

STATE OF IDAHO )  
County of KOOTENAI )  
FILED 8/17/2020 )  
AT 1:05 O'clock PM )  
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. )  
 )  
MICHAEL ALLEN PRITCHARD )  
 )  
DOB: 05/10/1995 )  
 )  
SSN: XXX-XX-1172 )  
 )  
IDOC: 136471136471 )  
 )  
Defendant. )

Case No. **CR28-20-0153**

**MEMORANDUM DECISION  
AND ORDER DENYING  
I.C.R. 35 MOTION**

STATE OF IDAHO )  
County of BONNER )  
FILED \_\_\_\_\_ )  
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DOB: 05/10/1995 )  
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SSN: XXX-XX-1172 )  
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IDOC: 136471136471 )  
 )  
Defendant. )

Case No. **BONNER CR09-20-173**

**MEMORANDUM DECISION  
AND ORDER DENYING  
I.C.R. 35 MOTION**

On July 22, 2020, before the Honorable John T. Mitchell, District Judge, you, MICHAEL ALLEN PRITCHARD (Pritchard), via Zoom appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Lisa Chesebro. Those attorneys were authorized by their colleagues in Bonner County to handle the Bonner County matter as well. At that hearing, the Court imposed the following sentences:

**KOOTENAI CR28-20-0153 - GRAND THEFT BY RECEIVING,  
POSSESSING OR DISPOSING OF STOLEN PROPERTY, (a felony), I. C.  
18-2403(4), committed on January 2, 2020 – to the custody of the Idaho  
State Board of Correction for a fixed term of THREE (3) years followed by**

an indeterminate term of TWO (2) years, for a total term not to exceed FIVE (5) years.

**BONNER CR09-20-173 - BURGLARY**, (a felony), I.C. 18-1401 committed on January 2, 2020 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of TWO (2) years, for a total term not to exceed FIVE (5) years.  
**THESE SENTENCES RUN CONSECUTIVELY.**

Sentencing Disposition and Notice of Right to Appeal 2. The Court then committed Pritchard to the custody of the Idaho State Board of Correction with the Court retaining jurisdiction for up to one year pursuant to I.C. §19-2601.

Twenty days later, on August 10, 2020, Pritchard filed the instant I.C.R. 35 Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support in both cases. As a preliminary issue, the Court notes that counsel for Pritchard inadvertently filed an I.C.R. 35 Motion in Kootenai County Case No. CR28-20-7296, another case involving Pritchard, but that case was a misdemeanor (where a retained jurisdiction could never be an issue), so the Court is confident that such I.C.R. 35 Motion was to be filed in Kootenai County Case No. CR28-20-153, and not CR28-20-7296.

Pritchard bases this motion on a plea for leniency. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 1. More detail was provided:

The basis for such argument consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future. Further, this Motion is to raise the concern that the COVID pandemic has terminated the transport of inmates to the Department of Correction to access their treatment programs.

*Id.* at 2. The relief Pritchard requests is to have his sentence reduced or to be placed onto probation. *Id.* Pritchard requested a hearing in his motion. *Id.*

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 Pritchard’s I.C.R. 35 motions in each case, the Court has re-reviewed the minutes of the July 22, 2020, sentencing hearing, and has re-reviewed the pre-sentence report and all other materials reviewed at sentencing. 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.

Pritchard states, “Additional evidence will likely include testimony from Mr. Pritchard and possible other individuals, and potentially documentation in support of the defendant’s request.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 3. No other evidence is provided by Pritchard.

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.2d 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, Pritchard has not only not set forth any evidence that could be adduced at hearing on an I.C.R. 35 motion. The Court cannot be required to guess at

what evidence Pritchard might present in support of his Rule 35 Motion. Because Pritchard has completely failed to give any indication of any facts which would support his claim, his Rule 35 Motions must be denied due to that failure alone.

Regarding Pritchard's reason, that "the COVID pandemic has terminated the transport of inmates to the Department Of Correction to access their treatment programs", the IDOC has indicated to the ADJ on August 6, 2020, that male inmates will be transported beginning the week of August 10, 2020, and female inmates beginning the week of August 17, 2020.

Finally, the two types of relief requested by Pritchard are without merit. Pritchard requested either a reduction in his sentence or to be placed on probation at the present time. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 2. The Court stated in its July 22, 2020, Order, "THE IDOC IS ENCOURAGED TO KEEP MR PRITCHARD FOR ONE FULL YEAR." Sentencing Disposition and Notice of Right to Appeal 2. The Court made the reason for that unusual request on the record. A review of the Court minutes from that July 22, 2020, hearing show that based on Pritchard's record, the Court told Pritchard:

All I see in front of me are cases that you have plead guilty to or found guilty. You present a huge problem to [the] public. I have to protect [the] public. You will have an uphill fight [after completion of the retained jurisdiction] to try and convince me, that you are a good candidate for probation.

July 22, 2020, minutes. Nothing has changed since the Court specifically found that it could not only not in any way place Pritchard on probation on July 22, 2020, but that in all likelihood the Court might not place Pritchard on probation after successfully completing his retained jurisdiction. Nothing has happened in the intervening twenty days from sentencing to the filing of Pritchard's I.C.R. 35 motion, to decrease the extreme risk to the public that Pritchard imposes. If Pritchard does not want to go on a retained jurisdiction, the only remedy is for this Court to impose relinquish its jurisdiction and impose Pritchard's consecutive prison sentences, which this court can do at any time. Were the Court to impose Pritchard's sentences, there would be no reduction in those sentences. If the Court were to impose prison sentences there would be even less programming given to Pritchard than on a retained jurisdiction. There is no possible way to protect the public by both 1) shortening the sentences and 2) reducing the amount of rehabilitative programming.

The sentences imposed on July 22, 2020, were and are appropriate sentences given Pritchard's social and criminal history and the crimes for which sentences were imposed. A lesser sentence would depreciate the seriousness of Pritchard's crimes. The decision to retain jurisdiction was appropriate. This Court concludes that the sentences imposed were and are necessary for the protection of society and the deterrence of Pritchard and others.

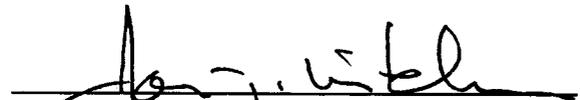
**IT IS THEREFORE ORDERED** that Pritchard's I.C.R. 35 Motion filed in each case be and the same hereby are **DENIED**.

**NOTICE OF RIGHT TO APPEAL**

**YOU, Pritchard, 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 17<sup>th</sup> day of August, 2020.

  
John T. Mitchell, District Judge

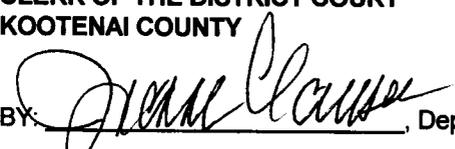
**17<sup>th</sup> CERTIFICATE OF MAILING**

I hereby certify that on the 17 day of August, 2020 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Lisa Chesebro *pd fax @ idoc.gov. ut*  
Kootenai Co. Prosecuting Attorney – *McParsons*  
Bonner Co. Prosecuting Attorney –

Idaho Department of Correction *central records idoc. idaho.gov.*  
Records Division *(certified copy)*  
Fax: (208) 327-7445

MICHAEL ALLEN PRITCHARD  
IDOC # 136471

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**  
BY:  Deputy