

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-CR-198

PHILIP REINHART,

Defendant.

SENTENCING MEMORANDUM

I. Introduction and Sentence Recommendation

Overwhelmed by continuous, severe pressure and abuse from Ron Van Den Heuvel, Philip Reinhart made the mistake of his life, and agreed to create false documents that would be submitted to the WEDC. Mr. Reinhart was not motivated by greed or personal gain. In fact, as this Court recognized during the change-of-plea hearing, Mr. Reinhart received no financial gain whatsoever from the offense.

Mr. Reinhart fully recognizes that, despite the pressure and abuse, he should have walked away from Van Den Heuvel long ago. He made the mistake of staying, with the hope of keeping employees employed, benefits paid, and perhaps even eventually recouping close to \$200,000 in his own unpaid wages. But Mr. Reinhart makes no excuses for his actions. Indeed, immediately upon being confronted by the government, Mr. Reinhart acknowledged his wrong-doing and thereafter cooperated with the government in their investigation of Van Den Heuvel's sprawling criminal conduct.

As for the question of a sentence that will satisfy the goals of sentencing—that is, promote respect for the law, provide just punishment, afford deterrence, and protect the public—several compelling reasons demonstrate that one year of probation will be more than sufficient:

- A pre-substantial-assistance Guidelines range of just 10-16 months;
- Timely and helpful cooperation, resulting in a § 5K1.1 motion and a government recommendation of a 30% reduction;
- No criminal history whatsoever;
- A lifetime of continuous, legitimate employment;
- Countless good deeds for his church, friends, and Green Bay community;
- Remarkable support from his wife of 35 years, daughter, and numerous other family members and friends, which is reflected in the letters of support filed collectively with this memorandum as Exhibit 1;
- No mental health or substance abuse issues; and
- A complete “divorce” from Van Den Heuvel.

II. The § 3553 factors strongly demonstrate that a short probationary sentence is sufficient to achieve the goals of sentencing.

A. History and Characteristics

Philip Reinhart is 60 years old. He was born and raised in Green Bay, and resides there with Nancy Reinhart, his wife of 35 years. The two share a loving, stable relationship, and regularly visit and assist Mrs. Reinhart’s 91-year-old mother, Dorothy Nichols, who resides in Minnesota. The Reinharts have one adult daughter, Claire, with whom they maintain a very close, positive relationship.

Mr. Reinhart has worked to support his family for his entire adult life. He spent 16 years working for Foot Locker in various cities, most recently Toronto. In 1998, he moved back to Green Bay after his parents passed away, so that he could purchase the family home that his parents had built and in which they had raised their six children. One of Mr. Reinhart's sisters, Jeanne Berney, explains that Mr. Reinhart "was the one to come back, handle things and keep [the family home] alive for all of us." Exh. 1 at 7. Mr. Reinhart and his wife still reside in Green Bay, in that family home, but because of the devastating financial impact of this case, they have been forced to try to sell.

Mr. Reinhart held several different jobs in the Green Bay area before he started working for Van Den Heuvel in 2007, after being introduced to him through Mr. Reinhart's brother, Peter. It is that relationship with Van Den Heuvel that ultimately landed him before this Court. Claire Reinhart describes her father's constant struggle to provide for his family while enduring an abusive work relationship with Van Den Heuvel:

All my dad has ever wanted to do is support me and my mom He suffered silently while working under constant abuse, harassment, and threats. He would work every weekend and often late into the night, just so he could keep a roof over our heads and food on the table. He never liked to let me see him hurting, but I saw it all the time. I saw how he was spoken to at his office, how hard he tried to push through, and how much he withstood. I'm devastated to see how all his years of hard work and efforts to provide for his family have come to this.

Exh. 1 at 27.

Nancy Reinhart describes her husband's hard work, loyalty, honesty, ethics and faith, his love for the Green Bay community, and his belief in the goodness of others:

His old-school gentle manner was inherited from his father, just as surely as his button-down collars, sweater vests and linen handkerchiefs were. But more than that, he learned his generosity, his patience, his way of inspiring and motivating and mentoring people from his dad. I have heard this time and again about my husband from friends, family, and the people Phil has met or worked with over the years – how he taught them how to be an adult.

Exh. 1 at 30.

Mr. Reinhart's character, compassion, and integrity are also demonstrated in his relationships with his extended family. Mr. Reinhart drives his brother Peter to work at Home Depot every day, as Peter does not have a driver's license. Peter explains that "never in his six decades, has [Mr. Reinhart] put the welfare of his own needs / wants ahead of his family, friends, co-workers or any person(s) on this Earth." Exh. 1 at 32.

Mr. Reinhart also provides regular support to his 91-year-old mother-in-law, who describes him as "a genuinely good guy—honest, hard-working, caring." Exh. 1 at 24. He also regularly helps his daughter and son-in-law, Hank Greene, who summarizes his feelings about Mr. Reinhart as follows: "I am proud that the children that Claire and I someday hope to have will have Phil as a grandfather, because I can think of no better person for them to aspire to be." Exh. 1 at 19.

Mr. Reinhart has had a lifelong devotion to and involvement with the Catholic church. He is an active member of the Resurrection Parish in Allouez, which he rejoined when he and Nancy returned to Green Bay. Mr. Reinhart is a

regular usher at weekend mass, and served on the church's Blue Ribbon Committee for strategic planning. The Pastoral Minister at Resurrection Parish, Sheila DeLuca, explains that "Phil's commitment over these many years, his consistent presence where needed, his willingness to give back to his parish community stand out as enduring and commendable qualities." Exh. 1 at 12. Auxiliary Bishop Emeritus Robert Morneau describes Mr. Reinhart as "a man of integrity, gentle demeanor, and a committed parishioner." Exh. 1 at 23.

Mr. Reinhart suffers from type-2 diabetes. As a result of that diagnosis, he volunteered with the Juvenile Diabetes Research Foundation from 2004 to 2015. Mr. Reinhart chaired the Corporate Walk, and thereafter joined the Board, serving on several different committees and eventually serving as Board President. The Executive Director, Julie Feest, describes Mr. Reinhart as "kind hearted, willing to share time in helping the organization and was respected because of his honest, open two way communication with staff and volunteers." Exh. 1 at 15.

Mr. Reinhart's "history and characteristics" are further borne out in the multitude of character letters from other life-long friends, neighbors, family members, and colleagues. *See* Exh. 1. To a person, each and every letter describes an engaged, dedicated, family man of integrity and good deeds who has unquestionably learned his lesson from this case:

- Jim and Karlene Lemke, who have known Mr. Reinhart for more than 40 years, describe him as "more than a good friend, he is part of our family." They relate that his "calm perspective was appreciated and

needed when times were difficult for our family.” They also state, “I would bet all I know and have on him learning from this experience and living an honored and worthy life.” Exh. 1 at 22.

- J. Arthur Bie, a longtime friend, states: “Phil is a good man with a big heart. He has agonized over this situation and especially how it would affect his family. He has already been through so much, his good name tarnished and the financial impact of these proceedings.” Exh. 1 at 9.
- Pete DeMars, a friend since high school, similarly describes Mr. Reinhart as “a wonderful husband to Nancy, and a great role model and father to Claire, his pride and joy.” He concluded that the “community is a much better place with Phil actively participating.” Exh. 1 at 13.
- Mike Van Lanen, a life-long friend who states that Mr. Reinhart is “of the highest integrity and character,” describes the severe impact this case has had on Mr. Reinhart: “he has already incurred significant pain and suffering” and “has already paid a heavy price.” Exh. 1 at 37.
- Likewise, Marty and Barbara Albers, friends of Mr. Reinhart’s since high school, explain that he “has never changed his true blue spirit of trust and overall sense of goodness” and that they still believe Mr. Reinhart to be “an honorable individual, valuable member of the community and a good human being” who has “suffered enough” already. Exh. 1 at 1, 2.
- Stephen Smith, the current Chairman and CEO of Green Box’s parent company who became Mr. Reinhart’s good friend, describes him as a man

of strong character in a “toxic environment”: “I trust him implicitly and fully believe that this was a one time and unusual situation.” Exh. 1 at 35, 36.

- Another friend, Kelly O’Donahue, simply states, “I would trust him with my life and the lives of my children.” Exh. 1 at 25.

In sum, Mr. Reinhart’s history and characteristics demonstrate that a short, probationary sentence is more than sufficient to achieve the goals of sentencing.

B. Advisory Guidelines

The Guidelines before substantial assistance are 10-16 months (offense level 12, criminal history category I). Mr. Reinhart agreed to cooperate with the government in its investigation of Van Den Heuvel, and participated in three lengthy interviews with government agents and prosecutors. Those statements were disclosed to Van Den Heuvel throughout his cases, and Mr. Reinhart was at all times prepared to testify, if called. In fact, a trial preparation meeting was scheduled with the government, but was cancelled when Van Den Heuvel pled guilty in the second case. The government has indicated it will move for a 30% reduction in the sentence.

