

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

FRANK MENICHINI

CRIMINAL ACTION
NO. 15-00462

PAPPERT, J.

April 9, 2020

MEMORANDUM

Frank Menichini pleaded guilty to one count of falsifying documents with the intent to obstruct a United States Department of Transportation investigation. *See* (Guilty Plea Agreement ¶ 1, ECF No. 11). In February of 2016, the Court sentenced Menichini to three years' probation, including six months' home confinement, and prohibited him from incurring new credit charges or opening new lines of credit without prior approval; he also had to complete 100 hours of community service and pay \$300,000 in restitution. *See* (J. in Crim. Case, ECF No. 15). The next year, while falling behind on his monthly restitution payments and without getting approval, Menichini leased a new luxury car with a \$6,000 down payment. *See* (Request for Revocation Hr'g 2–3, ECF No. 19). After Menichini pleaded guilty to these violations, the Court revoked his probation and sentenced him to sixty days' imprisonment followed by three years' supervised release. (Order Revoking Probation, ECF No. 21). As of this month, Menichini owes \$258,212.88 in restitution, and his supervised release is set to expire in November of 2020. *See* (Gov't Resp. 2, ECF No. 25). Since serving his prison term, Menichini has complied with the terms of his supervision. *See* (*id.* at 4).

He now moves for early termination of his supervised release, (Mot. for Early

Termination of Supervision, ECF No. 23), something the Probation Office and the United States Attorney oppose, *see* (Gov't Resp.). According to Menichini, the COVID-19 pandemic "is wreaking havoc" on his small business, though he never says how the pandemic has harmed his business. (*Id.* at 2.) To alleviate this unspecified harm, Menichini hopes to apply for a forgivable loan under the Paycheck Protection Program created by the Coronavirus Aid, Relief, and Economic Security Act, § 1102, 15 U.S.C. § 636(a) (West 2020). But because such loans are unavailable to persons "presently incarcerated, on probation or parole," (Mot. for Early Termination of Supervision 3), Menichini asks the Court to terminate his supervised release about seven months early.

A district court may "terminate a term of supervised release" if the defendant's conduct "and the interest of justice" warrant doing so. 18 U.S.C. § 3583(e)(1). Before doing so, a court must consider "the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)." *Id.* § 3583(e). A court must ordinarily hold a hearing "[b]efore modifying the conditions of probation or supervised release," Fed. R. Crim. P. 32.1(c)(1), but it need not do so "before refusing a request for modification," *United States v. Nonahal*, 338 F.3d 668, 671 (7th Cir. 2003). Some panels of the Third Circuit have remarked that "early termination of supervised release under § 3583(e)(1) should occur only when the sentencing judge is satisfied that 'new or unforeseen circumstances' warrants it." *United States v. Davies*, 746 F. App'x 86, 89 (3d Cir. 2018) (unpublished) (quoting *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997)). But elsewhere the Third Circuit has expressed "doubt that such a [new-or-changed-circumstances] requirement exists." *United States v. Murray*, 692 F.3d 273, 279 (3d Cir. 2012); *see also United States v. Kay*, 283 F. App'x 944, 946 (3d Cir. 2008)

(unpublished).

After considering the relevant § 3553(a) factors, the Court denies Menichini's Motion. Though some factors are neutral or slightly favor terminating Menichini's supervision, *see, e.g.*, 18 U.S.C. § 3553(a)(2)(D), others counsel strongly against granting the Motion. For example, Menichini still owes \$258,212.88 in restitution to the company he misled. *See* (Gov't Resp. 2, 5); (Guilty Plea Agreement ¶ 3). That substantial obligation, combined with Menichini's past noncompliance with his restitution payments, suggests that freeing Menichini from his supervision would undermine efforts to provide restitution to his victims. 18 U.S.C. § 3553(a)(7). Likewise, Menichini's sentence of probation and then sixty days' imprisonment for violating probation were both below the applicable sentencing range. *See* (Menichini Sentencing Mem. 9, ECF No. 13); U.S.S.G. § 7B1.4(a). Further reducing his sentence to let him apply for government assistance would run contrary to the interest of justice given his past failure to satisfy his restitution obligations and the nature of his original offense—falsifying documents with the intent to obstruct a government investigation. *See* 18 U.S.C. § 3553(a)(1). And to the extent Menichini must show extraordinary or unforeseen circumstances to merit early termination, he has not done so. To be sure, the COVID-19 pandemic is extraordinary and has changed life in ways few predicted. But without any details showing how the pandemic has harmed his business specifically or how the financial assistance he seeks furthers the interest of justice, such a generic invocation of the pandemic cannot suffice. *Cf. United States v. Raia*, --- F.3d ---, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020).

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

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ORDER

AND NOW, this 9th day of April 2020, upon consideration of Frank Menichini's Motion for Early Termination of Supervision (ECF No. 23) and the government's Response (ECF No. 25), it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.