

MAGISTRATE JUDGE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ROBERT BLACK, JR.,

Defendants.

) Case No.: CR10-5139BHS

) DEFENDANT BLACK'S SENTENCING
) MEMORANDUM

PRE-SENTENCE REPORT

As this court is aware, Mr. Black pled guilty to conspiracy to intentionally damage a protected computer in violation of 18 U.S.C. § 371 on March 5, 2010. This plea was entered pursuant to a Rule 11.C plea agreement related to a Grand Jury indictment in the Eastern District of Pennsylvania filed on November 19, 2009, charging Mr. Black, and others, with conspiracy to intentionally damage a protected computer during the month of May 2008 in the Eastern District of Pennsylvania. As this court is aware from the Government's sentencing memorandum and the pre-sentence report, the charges relate to the "defacement" of the Comcast e-mail system in May of 2008.

1 The offense conduct described in the pre-sentence report is accurate to a point,
2 but as discussed below does not include Mr. Black's actions after the initial defacement
3 to block any further damage to the Comcast system. Mr. Black has reviewed the pre-
4 sentence report and asserts that his personal and family data and other information
5 about him is accurate. Mr. Black currently resides in Tumwater, Washington with his
6 girlfriend, as described in the pre-sentence report. He is employed for a computer
7 marketing company and works from his home in Tumwater. Mr. Black will be 21
8 years of age in approximately 10 days.
9

11 FACTS

12 Mr. Black admits that he was involved with other co-conspirators, including
13 "E.B.K." and "Slacker" when the initial discussions of the events leading up to the
14 crime for which he is charged. There were discussions and computer entries and other
15 activities that were played as games and "what if's" by the defendant and the other
16 individuals over a lengthy period of time. The actual intrusion into Comcast came as
17 somewhat of a surprise to Mr. Black as he did not intend for it to happen and did not
18 really believe that it was going to happen when it did. The day of the event, the
19 individuals had created access to the Comcast computer as indicated because it was a
20 challenge and, more or less, that's what hackers do. Shortly before it happened, a co-
21 conspirator, E.B.K., gave Mr. Black access to the Comcast computers and wanted him
22 to hack them. Mr. Black said no and updated the contact information to Comcast so
23 E.B.K. couldn't get into the Comcast computers. Comcast, realizing an intrusion,
24 corrected the problem and fixed, i.e., prevented further access by E.B.K. Thereafter,
25
26
27

1 Mr. Black indicated to E.B.K. (a/k/a Lewis) that he would not participate further in the
2 event. Lewis contacted an individual by the name of Slacker and they proceeded to re-
3 contact Comcast and hack into the computer. While they were conducting this activity,
4 they called Mr. Black and indicated that, during the conversation that they were
5 successfully hacking the Comcast e-mail system. Apparently, Comcast tried to take it
6 back but was unsuccessful. At approximately 1:00 a.m., the day after the event
7 occurred, Mr. Black called Comcast and attempted to notify their personnel of this
8 intrusion. After a significant period of time on the phone, he was told to call back at
9 8:00 a.m. At that point in time, Mr. Black reached an appropriate individual at
10 Comcast and told them how to fix the problem. Mr. Black, from that point, provided
11 cooperation, including his contact information. Within two days, he was contacted by
12 federal investigators and he began cooperating with the investigators from that point
13 on. While Mr. Black admits that he had gone along with his co-conspirators up to a
14 point, he never intended that the actual damage be done. He realizes that his
15 participation helped and encouraged the damages incurred by Comcast and, thus, is
16 responsible for and has pled guilty to the crime.

17
18
19
20
21 Since May of 2008, Mr. Black has cooperated, in the investigation of the other
22 individuals involved in this crime, including the making of monitored recorded,
23 consensual phone calls, he has also worked with government officials in a number of
24 completed and ongoing cases, a summary of which has been provided by the federal
25 government, and is Exhibit "A" to this memorandum, and filed under seal.
26
27

1
2
3 SENTENCING RECOMMENDATION

4 Mr. Black agrees with the guideline range and also notes that the government
5 has made a motion to depart from the standard guideline range, pursuant to U.S.C.
6 5K1.1. While the government has complied with the plea agreement, it is the
7 defendant's position that the sentence imposed by this Court should be that of
8 probation and not a prison sentence.
9

