

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

22-CR-35-JLS

LUKE MARSHALL WENKE,

Defendant.

GOVERNMENT SENTENCING MEMORANDUM

The government submits this memorandum in support of its request for a sentence of 18 months' incarceration, to be followed by a three-year term of supervised release. Such a sentence is consistent with the terms of the plea agreement and is sufficient but not greater than necessary to achieve the goals of sentencing under 18 U.S.C. § 3553(a).

As noted in the defendant's sentencing memorandum, on the eve of trial the parties agreed to a plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. Dkt. 30, at 1. The plea agreement contemplated that the defendant would plead guilty to the top charge of the Indictment—cyberstalking—and that he would be sentenced to an agreed-upon term of 18 months' incarceration together with the statutory maximum three years of supervised release. Dkt. 23 ¶¶ 1, 10. The government agreed to this after substantial consideration and extensive communication with the victim, R.G., and his family. The government submits that this sentence adequately accounts for the nature and seriousness of the defendant's crime and the history and characteristics of the defendant. It also provides

adequate deterrence, and would provide the defendant with an opportunity to rehabilitate himself. *See* 18 U.S.C. § 3553(a)(1)-(7).

Additionally, however, the government respectfully requests that any term of supervised release include: (1) a requirement to engage in mental health treatment; (2) a requirement to participate in drug testing; and (3) a requirement that the defendant not have contact with the victim, his colleagues/employees, and his family. Much of the defendant's conduct appears to have occurred while he was either suffering from mental health problems or under the influence of drugs. Dkt. 27 ¶¶ 86-89; Dkt. 30 at 5-6. The government submits that mental health treatment and drug testing requirements are necessary conditions to assist the defendant in his rehabilitation. Moreover, although the victim in this case expressed his approval of 18-months' incarceration, he has also expressed to the government a desire to put this behind him and to no longer have any contact with the defendant. The government respectfully requests that the Court impose a supervised release condition that the defendant not have any contact with R.G., his family members, or his employees and colleagues.

CONCLUSION

For these reasons, the government submits that a sentence consistent with the plea agreement is appropriate here. Such a sentence is sufficient but not greater than necessary to achieve the goals of sentencing under 18 U.S.C. § 3553(a).

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