

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-64

RONALD VAN DEN HEUVEL,

Defendant.

UNITED STATES' SENTENCING MEMORANDUM

The United States of America, by its attorneys, Gregory J. Haanstad, United States Attorney for the Eastern District of Wisconsin, and Mel S. Johnson and Matthew D. Krueger, Assistant United States Attorneys for said district, respectfully submits this memorandum in advance of the January 5, 2018 sentencing of defendant Ronald Van Den Heuvel. Van Den Heuvel's offense fits within his pattern of manipulating others to promote his own image and fuel his lavish lifestyle. Accordingly, the United States recommends that the Court impose serious consequences, including a term of incarceration, a period of supervised release, and restitution of \$316,445.79.

I. The PSR Correctly Calculates the Guidelines Range

In fashioning a sentence, the Court should begin "by correctly calculating the applicable Guidelines range." *Peugh v. United States*, 133 S. Ct. 2072, 2080 (2013) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall*, 552 U.S. at 49.

The PSR's calculation of the Guideline range is correct, and Van Den Heuvel has not objected to it. The base offense level is six. PSR ¶ 63. A 12-level increase is required under U.S.S.G. § 2B1.1(b)(1) to reflect a loss amount between \$250,000 and \$550,000. PSR ¶ 46. The PSR determines the loss to Horicon Bank to be \$464,465.81, whereas the United States determined the loss to be \$316,445.47, as reflected in the agreed-upon restitution amount. *See* PSR ¶ 64. Attached is a table summarizing the loss amount calculations. The differences are discussed below in connection with restitution. Under either the PSR's or the government's loss determination, the effect on the Guidelines is the same, a twelve-level increase.

A two-level enhancement under U.S.S.G. § 3B1.1(c) is warranted to reflect that Van Den Heuvel organized and directed others in pursuing the Horicon Bank loans. PSR ¶ 66. The PSR questions whether a four-level enhancement under U.S.S.G. § 3B1.1(a) should apply because the scheme involved five or more individuals. *See id.* It is true that Van Den Heuvel involved at least six individuals in the scheme, namely the Horicon Bank loan officer, Paul Piikkila, and five straw borrowers: (1) Steve Peters, (2) William Bain, (3) Kelly Van Den Heuvel, who obtained loans for KYHKJG, LLC, (4) Deb Stary, who obtained a loan for Source of Solutions, and (5) Julie Gumban. To qualify for the four-level enhancement, however, the individuals each must be a "participant," meaning a person "who is criminally responsible for the commission of the offense." U.S.S.G. § 3B1.1, App. Note 1. Because it is not clear that five or more of those individuals had the criminal intent to make them responsible for the offense, the United States agrees that only the two-level enhancement should apply.¹

¹ Piikkila has pleaded guilty to the conspiracy and thus qualifies as a participant. In addition, Kelly Van Den Heuvel was charged with participating in the conspiracy, though the United States moved to dismiss the charges against her without prejudice.

As indicated in the PSR, Van Den Heuvel has accepted responsibility for the offense by pleading guilty and admitting his culpability. The United States therefore agrees that the offense level should be reduced by three levels. *See* PSR ¶¶ 61,70.

Taken together, then, the offense level is 17. The PSR reports Van Den Heuvel's criminal history as category I for a resulting Guidelines imprisonment range of 24 to 30 months.

II. Application of the § 3553(a) Factors Requires a Term of Imprisonment

After determining the Guidelines range, the Court must consider the factors set forth in § 3553(a) to fashion a sentence that is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a); *see Gall*, 52 U.S. at 49-50. Although the Court “may not presume the Guidelines range is reasonable,” the Guidelines range remains the “lodestone” of sentencing. *Peugh*, 133 S. Ct. at 2083–84 (quoting *Gall*, 52 U.S. at 50). The Court “must . . . remain cognizant of [the Guidelines] throughout the sentencing process.” *Id.* (quoting *Gall*, 552 U.S. at 50 n.6) (emphasis in original). “A district court contemplating a non-Guidelines sentence ‘must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.’” *Id.* (quoting *Gall*, 552 U.S. at 50); *see also id.* (“[A] major departure [from the Guidelines] should be supported by a more significant justification than a minor one.”). Thus, “[i]n the usual sentencing,” the district court will “impose a sentencing within the range.” *Peugh*, 133 S. Ct. at 2083. In this case, the United States submits that application of the § 3553(a) factors supports a sentence at the bottom of the Guidelines range.

