UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA	)	
	)	No. 3:12-CR-00107
v.	)	
	)	Hon. Amul R. Thapar, USDJ
MEGAN RICE	)	Hon. C. Clifford Shirley, Jr., USMJ
	)	

SENTENCING MEMORANDUM OF THE DEFENDANT MEGAN RICE

The Defendant **MEGAN RICE**, by undersigned counsel, and pursuant to LR 83.9(k), E.D. Tenn., submits this sentencing memorandum.

I. PROCEDURAL HISTORY

This case was tried to a jury on May 7 and 8, 2013. The jury returned a verdict of guilty on counts one and three of the superseding indictment filed December 4, 2012 [doc. 55].

Count one charged that this Defendant, with her two co-defendants Michael R. Walli and Greg Boertje-Obed, "aiding and abetting each other, with the intent to injure, interfere with, and obstruct the national defense of the United States, did willfully injure, destroy, and contaminate, and attempt to injure, destroy and contaminate national-defense premises, specifically, buildings and grounds of the Y-12 National Security Complex," in violation of 18 USC §§ 2155(a), 2151 and 2. Count three charged that the three co-defendants (as part of the same conduct charged in count one) "aiding and abetting each other, willfully and by means of cutting, painting and defacing, did injure and commit a depredation against property of the United States and of the US Department of Energy, National Nuclear Security Administration, Y-12 National Security Complex," with resulting damage to such property exceeding $1,000.00, in violation of 18 USC

§§ 1361 and 2.

The statutory penalty for a violation of 18 USC § 2155(a) is a fine under Title 18, USC, and not more than 20 years imprisonment. The statutory penalty for a violation of § 1361 is a fine under Title 18, USC, and, if the damage or attempted damage exceeds $1,000.00, imprisonment for not more than 10 years. The maximum fine applicable to each of these offenses is $250,000.00. 18 USC § 3571(b)(3).

The Defendant Megan Rice and her co-defendants were detained upon the jury's return of its verdict. Megan Rice has been in continuous custody since, with the exception of a period of days during which she was allowed to travel to a funeral. [*See* doc. 209: Order (allowing release on the morning of July 25, 2013, and reporting back on July 27, 2013).]

The District Court filed its Sentencing Order [doc. 167] on May 13, 2013. The District Court later continued the sentencing hearings for Megan Rice and her co-defendants to their present settings on January 28, 2014. [Doc. 234: Order.]

II. APPLICABLE PROCEDURES

A procedure for judging what must be considered in imposing a sentence in a case like this is prescribed by USSG § 1B1.1. The sentencing court should first apply the advisory United States Sentencing Guidelines provisions, in the order in which they present themselves in the Federal Sentencing Guidelines Manual, vol. 1. Next, "[t]he court shall then consider Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence." USSG § 1B1.1(b). Third, according to USSG § 1B1.1(c), "[t]he court shall then consider the applicable factors in 18 USC § 3553(a) taken as a whole. *See* 18 USC § 3553(a)." *See also United States v. McElheney*, 630 F. Supp. 2d 886, 888-89 (E.D. Tenn. 2009).

III. STANDARD OF ADJUDICATION

A sentencing court that applies a presumption of reasonableness to the applicable advisory Guidelines range commits reversible error. *Rita v. United States,* 551 U.S. 338, 347-48, 127 S. Ct. 2456, 168 L.Ed. 2d 203 (2007); *United States of America v. Wilms*, 495 F.3d 277 (6th Cir. 2007). The sentencing court's duty is to impose "a sentence sufficient, but not greater than necessary, to comply with the purposes" stated in 18 USC § 3553(a)(2). *Wilms*, *supra*, at 281 (citations omitted). This is the "overriding requirement." *McElheney*, 630 F. Supp. 2d at 896.

> The court may impose a sentence within the applicable Guidelines range (after any clearly applicable departures) if such is consistent with the court's consideration of the § 3553(a) factors, or impose a non-Guidelines sentence if such is justified by the § 3553(a) factors.

Id. at 889-90 (citation omitted).

IV. THE PURPOSES OF SENTENCING

"The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2)" of 18 USC § 3553(a). These purposes are listed in § 3553(a)(2)(A) through (D):

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

This case differs greatly from most cases to which § 3553 applies. The Defendant Megan Rice is 83 years old, and has served most of her life as a sister of the Society of the Hold Child Jesus, a Roman Catholic order. Her conduct in this case was motivated by her unshakeable conviction, based on her studied and devoted understanding of Christian principles of

nonviolence, that nuclear weaponry is inescapably evil.

Megan Rice has been open throughout this case about her affiliation with the Plowshares Movement. Like-minded individuals in this movement have engaged in similar expressive conduct in the past, and no doubt will do so in the future.

For these reasons, this is one of the rare cases in which Congress' stated purposes of criminal punishment of affording "adequate deterrence to criminal conduct" (general deterrence), § 3553(a)(2)(B), protecting "the public from further crimes of the defendant" (specific deterrence), § 3553(a)(2)(C), and providing to a convicted defendant" needed education or vocational training, medical care, or other correctional treatment in the most effective manner" (rehabilitation), § 3553(a)(2)(D), scarcely apply. Those who share Megan Rice's belief in a moral imperative to end nuclear weaponry, and in the superiority of that imperative over any law promulgated by humans, are going to act in obedience to that moral imperative regardless of the punishment imposed on Megan Rice. She herself, at the age of 83, and devoted to Christian nonviolence, presents little threat of a future life of crime against which the public needs protection. As for educational or vocational training, medical care, or other correctional treatment, it challenges reason to suggest that the Bureau of Prisons has anything to offer for the benefit of this long-lived, experienced, and devout individual that she cannot find in greater quantity and quality outside penitentiary walls.[1]

This leaves for consideration in this case the first purpose of criminal punishment, the

[1] In any event, Congress itself seems to doubt that rehabilitation can be had as a result of incarceration:

> The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.

18 USC § 3582(a)

one stated in § 3553(a)(2)(A), the need for the sentence imposed to reflect the seriousness of the offense(s), to promote respect for the law, and to provide just punishment. This stated purpose, and especially its "seriousness" component, cannot be considered separately from something else that the court is commanded by statute to consider: "the nature and characteristics of the offense and the history and characteristics of the defendant." 18 USC § 3553(a)(1). First, however, in keeping with the procedure call for by the United States Sentencing Guidelines (USSG) and the Court of Appeals for the Sixth Circuit, a review of Megan Rice's presentence investigation report (PSIR) is in order.

V. THE PRESENTENCE INVESTIGATION REPORT

Megan Rice's PSIR states an offense level of 26, applying USSG § 2M2.3 to the 18 USC § 2155(a) offense, and using USSG § 3D1.4 to determine the combined offense level. With two criminal history points, the advisory Guidelines term of imprisonment calculated in this case is offense level 26 / criminal history category II, or 70 to 87 months.

Megan Rice, through undersigned counsel, states four objections to this PSIR. The first objection concerns ¶ 23 of the PSIR. The offense conduct is described in the PSIR, ¶ ¶ 16 through 24 not through reference to trial evidence, but by quotations from an affidavit of complaint filed early in this case. Paragraph 23 includes a gratuitous allegation that Megan Rice and her co-defendants "maliciously defaced and injured" a building in the Y-12 complex. Neither 18 USC § 2155(a) nor § 1361 includes "malice" as an element of the offense described. This objection is raised to avoid any unfair prejudice that might otherwise arise from the quoted language. It is conceded that this matter does not affect the calculation of the advisory Guidelines range of a term of imprisonment in this case.

The second objection concerns ¶ 26, which imposes a restitution obligation of

$52,953.00. All of the defendants have submitted previously an objection to this restitution provision of the PSIR.

The third objection is to ¶ 28 of the PSIR. The probation officer advised that it does not appear that Megan Rice is eligible for an adjustment for acceptance of responsibility under USSG § 3E1.1.

This guideline, in subsection (a), provides for a decrease of an offense level by two levels "[i]f the defendant clearly demonstrates acceptance of responsibility for [her] offense." Subsection (a), unlike the provision in subsection (b) which allows for a decrease of an offense level by an additional (third) level in certain cases upon motion of the government, states nothing about a showing that a defendant has assisted authorities in the investigation or prosecution of her own misconduct, timely notification of an intent to plead guilty, permitting the government to avoid preparing for trial, or permitting efficient allocation of prosecutorial and judicial resources.

As is explained in § 3E1.1, comment. (n. 2), conviction by trial does not automatically preclude a defendant from the benefit of the offense level decrease by two levels provided by § 3E1.1(a). *See United States v. Kraig*, 99 F.3d 1361, 1371-72 (6th Cir. 1996). An example given in application note 2 of acceptance of responsibility even when the constitutional right to trial is exercised is "where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to [her] conduct)." Furthermore, application note 1(D) to this guideline includes among the considerations that might support a decrease of the offense level by two levels "voluntary surrender to authorities promptly after commission of the offense." *Cf. United States v. Fleener*, 900 F.2d 914, 916-18 (6th Cir. 1990) (the district court did not clearly err in

granting a decrease of the offense level by two levels under an older version of USSG § 3E1.1 even though the defendant had attempted an unsuccessful entrapment defense; the defendant turned over incriminating videotapes and letters when a search warrant was executed; this was within § 3E1.1, comments (n. 1(E)), "voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense").

From the moment of their arrest, Megan Rice and her co-defendants have been open to the world about their conduct at the Y-12 complex, and about their moral and legal reasons for the conduct charged in this case. Indeed, their openness about their conduct and objectives has been essential to their desired communication to the world of their view that nuclear weapons are inescapably immoral, illegal, and evil.

