

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMMOTHY PORTMAN,

Defendant.

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ORDER

04-CR-0168-C

Defendant Timothy Portman has filed an ex parte petition for clarification or modification of the terms of his supervised release. Contending that his present conditions amount to illegal occupational restrictions, defendant asks for a modification of the conditions and specifically, the removal of the condition directing the probation office to monitor any computers that defendant uses, whether at home or work. A hearing is not necessary on the motion, because the relief that defendant is seeking would be favorable to him and would not extend the time of his supervised release. Fed. R. Crim. P. 32.1(c)(2)(B).

Section 5F1.5 of the sentencing guidelines restricts courts from prohibiting a defendant from engaging in a specified occupation, business or profession or limiting the terms upon which a defendant may do so unless the court finds both that a reasonably direct

relationship existed between the defendant's relevant conduct and his occupation, business or profession and that imposition of a restriction is reasonably necessary to protect the public "because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted." Id.

Defendant was convicted of accessing a protected computer and recklessly causing damage with a loss of at least \$5,000. The charged conduct consisted of hacking into the computer system of LeMans Corporation, defendant's former employer, around the time he was fired from his job as network administrator. Defendant deleted 10.5 gigabytes of information from the LeMans system, stopped the email system, installed various hacking tools and turned off the anti-virus software on one system server. Further investigation showed that defendant had installed computer hacking software even before he was fired and had been reading internal emails from coworkers for some time before he was terminated.

Defendant argues now that his criminal conduct was aberrant, that he worked successfully in two different senior networking positions between the time he was terminated from LeMans and the time he was sentenced and that in his fifteen years of professional experience, he has never committed another crime involving computers or been accused of committing one. He contends now that he has learned his lesson and will never again be tempted to engaged in hacking behavior.

Defendant may be perfectly sincere about his intention to refrain from criminal conduct in the past, but the inexplicable nature of his hacking activity in this case, taken together with his prior criminal history, makes me cautious about accepting him at his word at this time. Instead, I am persuaded that the conditions imposed on defendant's use of computers are both reasonable and necessary to protect the public from criminal activity similar to the hacking that led to his conviction in this case and that the minimum time necessary for the imposition of those conditions is the three-year term of defendant's supervised release.

However, it is possible to modify the conditions to accommodate defendant's desire to work in areas related to his expertise in the computer industry. The critical aspects of the restrictions on defendant's work are 1) his disclosure of his conviction to employers, clients or customers; (2) the ability of the probation office to verify the disclosure; and (3) the ability of the probation officer to monitor defendant's computer use itself or to verify that defendant's employer is monitoring that use. So long as these critical aspects remain in place, other details of the restrictions on defendant's work may be reconsidered. For example, if defendant is concerned that no company will hire him if it has to agree to allow the probation office to monitor its computers, the probation office will work with him and any prospective employer on a monitoring plan that will meet the public's need for protection and the employer's need to protect the privacy of its operations.

Defendant wants the court to eliminate the requirement for monitoring any client or employer computer. I am not persuaded that eliminating this condition would protect the public. Defendant suggests that equal protections could be achieved if the court entered an order restraining him from accessing any of LeMans's computer systems, contacting any of LeMans's employees and performing any "hacker like" security audits for anyone. He does not say how the court would monitor his observance of such an order. Without monitoring defendant's computers, it would be impossible to know whether defendant is abiding by the restrictions imposed on him until after damage has been done.

#### ORDER

IT IS ORDERED that defendant Timmothy Portman's motion for the removal of all restrictions on the monitoring of employer or client-owned computer systems is DENIED. However, defendant is free to work with the probation office on modifications of his court-ordered restrictions on computer use, subject to court approval of any changes.

Entered this 12th day of September, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge