.C. § 3553(a), including just punishment, promotion of respect for the law, specific and general deterrence, protection of the public, and the continuation of Mr. Meiggs' rehabilitation. Two years in federal prison is a sentence that is "sufficient, but not greater than necessary" to achieve the goals of sentencing. 18 U.S.C. § 3553(a). In this case, with this defendant and on these facts, such a sentence will accomplish the Court's task of imposing one that is "*minimally* sufficient to achieve the broad goals of sentencing." *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008) (emphasis added).

II. Eric Meiggs' tragic childhood left him isolated and living his life on-line, where he learned and engaged in antisocial behavior.

Eric Meiggs was born into an abusive household. His biological father physically abused him, his brother, and their mother. PSR ¶ 55. As a result, his mother took the children and fled, divorcing their father when Eric was approximately seven years old. *Id.* Mr. Meiggs' biological father never attempted to repair the relationship and the two had no contact throughout his childhood. PSR ¶ 53. The experience was so painful that Mr. Meiggs declined to make contact when a family member reached out during the pendency of this case when his father became seriously ill. *Id.*

Mr. Meiggs' mother showed great resilience in leaving their abuser and working to create a stable life for her family. She found a safe, supportive man and the two married. PSR ¶ 53. Mr. Meiggs' stepfather supported the family through his work in construction and he has remained in Eric Meiggs' life ever since. *Id.* They have lived together for the last 13 years, including through

the present case. Mr. Meiggs' simply refers to him as his father. Id. His father has submitted a letter in support of his son, describing his positive qualities and noting the shame and remorse he has expressed for his crimes. Exhibit A, Letter of Kenneth Dean.

Sadly, the close relationship between father and son has been forged through a terrible shared trauma. When Eric was 13 his mother underwent surgery. PSR ¶ 55. On Christmas Day she was still in rehabilitation when she suffered a stroke. Id. She was placed on life support and died just weeks later. Id. Eric Meiggs' life has never been the same.

At the time of his mother's sudden death Eric was already receiving mental health services. PSR ¶ 60. As a child he was diagnosed with Bipolar Disorder, Anxiety, Depression, and Attention Deficit Hyperactivity Disorder. Id. His mother had been the only consistent presence in life and had been the one to arrange and enable him to receive the needed services. When she died, that critical treatment stopped shortly afterwards. Id.

Eric's father has been a loving and supportive presence in his life, but it is clear that his own trauma made it difficult for him to provide for all of his young son's particular needs. At a time when the boy needed professional help the most, and even contemplated suicide, PSR ¶ 61, his father allowed treatment to stop.

Without proper treatment, young Eric Meiggs sought other ways to deal with his pain and sadness. He began smoking marijuana at 14. PSR ¶ 63. With a history of anxiety and depression, suffering from acute trauma, and without proper treatment, Eric understandably found it very difficult to attend school. PSR ¶ 57. Rather than working through a difficult problem though, Eric's father allowed him to drop out. PSR ¶¶ 57, 65.

At this point, in his mid-teens, Eric Meiggs had no structure whatsoever in his life. He was not attending school. He was not receiving mental health services. He was self-medicating daily with marijuana. These are serious problems that have affected young people for generations, but Eric Meiggs is among those who first confronted them during the age of the internet and social media. Afraid to go outside, Eric Meiggs was able to live his life inside and on-line. PSR ¶ 56. Though he had difficulty in a traditional school setting, Eric has always been intelligent, and he became proficient in new technology, even earning money legitimately through coding to help support his family. *Id.* However, as might be expected of a traumatized teen left to his own devices, he spent his days primarily playing video games and watching videos. PSR ¶ 60. He was participating in a toxic on-line culture where antisocial behavior has no consequences because it is done anonymously and at a distance.

As a teen, Eric Meiggs unfortunately learned that he could get away with negative behavior on-line. Unchecked, that lesson then extended into criminal behavior. He learned how to “SIM-swap”, which is the process for tricking a cell phone carrier customer service agent into granting access to an account, and then controlling that account through a new phone. PSR ¶ 9. He and his peers were originally interested in obtaining what are considered valuable on-line user names known as “handles.” *Id.* The ability to obtain the handles then led to extorting victims to return control of accounts in some cases, and to outright theft in others. PSR ¶¶ 9-25. Mr. Meiggs has admitted his guilt, expressed his remorse to his family, and made efforts to acknowledge and understand the harm he caused through participation in RISE restorative justice programming. His particular trauma created the environment for him to commit his crimes, but he

acknowledges that he made his own choices and now stands ready to accept the consequence of federal incarceration.

III. Eric Meiggs has already made significant strides towards full rehabilitation.

Eric Meiggs was arrested for the first and only time in his life on November 14, 2019. PSR p. 2; ¶¶ 46-51. The indictment in this matter had been returned the day before. Dkt. 1, Indictment. The indictment, in the usual practice, alleges that the conspiracy continued up through the date of the indictment. Dkt. 1, Indictment, ¶ 57. However, the latest date of actual conduct in either the Indictment or the Offense Conduct section of the Presentence Report is May 7, 2018. Dkt. 1, Indictment, ¶ 61; PSR ¶ 17. Mr. Meiggs submits that he actually ceased his offending behavior more than a year before his arrest. In fact, he has shared with counsel and the government that prior to his arrest he experienced a period of intense, overwhelming shame that led him to cease his crimes. He has also reported that his arrest led to somewhat of a sense of relief because he had been living for some time feeling like he had to look over his shoulder, afraid of the consequences of his actions. PSR ¶ 62a.

The fact that Mr. Meiggs had already ceased his criminal conduct well before arrest is consistent with the significant rehabilitation he has achieved since. His efforts to change his ways began immediately upon his arrest and release. Although he had been smoking marijuana throughout the day every day, PSR ¶ 63, since his release he has complied with all conditions, including a prohibition of all controlled substances. PSR ¶ 5. He also obtained his first real job, working approximately 30 hours per week at the Dollar Store. PSR ¶ 67. He started seeing a

therapist again, went back on medication, and started leaving the house more consistently. Exhibit B, RISE Program Final Report, p.1.

Eric Meiggs displayed lawful and compliant behavior for approximately 18 months from his arrest in November 2019 until his plea in April 2021. From that point on he increased his efforts at changing his ways upon beginning his RISE participation in May 2021. He maintained his psychiatric care, including therapy and medication. RISE Report p.2. He continued to test negative for drugs. Id. He left the job at the Dollar Store for a better job at UPS, where he worked full-time preparing packages for delivery during the overnight shift. Id; PSR ¶ 66a.

Eric Meiggs also participated in RISE's restorative justice programming. The restorative justice portion of RISE consisted of four half-day workshops designed to confront defendants about the harm they have caused and to help them accept responsibility meaningfully. Exhibit B, p. 2. The sessions were demanding, and Mr. Meiggs has reported that being forced to think and discuss his crimes was difficult but has led to a better understanding of the harm he caused.

Admittedly there were times when Mr. Meiggs found the RISE requirements difficult to meet. He faced three challenges in particular. One was the fact that he, unlike any other RISE participant of which counsel is aware, knew he would be going to federal prison for at least two years no matter what he did. This foregone conclusion deprived Mr. Meiggs of the typical incentive that gets RISE participants to buy in to the program. That Mr. Meiggs did so anyway, and that his accomplishments were significant, shows that he began to learn and practice discipline.

A second challenge was a change in medication that significantly affected his functioning just after the holidays in early 2022. He experienced a significant increase in feelings of

depression and hopelessness, and a corresponding decrease in the quality of his RISE participation. Exhibit B, p.2. This led to a court hearing in March 2022 at which his commitment to the program was discussed. The third challenge was the traumatic end of a seven-year relationship. PSR ¶ 58; Exhibit B, p.2. Mr. Meiggs' long-term girlfriend has also struggled with anxiety and depression throughout her life. PSR ¶ 58. Early in their relationship she attempted suicide, and Mr. Meiggs was the one to find her on the bathroom floor. *Id.* They persevered through this trauma, and she became the one person outside of his family with whom he had a pro-social relationship. Yet in the summer of 2022, as his sentencing and incarceration approached, the stress and anxiety increased on both of them. Mr. Meiggs chose to end the relationship in order to focus on his own situation and re-commit himself to RISE. It was a difficult but mature decision and another sign of growth.

Following that decision, Mr. Meiggs finished his RISE participation strongly. He obtained a mentor and met with her weekly. Exhibit B, p.2. She has written to the Court about the potential she sees in him, and how he has expressed an understanding of the wrong he committed. Exhibit A, Letter of Kimberley Hope. Mr. Meiggs' father also noted Mr. Meiggs' remorse in his letter, and the changes he has seen in behavior. Exhibit A, Letter of Kenneth Dean. Eric Meiggs' participation in RISE, while not perfect, demonstrated a commitment to rehabilitation, and is one of the reasons supporting the recommended sentence in this case.

IV. The advisory guidelines range are inflated due to multiple enhancements that apply to similar conduct.

The defense agrees that the probation department has calculated the sentencing guidelines correctly. However, two enhancements that result in six additional offense levels do not meaningfully distinguish this case from similar cases because they are based in very similar conduct. The guidelines apply two different enhancements to defendants who are convicted of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, which is Count 10 in this case. PSR ¶¶ 35, 36. Two points are added for a conviction under this statute if there was an intent to obtain personal information, PSR ¶ 35, and four more points are added for a conviction under § 1030(a)(5)(A). PSR ¶ 36. That subsection deals with “damage” to a computer. Damage, however, is not defined as physical damage, but rather “any impairment to the integrity or availability of data, a program, a system, or information.” 18 U.S.C. § 1030(e)(8). Unlawful access constitutes damage under this definition, and thus the enhancement would apply in virtually every case.

Similarly, the two-year mandatory sentence in this case comes from the use of personal information in the commission of Count 11, Aggravated Identity Theft under 18 U.S.C. § 1028A. Yet the guidelines also add two points for an intent to obtain personal information under USSG § 2B1.1(b)(18)(A). PSR ¶ 35. Where Mr. Meiggs is already subject to a two-year mandatory sentence for the use of personal information, the enhancement does not further distinguish the conduct from other cases.

Taken together, these two enhancements raise Mr. Meiggs’ offense level from 20 to 26. In Criminal History Category I the advisory range goes from 33-41 months up to 63-78 months. Yet

there is no particular behavior that justifies such a leap. This lack of meaningful distinction as the guidelines are applied in this case is another reason to impose a downward variance as recommended.

V. **A two-year federal prison sentence for Eric Meiggs will accomplish all the purposes of sentencing.**

For the nearly three years this case has been pending, and for a year or more before that, Eric Meiggs has been worried about the consequences of his actions. Before his arrest he felt like he was looking over his shoulder. PSR ¶ 62a. Since his arrest, and more so since his plea, he has struggled with the knowledge that he will receive at least a two-year prison sentence. PSR ¶¶ 61, 62a. His fears should be understandable. He has never been to jail of any kind for any length of time before. PSR ¶¶ 46 to 51. He is 5 feet 9 inches tall and weighs just 137 pounds. PSR ¶ 59. He appears much younger than his actual age of 24.

While Mr. Meiggs' fears are likely worse than the reality, a two-year prison sentence will certainly be impactful for him. For years Mr. Meiggs barely set foot outside his home. PSR ¶ 56. Just at the point when he began to reach age-appropriate milestones, such as maintaining employment and making mature relationship decisions, he will now be away from his family for the first time in his life. He will certainly experience incarceration as a punishment and deterrence. The length of the sentence will also deter others who are similarly situated from engaging in such conduct.

At this point, several years removed from his offending, there is little need to further protect the public from Eric Meiggs. His rehabilitation is already well underway, and at this point will be better accomplished outside prison upon his release.

When Eric Meiggs returns to society, he will have something that would not have been possible without RISE and the extended pre-trial delay due to the COVID-19 pandemic - work experience that can go on a resume. Mr. Meiggs will know how to get a job and that he can keep one. Without looming incarceration he will also be able to pursue a field of his choosing. He has demonstrated his intelligence and hard work. At such a young age, he possesses earning ability not present in some defendants, and thus has a reasonable chance of paying back what he owes to the victims through restitution. A sentence longer than the recommended two years would decrease that potential by reducing his earning years and creating a larger gap in employment.

VI. Conclusion

Eric Meiggs fully acknowledges the harm he has committed. He has made significant strides towards rehabilitation already. He is prepared to accept the most punitive consequence of his actions- incarceration in federal prison. For all the reasons discussed above, a two-year sentence will accomplish all the statutory sentencing goals and is one that is “sufficient, but not greater than necessary.” 18 U.S.C. § 3553(a).

Respectfully submitted,
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Certificate of Service

I, Joshua R. Hanye, hereby certify that this document was this day filed through the ECF system and will be sent electronically to the registered participants as Identified on the Notice of Electronic Filing (“NEF”).

Date: October 17, 2022

/s/ Joshua R. Hanye
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