With or without substantial assistance, Mr. Reinhart’s Guidelines range warrants probation. Moreover, the advisory Guidelines range, albeit very low, arguably overstates Mr. Reinhart’s culpability for several reasons, all of which justify the request for one year of probation.

First, the loss in this case is arguably overstated. Although Mr. Reinhart has always maintained that at least *some* work may have legitimately qualified under the WEDC grant—for example, his own work putting together training manuals for the project—he has chosen not to contest the loss figure of \$95,500, the full amount of the grant. Under § 2B1.1, had the loss been even \$500 less, the offense level would have decreased by two levels.

Moreover, § 2B1.1 fails to take into account relevant factors other than the dollar figure, including motive and culpability. *United States v. Dikiara*, 50 F. Supp. 3d 1029, 1032 (E.D. Wis. 2014) (internal citation omitted); *United States v. Forchette*, 220 F. Supp. 2d 914, 924 (E.D. Wis. 2002) (analyzing loss in pre-*Booker*, departure context). Indeed, § 2B1.1, app. n.21(C) states that it is appropriate to reject advisory Guidelines range when the offense level under § 2B1.1 substantially overstates seriousness of offense. *United States v. Rosen*, 726 F.3d 1017, 1027 (7th Cir. 2013).

Specifically, a defendant's unique or unusual role may provide a basis for rejecting the Guidelines. For example, “[the defendant’s] intent in involving himself in the scheme may have been significantly different than of the usual fraud defendant . . . or the defendant’s fraud may have been for little or no gain, especially in comparison to the size of the loss.” *Forchette*, 220 F. Supp. 2d at 925; *see also United States v. Milne*, 384 F. Supp. 2d 1309, 1313 n.4 (E.D. Wis. 2005) (“A defendant who offends in order to support his family is less culpable and thus more

deserving of leniency than one who steals from the vulnerable to finance a lavish lifestyle.”).

Thus, in some cases, the Guidelines’ “mechanical correlation between loss and offense level,” may be a poor proxy for “personal culpability.” *United States v. Ranum*, 353 F. Supp. 2d 984, 990 (E.D. Wis. 2005). That is certainly the case here, as it fails to account for Van Den Heuvel’s central role, the toxic work environment that Van Den Heuvel created, and Mr. Reinhart’s lack of any personal gain.

Sentencing statistics also generally bear out the unreliability of § 2B1.1, as courts are consistently rejecting the Guidelines range for § 2B1.1 offenses. For example, in fiscal year 2015, out of over 7,000 cases sentenced using § 2B1.1, courts sentenced below the range approximately 60% of the time. *See* United States Sentencing Commission, Statistical Information Packet, Fiscal Year 2015, Eastern District of Wisconsin, at Table 10.¹ Locally, the statistics are even higher. In the same year, approximately 70% defendants in the Eastern District of Wisconsin were sentenced below the § 2B1.1 Guidelines range.

In all likelihood, these statistics result, at least in part, from the fact that the Guidelines are based primarily on a loss calculation that in many cases simply fails to fairly or accurately capture or measure culpability. In sum, the Guidelines overstate the seriousness of this offense. Instead, numerous other compelling factors support the recommendation of a short probationary sentence.

¹ This publication is available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2015/wie15.pdf>.

C. Deterrence, Protection of the Public, and Just Punishment

A short probationary sentence will sufficiently deter any future criminal conduct and protect the public. There is little evidence of a specific deterrent effect arising from the experience of imprisonment, compared with the experience of non-custodial sanctions. Instead, the evidence suggests that reoffending is either unaffected or increased.²

Indeed, research shows that imprisoning very low-risk offenders, like Mr. Reinhart, actually leads to higher re-offending rates and undercuts deterrence.³ *See also United States v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005) (explaining that a lesser sentence “is required to deter a defendant not previously subject to lengthy incarceration than is necessary to deter a defendant who has already served serious time yet continues to re-offend”). Here, Mr. Reinhart is particularly unlikely to reoffend because: (1) he has no criminal history; (2) he has no history of drug or alcohol abuse; (3) he is over 50; (4) he has a college degree; and (5) he is married.⁴

² See Daniel S. Nagin, “Deterrence in the Twenty-First Century,” 42 *Crime & Just.* 199, 201 (2013); *see also* Francis T. Cullen et al., “Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science,” 91 *Prison J.* 48S, 50S (2011) (“[H]aving pulled together the best available evidence, we have been persuaded that prisons do not reduce recidivism more than noncustodial sanctions.”).

³ Martin H. Pritikin, “Is Prison Increasing Crime?” 2008 *Wis. L. Rev.* 1049 (2008) (citing articles).

⁴ See United States Sentencing Commission, “Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines” at 11-13, 21 (May 2004).

