STATE OF IDAHO)
County of KOOTENAI) ss
FILED 10/28/19
AT 8:30 O'clock A M
CLERK, DISTRICT COURT
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.

JORDAN AVERY ERICKSON
DOB: 12/02/1998
SSN: XXX-XX-3576
IDOC: 133452

Defendant.

Case No. **CR28-19-4042**

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

I. PROCEDURAL BACKGROUND.

On June 27, 2019, this Court sentenced Jordan Avery Erickson (Erickson) to five years fixed and zero years indeterminate for the felony in Count I, Battery with Intent to Commit a Robbery under I.C.§§ 18-903, 18-911, and five years fixed and fifteen years indeterminate for the felony in Count II, Conspiracy to Commit Robbery under I.C. §§ 18-6501 and 18-1701. Sentencing Disposition and Notice of Right to Appeal, 1. Those sentences run concurrent. *Id.*

On October 25, 2019, Erickson timely filed his Motion for Modification of Sentence Pursuant to I.C.R. 35(b). Erickson requests "his sentence be modified to a retained jurisdiction or in the alternative move a portion of the Defendant's determinate time to his indeterminate time." Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 2. Erickson adds:

> The basis for this Motion consists of the direct and collateral negative impact a sentence of the current nature places upon the Defendant and his future. The Defendant is remorseful for [what] he did and understands there needs to be consequences for his actions; however, he is young with no prior experience in the felony court system and now fully understands

> how a negative, flippant attitude can dramatically impact a presentence investigation report and the recommendations that follow and is respectfully requesting this Court grant him some leniency. Additionally, the co-Defendant and main perpetrator in this matter, Nolan Mullen-Huber, received a lesser sentence than the Defendant despite being convicted of robbery and conspiracy to commit robbery in addition to three (3) additional felony drug offenses. Please see Exhibit B attached hereto and incorporated as though fully set forth in length.

Id. at 2-3. Erickson requested a hearing. *Id.* at 3. A motion to modify a sentence "shall be considered and determined by the court without the admission of additional testimony and without oral argument, unless otherwise ordered by the court in its discretion." I.C.R. 35; *see State v. Copenhaver,* 129 Idaho 494, 496, 927, P.2d 884, 886 (1996); *State v. James,* 112 Idaho 239, 242, 731 P.2d 234, 237 (Ct. App. 1986) (it is the defendant's burden to present any additional evidence and the court cannot abuse its discretion in "...unduly limiting the information considered in deciding a Rule 35 motion"); *State v. Puga,* 114 Idaho 117, 118, 753 P.2d 1263, 1264 (Ct. App. 1987). Even though a hearing was requested, "[t]he decision whether to conduct a hearing on an I.C.R. 35 motion to reduce a legally-imposed sentence is directed to the sound discretion of the district court." *State v. Peterson,* 126 Idaho 522, 525, 887 P.2d 67, 70 (Ct. App. 1994); *citing State v. Findeisen,* 119 Idaho 903, 811 P.2d 513 (Ct. App. 1991). The Court has reviewed the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, and Erickson's entire file. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel and the Court's time.

II. ANALYSIS.

A. ERICKSON HAS NOT SET FORTH A VALID BASIS FOR HIS MOTION, NOR HAS HE SET FORTH ANY EVIDENCE TO SUPPORT HIS MOTION.

Erickson states, "Additional evidence may include testimony from the Defendant and potentially documentation in support of the Defendant's request." Mot. for

Modification of Sentence Pursuant to I.C.R. 35(b), 3. Where a sentence as originally imposed is not illegal, the defendant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown,* 121 Idaho 385, 393, 825 P.2nd 482, 490 (1992). "To establish that the sentence imposed was improper, the defendant must show that in light of the governing criteria, [the] sentence was excessive under any reasonable view of the facts." *Id.* (quoting *State v. Broadhead*, 120 Idaho 141, 143-45, 814 P.2d 401, 403-05 (1991) (citations omitted)). When a defendant does not identify what evidence he or she might have produced at a hearing that could not have been produced through affidavits, the district court does not abuse its discretion in refusing to hold a hearing on his or her Rule 35 motion. *State v. Ramirez*, 122 Idaho 830, 836, 839 P.2d 1244, 1250 (Ct. App.1992). Specifically, the Idaho Court of Appeals held:

> This Court has previously held that while a defendant is entitled to be present at sentencing and at resentencing when a prior invalid sentence is corrected, no such right exists on a motion to reduce a sentence. *State v. James,* 112 Idaho 239, 242, 731 P.2d 234, 237 (Ct. App.1986). "Indeed, the decision whether even to conduct a hearing on a Rule 35 motion has always been discretionary with the district court." *Id.* A trial court abuses its discretion on whether to hold a hearing on a Rule 35 motion when it unduly limits information considered in deciding the motion. *James,* 112 Idaho at 242, 731 P.2d at 237. Ramirez has failed to show that the district court unduly limited the available information in this case. Ramirez does not even identify what evidence he might have produced at a hearing that he was unable to produce through the affidavits which were submitted.

Id. (footnote omitted). Here, Erickson did not set forth any evidence that could be adduced. Erickson only provided argument in his motion. The Court cannot be required to guess at what evidence Erickson might present in support of his Rule 35 Motion. Accordingly, Erickson's Rule 35 Motion must be denied due to that failure.

B. ERICKSON'S MOTION HAS NO MERIT.

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 to 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 Court finds the sentences originally imposed were reasonable. The Court finds the imposition of those sentences was a reasonable decision for the reasons set forth on the record on June 27, 2019. This Court strongly felt the only way to keep the community safe (both from Erickson via incapacitation, and as a deterrence to others) was to impose those specific prison sentences. Nothing has changed since imposition of those sentences.

At sentencing, the Court made clear why it chose to give a co-defendant (Jones) a

retained jurisdiction, and why the Court was unwilling to do so with Erickson. Erickson failed to take responsibility, failed to take any accountability. Nothing has changed. Erickson has submitted no proof. No affidavit of Erickson to support his motion; again, only argument. But even Erickson's argument shows nothing has changed regarding his lack of responsibility and accountability:

> The basis for this Motion consists of the direct and collateral negative impact a sentence of the current nature places upon the Defendant and his future. The Defendant is remorseful for [what] he did and understands there needs to be consequences for his actions; however, he is young with no prior experience in the felony court system and now fully understands how a negative, flippant attitude can dramatically impact a presentence investigation report and the recommendations that follow and is respectfully requesting this Court grant him some leniency. Additionally, the co-Defendant and main perpetrator in this matter, Nolan Mullen-Huber, received a lesser sentence than the Defendant despite being convicted of robbery and conspiracy to commit robbery in addition to three (3) additional felony drug offenses. Please see Exhibit B attached hereto and incorporated as though fully set forth in length.

Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 3. Complaining about the consequences of his sentence is not taking responsibility. Claiming eleventh-hour remorse (even if an affidavit were submitted) is not taking responsibility. Comparing his sentences to the sentences other judges imposed on other co-defendants is not taking responsibility. Nothing has changed. The Court cannot keep the pubic safe other than by imposition of these sentences. The Court's primary responsibility is to protect the public. *State v. Toohill,* 103 Idaho 565, 568, 650 P.2d 707, 710 (1982). This Court concludes that imposition of Erickson's prison sentences is necessary for the protection of society and the deterrence of Erickson and others.

III. ORDER.

IT IS THEREFORE ORDERED that Erickson's Motion for Reconsideration of Sentence Pursuant to I.C.R. 35 is **DENIED.**

NOTICE OF RIGHT TO APPEAL

YOU, JORDAN AVERY ERICKSON, 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.

DATED this 28th day of October, 2019.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of October, 2019 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Jed Nixon filing@erixonlawoffice.com
Prosecuting Attorney - kcpacourts@kcgov.us

JORDAN AVERY ERICKSON
IDOC # 133452 - thru attorney

Idaho Department of Correction centralrecords@idoc.idaho.gov
Records Division ~~(certified copy)~~
~~Fax: (208) 327-7445~~

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____, Deputy