

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

UNITED STATES OF AMERICA,

v.

22-CR-35-JLS

LUKE MARSHAL WENKE

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

“[I] know that this can definitely be an only one-time thing in my life.” That was the defendant’s statement to this Court at his sentencing. Now, the defendant is before the Court to be sentenced for violating supervised release only six weeks after he was released from prison. As discussed below, the defendant’s conduct since his release clearly demonstrates that he has not reformed, he is not ready to be a productive, law-abiding member of society, and he needs additional time in custody to get there. As such, the government submits this memorandum in support of a non-guideline sentence of 12 months’ imprisonment.

A. The nature and circumstances of the offense warrant an above-guideline sentence.

The nature and circumstances of the offense warrant an above-guidelines sentence. On paper, the defendant was convicted of cyberstalking (18 U.S.C. § 2261A(2)(b)). However, the underlying facts and circumstances of the defendant’s conduct, to quote the Court: “read like the prelude to a violent crime.” Sent. Tr. at 14. The defendant engaged in a multi-month crusade of increasingly violent communications directed toward the victim, R.G. When law enforcement searched the defendant’s home, they found, among other things, a document

titled “Hit List,” a document titled “To-do Monday” that included a drive-by shooting, and an AR-platform rifle.

The defendant served an agreed-upon 18-month sentence, was released on March 31, 2023, and almost immediately resumed his alarming behavior. The defendant began posting about R.G.—through not by name—on his social media in April 2023. Screenshots of several such posts are attached as **Exhibit A**. His erratic behavior led to the instant violation when he sent an email to a close associate of R.G., which referenced R.G. several times. This email is attached as **Exhibit B**.

The defendant’s recent conduct has again risen to an alarming level. The defendant may not have technically violated his supervised release until May 13, but he began posting vitriolic statements about R.G. within weeks of release. This, again, “reads like the prelude to a violent crime,” and the Court should consider this when imposing a sentence.

B. An above-guideline sentence is necessary to deter the defendant from future offending.

The defendant’s 18-month sentence on the underlying conviction was the result of a Rule 11(c)(1)(C) agreement. It was ultimately below the 24 to 30-month guideline range calculated by the Court. At sentencing, the Court appeared skeptical of the agreement and asked the parties to justify an 18-month sentence, asking “how do I know that society is adequately protected going forward?” Sent. Tr. at 14-15; *see also* Sent. Tr. at 10 (“[W]hy is this an appropriate sentence . . . [w]hy is it adequate and why is the public adequately protected?”).

In response, the government, among other things, assured the Court that 18 months was, in fact, a harsh sentence for a first-time offender, and assured the Court that 18 months in federal prison was an adequate deterrent to future similar conduct. Sent. Tr. at 10-14. **In short, we were wrong.**

The defendant's conduct since his release is, itself, proof that 18-months was not an adequate deterrent. But the defendant's own words are even more telling. For example, on April 11, 2023—12 days after his release—the defendant made light of his incarceration in a Facebook post, stating: “It’s Club Fed, not Guantanamo Bay. Hamburger Wednesdays at Allenwood were my favorite Imfao.” A screenshot of this post is attached as **Exhibit C**. Around that same time, the defendant took to Twitter to post “I can’t give a Facebook review for Niagara County Jail . . . Damn, Lol. Excellent bologna and cheese selections three times a week, will make this superb recipe for myself at home since I don’t plan on returning literally ever.” A screenshot of this post is attached as **Exhibit D**.

Even the defendant's most recent arrest on this violation has not deterred him. **In fact, the defendant has sent harassing letters to L.T., whose husband, B.T., has a restraining order barring the defendant from contacting him.**¹ A photograph of this letter and the envelope it was delivered in is attached as **Exhibit E**. The letter is addressed to “Only [L.T.],” **was sent from the Chautauqua County Jail, and is postmarked June 28, 2023—after the Court found that the defendant violated his supervised release** by indirectly contacting R.G. This letter was sent with no legitimate purpose, and, given the reference to “Only [L.T.]” **immediately**

¹ It should be noted that B.T. obtained the restraining order after receiving a series of unwanted letters from the defendant ranting about B.T.'s son and the legal system. The defendant also sent similar unwelcome letters to B.T.'s family members and others who simply share his last name.

after the defendant was made aware that B.T. had obtained a restraining order, clearly demonstrates the defendant's contempt for authority and his willingness to push the boundaries of acceptable conduct.

The defendant's flippant comments about his incarceration, together with his immediate return to violative conduct, make it clear that, contrary to the government's assurances at sentencing, 18 months was not adequate to deter the defendant. More is required. *See* U.S.S.G. § 7B1.4, cmt. 3 ("in the case of a Grade C violation that is associated with a high risk of new felonious conduct . . . an upward departure may be warranted.") As such, the government urges the Court to sentence the defendant to an additional 12 months of incarceration.

C. The Court should impose an above-guideline sentence to sanction the defendant's breach of trust, especially in light of the previous downward departure.

Sentencing for a violation of supervised release "should sanction primarily the defendant's breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator." U.S.S.G., Chpt. 7(A)(3). Indeed, that is why the Sentencing Guidelines counsel that "where the original sentence was the result of a downward departure . . . an upward departure may be warranted." U.S.S.G. § 7B1.4, cmt. 4.

Here, the Court trusted that a below-guidelines sentence of 18 months would be adequate. Despite its reservations, the Court showed leniency to the defendant. The defendant, in turn, betrayed the Court's trust and violated his supervised release almost

immediately. Showing the defendant leniency yet again would only serve to reinforce the defendant's apparent belief that supervised release is a suggestion, and that the rules somehow do not apply to him. To appropriately sanction the defendant's violation of the Court's trust, the Court should impose a sentence of 12 months' imprisonment. Twelve months for the violation, when added to the 18 months served on the underlying conviction, makes a total sentence of 30 months—the upper limit of the defendant's original guideline range. As such, the government submits that a 12-month sentence is appropriate.

DATED: Buffalo, New York, July 28, 2023.

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