For similar reasons, the public will be adequately protected by a short probationary sentence. Mr. Reinhart's conduct will not be repeated—not only because of his statistically low recidivism risk, but also because of the unique, “perfect storm” of circumstances that precipitated the offense and his lifelong history of pro-social conduct.

Finally, the recommended sentence will serve as just punishment. A felony conviction here serves the goals of just punishment because it creates certain barriers to employment, and results in other collateral consequences that Mr. Reinhart will live with for the rest of his life.

One district judge recently calculated that “there are nationwide nearly 50,000 federal and state statutes and regulations that impose penalties, disabilities, or disadvantages on convicted felons. Of those, federal law imposes nearly 1,200 collateral consequences for convictions generally.” *United States v. Nesbeth*, 188 F. Supp. 3d 179, 185 (E.D.N.Y. 2016). In addition, some states have very harsh statutory regulations and limitations targeting and restricting employment opportunities for people with criminal records.⁵ Every state except Maine and Vermont disenfranchises convicted felons to some extent, and felons are also often excluded from the important civic duty of sitting on a jury. *Id.* at 186.

Here, Mr. Reinhart's felony conviction, in and of itself, serves as just punishment because it is generally proportional to his offense. *See Rummel v. Estelle*, 445 U.S. 263, 293 (1980) (“A sentence may be excessive if it . . . is grossly

⁵ See, e.g., Rabiah Alicia Burks, “Laws Keep Ex-Offenders from Finding Work, Experts Say,” American Bar Association News Service (July 26, 2011).

disproportionate to the seriousness of the crime.”). He will suffer daily from the numerous statutory and regulatory, state and federal, collateral consequences of a felony conviction. He faces a long and arduous process of repayment to the WEDC. And he has already faced, and will continue to face, the undeniable social stigma of being a convicted felon.

D. Sentencing Disparity

As previously discussed, courts both nationally and locally consistently sentence below the Guidelines range in § 2B1.1 cases. Data regarding the type of sentence imposed in similar cases also demonstrate that a probationary sentence is reasonable. Indeed, in Fiscal Year 2015, 22.9% of fraud offenders convicted in the Eastern District of Wisconsin received a probation-only sentence, and another 11.4% received probation and confinement. *See* Table 5, United States Sentencing Commission, Statistical Information Packet, Fiscal Year 2015, Eastern District of Wisconsin.⁶

Moreover, any difference in sentence between other fraud defendants and Mr. Reinhart is clearly warranted because of the differences in offense conduct, criminal records, and personal circumstances. Indeed, while anecdotal, it is fair to suggest that there are very few federal, white-collar cases where there is virtually no evidence of greed or personal benefit.

⁶ *See supra* note 1.

For example, in another case intertwined with Van Den Heuvel's crimes, a case involving a loss amount three times higher than the amount in this case, this Court sentenced the defendant to probation. *United States v. Piikkila*, No. 16-CR-64 (E.D. Wis.). As another example, the defendant in *Dikiara* received 15 months' imprisonment where she stole in excess of \$1 million from her employer, "gambled away virtually all of the proceeds of her crime at Potawatomi Casino" over 10 years, and then destroyed records to cover up her theft. 50 F. Supp. 3d at 1030-34. As a third example, the male defendant in *United States v. Alexeev*, 2008 WL 1969594, at *1-2 (E.D. Wis. May 2, 2008), received a split sentence of 6 months imprisonment and 6 months home confinement even though he lied during court hearings, structured money, and helped perpetrate a \$5 million fraud.

In sum, any difference in sentence between other fraud defendants and Mr. Reinhart is clearly warranted because of the differences in offense conduct, criminal records, and personal circumstances. Mr. Reinhart did not profit personally from the crime, never attempted to conceal his conduct, and timely cooperated with the government. A probationary sentence is appropriate here.

III. Conclusion

For all these reasons, Mr. Reinhart respectfully requests that this Court impose a sentence of one year of probation. Anything more would be greater than necessary to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553. A longer period of probation will also unnecessarily expend U.S. Probation Office resources because, at the end of the supervisory period, the restitution obligation

will convert to a judgment against Mr. Reinhart, and there is no doubt that he will continue to make payments in good faith.

Dated this 24th day of January, 2019.

Respectfully submitted,

/s/ Michelle L. Jacobs

Michelle L. Jacobs, SBN 1021706
1045 West Glen Oaks Lane, Suite 106
Mequon, WI 53092
mjacobs@biskupicjacobs.com
Office: 262-241-0033
Fax: 866-700-7640

Attorney for Philip Reinhart