10 There are a number of factors that we believe warrant leniency and a
11 probationary sentence in this matter. As discussed above, the Court should understand
12 that Mr. Black never intended that this attack on Comcast take place and, as he has
13 indicated in his letter to the Court, was unwilling to participate when E.B.K. announced
14 his intention to continue with the "game" that Mr. Black thought he was playing.
15

16 USSG 3553(a) sets out factors that we believe warrant a sentence of probation in
17 this matter.
18

19 As this Court is aware USSG 3553(a) directs that this Court imposes a sentence
20 sufficient but not greater than necessary to comply with the purposes set forth in
21 paragraph 2.
22

23 In fashioning a sentence, the Court should consider the nature and circumstances
24 of the offense and the history and characteristics of the defendant. As the pre-sentence
25 report sets out, Mr. Black, at the time was an 18 year old individual, with no criminal
26 history and no previous acts of misconduct. Mr. Black's main problem appears to be
27 that he is an extremely intelligent young man who failed to understand the nature and

1 consequences of his actions and failed to harness his abilities and reign them in during
2 this period of his life. Mr. Black, due to his technical skills and intelligence, looked at
3 the world of computers as a challenge and his moving through the world of the Internet
4 and firewalls and security measures as the ultimate challenge for his skills. This,
5 unfortunately, brought him to the point of realization that, in May of 2008, that his
6 skills could be used for criminal activity and could result in many people suffering
7 damage as a result of his and his friends' activities. It is important to note that Mr.
8 Black and these other individuals did not pursue these actions for monetary gain and
9 there are no allegations in any of the information available that they intended to profit
10 from this. This truly was a game that had disastrous consequences.

11
12
13
14 The nature and the circumstances of the offense have been discussed by the
15 government and in the pre-sentence report. There was no question that this activity
16 caused Comcast, and its customers, damage through an outage of time and lack of
17 access by customers to their Internet account. There was no permanent damage
18 intended nor resulting and, as discussed, no profit motive existed in this intrusion.

19
20 The Court also needs to impose a sentence to reflect the seriousness of the
21 offense to promote respect for the law and to provide just punishment for the offense.
22 The Court is now sentencing an individual who was two years older than he was at the
23 time of this event. He readily admits and realizes the seriousness of the offense and
24 understands the true implications of his conduct. The offense certainly is serious in
25 that it damaged Comcast and its customers for a period of hours and, obviously, it had
26 potential, if carried farther, to do further damage. As discussed, Mr. Black never
27

1 intended this act to actually occur, and after he was advised of the incursion into
2 Comcast, he immediately took steps to reverse the process. Since that time, after the
3 initial calls to Comcast by Mr. Black, and during the past year of work, he has
4 demonstrated his understanding of the seriousness of the offense and demonstrated his
5 respect for the law, through his work with the government.
6

7 A sentence of probation provides just punishment for the offense. As to an
8 appropriate sentence providing adequate deterrence, again, Mr. Black has been working
9 for the government in the present case, and in many other cases for two years. It is
10 believed that, by his own actions, he has shown he has been deterred and has shown
11 that the public does not need to be protected from further crimes by him.
12

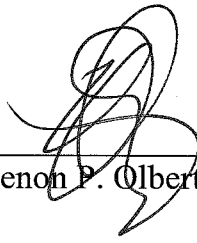
13 Mr. Black, as indicated will soon be 21 years old. He committed this crime at a
14 very young age and has matured significantly during the last two years. He has been
15 self-employed and now currently employed by an Internet marketing company and has
16 learned to use his skills in a positive and appropriate way and shows all the signs of
17 understanding and reflecting on the crime that he committed and having learned from
18 this experience.
19

20 A jail sentence in this case will have no positive impact on anyone. The public
21 does not need to be protected from Mr. Black, he does not need to be deterred from
22 further crime and he committed this offense at a very young age. As discussed above,
23 Mr. Black was blessed with a very bright mind and amazing skills that he
24 misunderstood and misused two years ago. We have all seen young people blessed
25 with skills that they didn't know how to use or misusing them and later maturing and
26
27

1 becoming very productive members of society. It is believed that if Mr. Black is given
2 this opportunity and sentenced to a term of probation, he can continue to become an
3 outstanding and very productive member of society.
4

5
6 DATED this 6th day of August, 2010.

7
8 LAW OFFICE OF
9 ZENON PETER OLBERTZ
10 Attorney for Defendant
11 James R. Black, Jr.

12 
13 _____
14 Zenon P. Olbertz, WSB #6080
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

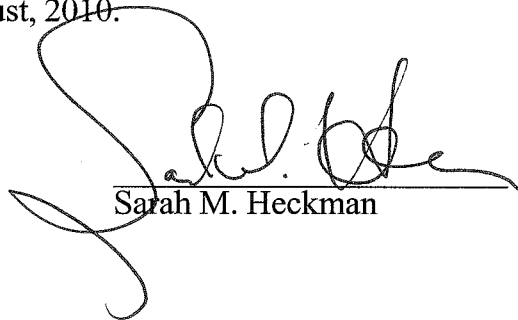
1
2 I hereby certify that on August 6th, 2010, I electronically filed the foregoing
3 Defendant Black's Sentencing Memorandum with the Clerk of the Court using the
4 CM/ECF system which will send notification of such filing to the following:
5

6 Michael L. Levy
7 United States Attorney's Office

8 I hereby certify that on August 6th, 2010, I mailed Defendant Black's
9 Sentencing Memorandum to the following:

10 James R. Black, Jr.
11 1648 Dahlia Lane S.W.
12 Apt. 18-303
13 Tumwater, WA 98512

14 DATED this 6th, day of August, 2010.

15 
16 Sarah M. Heckman
17
18
19
20
21
22
23
24
25
26
27

Sarah

From: James Black [james@fame.net]

Sent: Friday, August 06, 2010 3:23 PM

To: Sarah@olbertzlaw.com

Subject: Apology letter

Dear Comcast and the United States District Courts,

I would like to apologize for all of the inconveniences and trouble that I created last year, and I hope to find the most direct and efficient way to express my remorse for my actions in writing. The immature stunt I pulled was meant to be a harmless joke where my accomplices and I pursued no financial gain or damaged anything. After realizing the influential damage to my life that was a result of peer pressure, I did all I could to use my knowledge of computer security to only help assuage vulnerabilities from future dilemmas such as this. I will only apply my knowledge for good, not evil, and I have learned an immense amount from this situation.

I would just like it to be known that I never had any intention for it to go the way it did. I was joking around on the phone about the whole situation and never meant for anything serious to happen. I was surprised to find out the next thing that happened, my former friend under the alias of EBK, called me a few hours later telling me that "he got it"; referring to Comcast. He asked me to login to the website and that is when I changed the contact information, but made sure not to damage the site. I was persisted by my peers to deface it, but I refused, and that is when EBK told the other hacker under the alias of Slacker to do it. I told them it was a bad idea to deface it and tried to tell them not to do it, but that did not work to my advantage, I did however persuade them to not put anything obscene or provocative on the site like cuss words or pornographic material; which was their initial plan. After things got out of control, I took it upon myself to call comcast directly, spending four hours on the phone trying to get to the right people to inform them of what happened and how they can prevent it from happening again.

In addition, following the security breach, I discontinued my friendships and associations with the other individuals who are included in this case. I felt pressured into this situation and was harassed for ending my friendship with them, and have suffered from immense inconveniences, such as cruel pranks acted out by my accomplices against myself. My health and life has deteriorated ever since, and I have attempted to completely shun myself from social networking online with trouble-makers. Following a tragic and unfortunate death of my Grandma, the only guardian and person I was living with, I was left on my own financially and emotionally. I needed a new life, and a new beginning, so I moved to Washington where I began a moderate venture info affiliate marketing which finally allowed me to put food on the table.

My sincerest apologies for what I have done come directly from my

8/6/2010

heart, and I am taking a new course of action by working with Comcast in order to help fix this situation. I hope this situation can be worked out accordingly with the legal system and all can be well. I have cooperated with everybody in order to help the investigation and wrap up this case, and yearn for things to go back to normal in my life. Thank you for taking the time to read this, and I truly appreciate your time and efforts.

Sincerely,

James Black