As the evidence at trial showed, Megan Rice and her co-defendants were completely nonviolent when they were arrested. They used the occasion to present symbolically their passion for nuclear disarmament.

Much of the litigation in this case occurred pretrial, and concerned such overarching issues as the argued illegality of operations at Y-12 under international law applicable to the United States, and whether the defendants would be permitted to mount a necessity or justification defense. The very invocation of this defense illustrates that Megan Rice and her co-defendants were not interested in challenging most of the facts that the United States had to prove to establish the elements of the charged offense. At trial, the pertinent facts concerning the conduct charged (with an exception for the Government's inflated figures for the costs of restoring the walls of a building on which the defendants wrote words and performed symbolic

acts as part of their mission) were not contested.[2]

Megan Rice and her co-defendants are thus like the defendant in the examples used in the commentary to USSG § 3E1.1. They went to trial to assert and to preserve for appeal issues not related to factual guilt, but important issues concerning international and United States law. They went to trial to communicate their beliefs with urgency to their society and to the world at large. They challenged the application of 18 USC § 2155(a) to their conduct, aware that if this statute can be used successfully to prosecute nonviolent protest activity, it will enable federal law and law enforcement to ignore profound distinctions between nonviolent protestors and terrorists. The sentencing court should therefore grant a decrease of the offense level by two levels in accordance with USSG § 3E1.1.

The final objection to the PSIR is to ¶ 29. "The court shall use the Guidelines Manual in effect on the date that the defendant is sentenced." USSG § 1B1.11(a). The 2013 manual has now been issued. It is conceded that this matter does not affect the calculation of the advisory Guidelines range of a term of imprisonment in this case.

IV. THE SERIOUSNESS OF THE OFFENSE, PROMOTION OF RESPECT FOR THE LAW, JUST PUNISHMENT; THE NATURE AND CIRCUMSTANCES OF THE OFFENSE, AND THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT

The Defendant Megan Rice, through undersigned counsel, submits that the District Court should consider together in this case "the seriousness of the offense," 18 USC § 3553(a)(2)(A), and "the nature and circumstances of the offense," § 3553(a)(1). This District Court has stated

[2] The District Court has recognized this already. "Many of the key facts at trial were undisputed or easily proved: the defendants illegally entered Y-12 and inflicted minor damage once inside." [Doc. 239: Memorandum Opinion and Order at 2.]

already that under § 3553(a)(1), "the defendants' non-violence will be relevant at sentencing." [Doc. 239: Memorandum Opinion and Order at 8.] "Given the obvious differences between the defendants and the paradigmatic saboteur, those [§ 3553(a)(1)] factors surely will be worthy of discussion." [*Id*.]

The prosecutorial decision to charge Megan Rice and her co-defendants under 18 USC § 2155(a) drives to an unfair extent the advisory Guidelines terms of imprisonment in this case. That this prosecutorial decision has resulted in confronting Megan Rice and her co-defendants with unconscionably lengthy potential terms of imprisonment is highlighted by the fact that the provision of the Sentencing Guidelines that corresponds to the statute, USSG § 2M2.3, states without elaboration a base offense level of 26. In other words, the pertinent Guidelines provision states no gradations, and therefore does not acknowledge the obvious difference between, for example, a spray-painted reference to the biblical prediction that people and nations "shall beat their swords into plowshares, and their spears into pruninghooks," Micah 4:3 (KJV), and a Molotov cocktail.

The conduct that led to the convictions in this case was, of course, mostly trespass and graffiti, and nothing to do with explosives. Megan Rice and her co-defendants, once they gained access to the prohibited location, restrained themselves according to the limits of their non-violent mission (when they could have inflicted much more injury to property), and continued to act peaceably when confronted by the first security officer on the scene. Throughout their offense conduct and arrest, and, afterwards, their prosecution, they have promoted disarmament, not violent destruction.

The requirements of promotion of respect for the law and just punishment therefore do not require even the advisory Guidelines term of imprisonment in Megan Rice's case. This

elderly individual, committed unreservedly to her moral convictions, and possessed of wisdom gained through long experience and contemplation, has already been behind bars for months. The world has seen the law upheld through her incarceration. Additional imprisonment, especially to the extent recommended by the advisory Guidelines calculation in her case, would exceed the mandate of the "parsimony provision" of 18 USC § 3553(a) that a sentencing court impose a sentence "sufficient, but no greater than necessary" to comply with the § 3553(a)(2) purposes of sentencing.

For the reasons stated, the Defendant Megan Rice moves for a downward departure and for a variance from the advisory Guidelines range of a term of imprisonment. By undersigned counsel, she adopts the sentencing arguments stated by her co-defendants.

Respectfully submitted,

s/ Francis L. Lloyd, Jr.
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s/ Francis L. Lloyd, Jr.