A. Nature & Circumstances of the Offense

Section 3553(a)(1) directs the Court to consider the “nature and circumstances of the offense.” Several features of Van Den Heuvel’s offense warrant a Guidelines term of imprisonment.

First, Van Den Heuvel’s offense was highly planned and elaborately deceitful. Van Den Heuvel was a sophisticated actor who knew how banks operate, having formed numerous business entities, obtained loans from various banks, and even served on the board of directors for a bank.² See PSR ¶¶ 20, 23, 26; see also *id.* ¶ 109 (Van Den Heuvel claims to be “professionally licensed in banking regulations”); ¶ 112 (listing 45 business entities affiliated with Van Den Heuvel). By 2007, Van Den Heuvel’s businesses did not generate any significant revenue, yet he sought to maintain his high living standards. See PSR ¶ 16. Van Den Heuvel had previously obtained funds from other area banks, but by 2007, Van Den Heuvel had burned those bridges by not making loan payments. See PSR ¶ 20; PSR Addendum, at 25 (Peters interview). Van Den Heuvel had also previously arranged for associates such as William Bain and Steve Peters to act as straw borrowers and obtain loans for him at other banks. See PSR ¶¶ 23, 26; see also PSR Addendum, at 24-25 (Peters interview); *id.* at 29 (Bain interview).

By late 2007, however, Van Den Heuvel needed a new lending source to pay his old debt and maintain his lifestyle. Consequently, Van Den Heuvel pursued Horicon Bank loan officer Paul Piikkila and corrupted him. See PSR ¶¶ 18-20. In January 2008, Van Den Heuvel first persuaded Piikkila to give a loan at the top of his lending limit—\$250,000—to one of Van Den Heuvel’s business entities, RVDH, Inc. PSR ¶ 19. Van Den Heuvel failed to repay that loan. See PSR ¶ 64; Attached Summary of Loans. When Piikkila’s superiors instructed him not to

² In the mid-1990s, Van Den Heuvel served as chairman of the board of directors of Effingham Bank & Trust in Georgia. See Sara Hager Declaration (Jan. 2, 2018), Ex. A.

lend Van Den Heuvel additional funds, Van Den Heuvel persuaded Piikkila to evade Horicon Bank's controls by making loans below Piikkila's lending limit to straw borrowers. *See* PSR ¶¶ 18-34. By structuring the loans that way, Van Den Heuvel obtained funds while avoiding detection by the bank.

Second, the size, scope, and complexity of Van Den Heuvel's offense compels significant consequences. Through the use of straw borrowers, Van Den Heuvel obtained no fewer than nine additional loans, totaling over \$1 million.³ *See* PSR ¶¶ 23-33. Van Den Heuvel did not engage in an isolated, one-off transaction. Rather, Van Den Heuvel returned to Piikkila again and again, over the course of 14 months, with five different straw borrowers. *See id.* And, Van Den Heuvel went to considerable lengths to conceal that he was actually behind the loans. For example, Van Den Heuvel drew up paperwork designating his administrative assistant Deb Stary as an officer of Source of Solutions so that she could obtain a loan, and avoid having Van Den Heuvel's name in the file. PSR ¶ 31. This was a long-term, calculated scheme to deceive the bank.

Third, Van Den Heuvel repeatedly manipulated and abused the trust of vulnerable people in his life. Van Den Heuvel put forward not only his business associate Steve Peters and family friend William Bain to obtain loans from Horicon Bank. Van Den Heuvel also took advantage of Julie Gumban, the nanny for his children. PSR ¶¶ 29-30; PSR Addendum, at 46-48 (Gumban Interview). As a live-in nanny, Gumban was dependent upon the Van Den Heuvels for food, shelter, and wages. *See id.* The Van Den Heuvels exploited Gumban's vulnerable position by using her credit cards and convincing her to take out a loan at Horicon Bank. *See id.* Van Den Heuvel also roped in his administrative assistant Deb Stary, a subordinate who likely felt

³ The May 15, 2009 loan of \$129,958 to Peters consolidated two earlier loans, so the earlier loans are not included in the overall loss amount. *See* PSR ¶ 28; Attached Summary of Loans.

compelled to follow her boss's orders. PSR ¶¶ 31, 37. And Van Den Heuvel involved his wife, who helped secure two loans for KYHKJG, LLC, and the loan to Gumban, and as a result, was indicted as a co-conspirator. *See* PSR ¶¶ 13, 25, 29-30. That was not the last time Van Den Heuvel would enlist his family in fraud. In 2013, Van Den Heuvel offered a job to his son-in-law P.H. but did not pay him for several months of work. *See* PSR ¶ 50-51. Van Den Heuvel then convinced his son-in-law to approach several banks with forged pay stubs, which falsely inflated his salary, to seek loans on Van Den Heuvel's behalf. PSR ¶¶ 51-56. Van Den Heuvel's claim to be a selfless family man simply does not match reality.

Fourth, contrary to Van Den Heuvel's claim to be driven by "a desire to create and/or maintain functioning corporations," his offense was driven by greed. Witnesses consistently described the Van Den Heuvels as living a high-end lifestyle that included:

- A riverfront, five-bedroom residence worth at least \$1.9 million⁴
- A second home in Florida
- Luxury automobiles, such as two Cadillac Escalades
- A live-in nanny
- Private schools for their children
- Country club memberships
- Frequent dining at expensive restaurants
- Annual trips to Las Vegas
- A private jet

⁴ According to the PSR, an investor in Van Den Heuvel's companies owns the residence after foreclosure but allows Van Den Heuvel to reside there on a "hand-shake" agreement. PSR ¶ 99.

PSR ¶¶ 35, 99; *see* PSR Addendum, at 31 (Bain Interview); PSR Addendum, at 47 (Gumban Interview).

The Van Den Heuvels lived that life even as his businesses failed to generate any significant income. *See* PSR ¶¶ 16, 49. Earlier in his career, Van Den Heuvel may well have been a successful businessman, able to support that life and engage in philanthropy. Tellingly, most of the charitable efforts Van Den Heuvel cites date from the 1990s. *See* Doc. 170, at 1-5. But by the mid-2000s, Van Den Heuvel's fortunes had changed, and he was not generating much income. PSR ¶ 16. Rather than scale back his expenses, Van Den Heuvel sought to maintain the image by borrowing money. To keep just ahead of creditors, he kept on borrowing and then pressed others to borrow for him. All the while, Van Den Heuvel continued living far beyond his means, projecting a false image of success and philanthropy. For example, Van Den Heuvel cites his work for the March of Dimes. *See* Doc. 170, at 9. Although that service is admirable, at least one of Van Den Heuvel's contributions to the March of Dimes came from investors' funds that he represented would be used to promote his Green Box business plan. *See* Sara Hager Declaration (Jan. 2, 2018). Thus, Van Den Heuvel's offense was quite like a Ponzi scheme, seeking loan after loan to maintain a mirage of success.

Finally, this offense is especially serious because it targeted a federally insured financial institution. Our economic system depends upon the safety and soundness of financial institutions. If the public doubted the safety of banks, people would be less likely to deposit funds there, banks would not be able to loan funds, and economic development would be hampered. Congress therefore provided stiffer sentences for frauds that affect financial institutions. *See, e.g.*, 18 U.S.C. § 1343 (maximum wire fraud sentence is 30 years, rather than 20 years, if offense "affects a financial institution"). The Guidelines likewise provide

enhancements for offenses that affect financial institutions. *See* U.S.S.G. § 2B1.1(b)(16). Van Den Heuvel's offense did not involve enough funds to trigger an additional Guidelines enhancement related to financial institutions. *See* U.S.S.G. § 2B1.1(b)(16)(A) (two-level enhancement for more than \$1 million in gross receipts). But the Court should consider that Van Den Heuvel's offense involved precisely the type of conduct that undermines our banking system: Van Den Heuvel colluded with a bank employee, gamed a bank's lending limits, and obtained bank funds that he did not repay. Worse, Van Den Heuvel is a repeat player in bank fraud, having used straw borrowers at other banks before the Horicon Bank fraud, and having put forward his nephew P.H. as a potential straw borrower in 2013. PSR ¶¶ 20, 23, 26, 50-56. Van Den Heuvel has thus made a practice of manipulating financial institutions for his personal gain. This makes Van Den Heuvel's fraud more serious than frauds against other types of victims.

B. History & Characteristics of the Defendant

In fashioning a sentence, the Court also must assess Van Den Heuvel's history and characteristics. *See* 18 U.S.C. § 3553(a)(1). Van Den Heuvel had substantial advantages in life that many other criminal defendants lack. He grew up in a stable, two-parent family. *See* PSR ¶¶ 81-88. He has a supportive family with many siblings in the area. *Id.* Van Den Heuvel completed high school and some college, was certified as a Master Electrician, and has numerous professional licenses as a contractor and electrician. PSR ¶ 107-111. Both through his employment history and through the sophisticated nature of this fraud scheme, Van Den Heuvel has demonstrated natural intelligence and a capacity for enterprising, constructive work. Yet, despite these advantages, Van Den Heuvel chose to maintain his lifestyle by using others and pursuing this fraud scheme.

If anything, criminal history category I understates Van Den Heuvel's criminality. As noted, Van Den Heuvel had arranged for associates to obtain loans for him from other banks and then engaged in this scheme with Horicon Bank. PSR ¶¶ 20, 23, 26. A few years later, Van Den Heuvel attempted to obtain additional loans based on false representations through his son-in-law. See PSR ¶¶ 50-56. And, although Van Den Heuvel remains presumed innocent, it bears noting that a grand jury has indicted Van Den Heuvel for serious charges of pursuing a long-term \$9-plus million fraud scheme. See *United States v. Van Den Huevel*, Doc. 1, No. 17-CR-160. Many other offenders in criminal history category I are first-time offenders who engaged in a one-off offense. That description does not remotely fit Van Den Heuvel. Thus, the Court should consider that Van Den Heuvel has a long history of manipulating others for his personal gain.

Van Den Heuvel is mistaken in arguing that his family situation should be considered in fashioning his sentence. “[F]amily ties and responsibilities are not ordinarily relevant in determining whether a departure [from the Guidelines] may be warranted.” U.S.S.G. § 5H1.6. That is because “[m]ost families suffer emotional and financial harm when a parent is imprisoned,” and hence, the impact—although undeniably difficult—is not a mitigating circumstance. *United States v. Gary*, 613 F.3d 706, 710 (7th Cir. 2010). Van Den Heuvel's children will still have their mother as a caretaker, and they will still have the numerous members of Van Den Heuvel's extended family in the area. That is more than many children of defendants have. And although Ms. Van Den Heuvel's health concerns are unfortunate, that does not justify a reduction in Van Den Heuvel's sentence.

C. Purposes of Sentencing

A sentence at the Guideline range's low end would be sufficient, but not greater than necessary, to meet the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). The need to

impose just punishment is especially important in this case. As noted, Van Den Heuvel engaged in a serious, deliberate fraud scheme that took advantage of multiple people and showed a wanton disregard for banking requirements.

The need for both specific and general deterrence also supports a term of imprisonment. Van Den Heuvel has shown a disturbing, serial pattern of manipulating others over a long period of years. As noted, several years after the Horicon Bank fraud scheme, Van Den Heuvel attempted to defraud other banks through his son-in-law P.H. PSR ¶¶ 50-56. A period of incarceration is appropriate to prevent Van Den Heuvel from engaging in fraud and to send him a message that such conduct results in real consequences. Likewise, a significant sentence is necessary to deter others in the community who would be tempted to view banks as opportunities to engage in scams. The potential for general deterrence is increased by the fact that Van Den Heuvel and this case are well known in the Green Bay area. Indeed, a light sentence would send the troubling message that crime pays.

D. Need to Avoid Unwarranted Sentence Disparities

The Court must also consider “the need to avoid unwarranted sentence disparities” among similarly situated defendants. *See* 18 U.S.C. § 3553(a)(6). “The post-*Booker* federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines.” *Peugh*, 133 S. Ct. at 2083–84. Imposing a sentence within the Guidelines range thus will help ensure that Van Den Heuvel receives a sentence that fairly matches the sentences received by similarly situated defendants here and around the country. Pursuant to the plea agreement, the United States recommends a sentence at the low end of the Guidelines.

III. The Court Should Impose Full Restitution

As the PSR states, Van Den Heuvel should be ordered to pay restitution of \$316,445.47 to Horicon Bank. PSR ¶ 146. Van Den Heuvel agreed to pay this amount in the plea agreement. *See* Doc. 151, ¶ 29.

As noted above, the PSR determines the loss to Horicon Bank to be higher, \$464,465.81. Both the Probation Office and the United States originally obtained information about losses from Horicon Bank officials. *See* PSR ¶ 64. To clarify the discrepancy, undersigned counsel corresponded with Horicon Bank officials, in coordination with the probation office and defense counsel. Through those communications, Horicon Bank officials made the following clarifications. First, the bank recovered the full amount of the Source of Solutions loan. Therefore, the \$179,623.26 in losses for that loan, which the PSR includes, should be excluded. Second, Horicon Bank suffered \$68,863.93 in losses for the KYHKJG loan, not the lower amount of \$50,131.58 that the PSR included.⁵ With those adjustments, the loss amount totals \$316,445.47.

It bears noting that Horicon Bank officials also claim to have lost \$237,109.04 related to the January 2008 loan to RVDH. In the United States' view, restitution should not be ordered for this loan because it was not part of the fraudulent scheme; Van Den Heuvel did not use a straw borrower for that loan. *See* PSR ¶ 19.

⁵ There are two other smaller differences between the PSR's calculation and the United States' calculation: First, the probation office counted \$140,000 in losses for the William Bain loan whereas the United States included \$139,979.61, based on Horicon Bank's information. Second, the probation office appears to have deducted a full \$250,000 for the RVDH loan from its total loss of \$714,465.81, whereas that total loss amount included only \$237,109.04 for the RVDH loan. The apparent result is that the probation office reduced its loss amount by an additional \$12,980.96 beyond what the probation office intended.

Horicon Bank officials also claim to have suffered over \$100,000 in lost interest on the loans (including the RVDH loan). *See* PSR ¶ 64. In general, interest can be awarded to make a victim whole. *See, e.g., United States v. Shepard*, 269 F.3d 884, 886 (7th Cir. 2001). When the United States negotiated the plea agreement with the defendant, it conferred with Horicon Bank officials and did not have information regarding interest. Pursuant to the plea agreement, the United States recommends imposing a restitution order of \$316,445.47, which does not account for interest.

Dated at Milwaukee, Wisconsin, this 2nd day of January 2018.

Respectfully submitted,

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Summary of Horicon Bank Loans

Loan Date	Named Borrower	Loan Amounts Sought	Loan Amounts Given	PSR Report of Horicon Bank's Claimed Losses	PSR Determination of Loss Amount	United States' Determination of Loss Amount
1/17/2008	RVDH	\$ 250,000.00	\$ 250,000.00	\$ 237,109.04	\$ (12,890.96)	\$ -
3/20/2008	Source of Solutions	\$ 7,100,000.00	\$ -	\$ -	\$ -	\$ -
9/12/2008	Peters 1st loan	\$ 100,000.00	\$ 100,000.00	\$ -	\$ -	\$ -
11/7/2008	KYHKIG, Inc. (2 loans)	\$ 320,000.00	\$ 320,000.00	\$ 50,131.58	\$ 50,131.58	\$ 68,863.93
1/2/2009	Bain	\$ 240,000.00	\$ 240,000.00	\$ 140,000.00	\$ 140,000.00	\$ 139,979.61
2/11/2009	Peters 2nd loan	\$ 30,000.00	\$ 30,000.00	\$ -	\$ -	\$ -
5/15/2009	Peters 3rd loan	\$ 129,958.00	\$ 129,958.00	\$ 97,601.93	\$ 97,601.93	\$ 97,601.93
5/15/2009	Gumban	\$ 25,000.00	\$ 25,000.00	\$ -	\$ -	\$ -
9/11/2009	Source of Solutions	\$ 240,000.00	\$ 240,000.00	\$ 179,623.26	\$ 179,623.26	\$ -
9/25/2009	Tissue Tech	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
	Total	\$ 8,444,958.00	\$ 1,344,958.00	\$ 714,465.81	\$ 464,465.81	\$ 316,445.47