

FILED 7/23/19

AT 5:00 O'clock P M
CLERK, DISTRICT COURT

[Signature]
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
)
Plaintiff,)
)
vs.)
)
BRANDAN RYAN DRESSER)
DOB: 11-18-1983)
SSN: ***-**-4758)
IDOC: 98928)
)
)
Defendant.)

Case No. **CRF 2012 6443**

**ORDER DENYING I.C.R. 35
MOTION AND NOTICE OF
RIGHT TO APPEAL**

On January 8, 2019, as a result of a probation violation dated September 19,
2018, BRANDAN RYAN DRESSER (Dresser) had his sentences imposed as follows:

**CRF 2010 17657 - COUNT I
- GRAND THEFT, I.C. §18-
2403, 19-2407(1), a felony**

To the custody of the State of Idaho Board of
Correction for a fixed sentence of THREE (3) years
followed by an indeterminate term of FIVE (5) years for
a total unified sentence of EIGHT (8) years.

**CRF 2010 17657 - COUNT
IX - GRAND THEFT BY
POSSESSION OF STOLEN
PROPERTY, I.C. §18-
2403(4), 19-2407(1), a
felony**

To the custody of the State of Idaho Board of
Correction for a fixed sentence of THREE (3) years
followed by an indeterminate term of FIVE (5) years for
a total unified sentence of EIGHT (8) years.

**CRF 2010 17657 - COUNT
X - GRAND THEFT BY
POSSESSION OF STOLEN
PROPERTY, I.C. §18-
2403(4), 19-2407(1), a
felony**

To the custody of the State of Idaho Board of
Correction for a fixed sentence of THREE (3) years
followed by an indeterminate term of FIVE (5) years for
a total unified sentence of EIGHT (8) years.
**THESE THREE SENTENCES IN CRF 2010 17657
RUN CONCURRENT.**

**CRF 2010 19799 - COUNT I
- GRAND THEFT, I.C. §18-**

To the custody of the State of Idaho Board of
Correction for a fixed sentence of THREE (3) years

2403, 19-2407(1), a felony

followed by an indeterminate term of FIVE (5) years for a total unified sentence of EIGHT (8) years.

THIS SENTENCE IN CRF 2010 19799 RUNS CONCURRENT WITH THE SENTENCES IMPOSED IN CRF 2010 17657.

CRF 2012 6443, GRAND THEFT BY POSSESSION OF STOLEN PROPERTY, I.C. § 18-2403(4); 18-2407(1)(b)(6), a felony

To the custody of the State of Idaho Board of Correction for a fixed sentence of FIVE (5) years followed by an indeterminate term of FIVE (5) years for a total unified sentence of TEN (10) years.

At sentencing on October 6, 2012, the sentencing judge did not specify concurrent or consecutive, so this Court now finds it to be CONCURRENT WITH ALL ABOVE SENTENCES, as a matter of law due to that failure of the sentencing judge to so specify, *State v. Bosier*, 149 Idaho 664, 667, 239 P.3d 462, 465 (Ct.App.2010).

Probation Violation Disposition and Notice of Right to Appeal, 1-2. Dresser was sent to prison on all sentences in all three of his cases before this Court. *Id.* The September 19, 2018, probation violation report, to which Dresser admitted on January 8, 2019, alleged that Dresser 1) failed to report to his probation officer on 5/16/18, 6/11/18, 6/12/18 and 7/5/18, 2) used methamphetamine from 1/31/18 to 3/20/18, 3) failed to reside at his approved residence and 4) failed to attend six drug tests. Additionally, at the January 8, 2019, hearing, a copy of a federal indictment pertaining to Dresser was presented to this Court.

On January 25, 2019, Dresser, pro se, filed the instant Motion for Correction or Reduction of Sentence, I.C.R. 35, (his caption shows it being filed in all three cases) requesting that:

I respectfully request the courts to reconsider my sentence due to the custody level I am currently housed. Due to a United States Marshall Detainer I am currently housed, and will continue to be classified as medium, for the remainder of my prison sentence. With this taken into consideration I am respectfully requesting your honor to grant my plea for leniency. Thank you.

Motion for Correction or Reduction of Sentence, I.C.R. 35, 2. While the motion was

purportedly filed in all three cases, it was only actually filed in Kootenai County Case No. CRF 2012 6443, and that is appropriate as only that case is implicated by Dresser's motion. In his motion, Dresser only mentions the Grand Theft Charge for which he received a "unified term of 10 years including 5 years fixed followed by 5 years indeterminate." *Id.* at 1. Dresser proposed a sentence of two and one half years fixed, followed by two and one half years indeterminate. *Id.* at 3.

On February 4, 2019, this Court appointed counsel for Dresser. On May 16, 2019, counsel for Dresser filed a Notice of Hearing scheduling Dresser's I.C.R. 35 Motion for hearing on June 25, 2019. The Notice of Hearing was only filed in Kootenai County Case No. CRF 2012 6443. Counsel for Dresser did not file a Notice of Hearing in either Kootenai County Case No. CRF 2010 17657 or CRF 2010 19700.

The Court held a hearing on June 25, 2019. Dresser participated telephonically as he was in custody. Dresser testified his current classification makes him ineligible for treatment. At the conclusion of the hearing this Court indicated it would deny Dresser's motion but would take the matter under advisement to give Dresser a chance to prove the truth of what he said in his testimony, specifically that a reduction to two and one half years fixed, followed by two and one half years indeterminate was somehow the "magic number" that would allow Dresser to obtain programming while in the federal prison system.

It has been 28 days since Dresser's hearing on his I.C.R. 35 motion, and no evidence has been submitted by Dresser. As the Court has taken the matter under advisement, in a few more days this Court will run afoul of Article V, Section 17 of the Idaho Constitution and Idaho Code § 59-502, both of which require district judges to issue a decision within 30 days of taking a matter under advisement. Failing that requirement, a judge may not receive his or her salary.

A motion to reduce sentence is a motion for leniency. *State v. Strand*, 137 Idaho 457, 463, 50 P.3d 472, 478 (2002); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The decision to grant or deny leniency is left to the sound discretion of the court. *Strand*, 137 Idaho at 463, 50 P.3d at 478. *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989).

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. *State v. Arambula*, 97 Idaho 627, 550 P.2d 130 (1976). Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly severe. *State v. Lopez*. 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984). . . .

However, if the sentence is not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with his motion.

State v. Forde, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); see also *State v. Adams*, 137 Idaho 275, 278, 47 P.3d 778, 781 (Ct. App. 2002).

For a sentence to be considered “reasonable” at the time of sentencing the court must consider the objectives of sentencing: whether confinement is necessary to accomplish the objective of protection of society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to the case. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). This requires the court focus on “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982).

The sentences imposed on Dresser were and are appropriate sentences given Dresser's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Dresser's crimes. Given that no evidence has been submitted as to Dresser's claims that his sentence in Kootenai County Case No. CRF 2012 6443 is impacting Dresser's ability to program, the Court can only assume those claims are not true. This Court concludes that the sentence imposed was

and is necessary for the protection of society and the deterrence of Dresser and others.

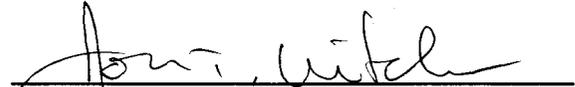
IT IS THEREFORE ORDERED that Dresser's I.C.R. 35 Motion is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, BRANDAN RYAN DRESSER, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer, if any.

DATED this 23rd day of July, 2019.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2019 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to: Aug.

Defense Attorney - Lisa Chesebrop dfax@kegov.us
Prosecuting Attorney kepa@courtschepp.us

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Probation & Parole dist1@idoc.idaho.gov

Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445 centralrecords

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy