STATE OF IDAHO)
County of KOOTENAI) ss
FILED 9/14/2020
AT 3:20 O'clock P 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.
PAYTON CHARLES MACDONALD
DOB: 07/14/1999
SSN: XXX-XX-7209
IDOC: 136471137299
Defendant.

Case No. **CR28-20-6272**

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

On September 1, 2020, before the Honorable John T. Mitchell, District Judge, you, PAYTON CHARLES MACDONALD (MacDonald), via Zoom appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Adrien Fox. At that hearing, the Court imposed the following sentences: Count I, Misdemeanor PCS (MDMA), Idaho Code § 37- 2732(c)(3), the Court sentenced MacDonald to 365 days with credit for 2 days served and 30 days unscheduled jail time and two 2 years of supervised probation by Kootenai County Adult Misdemeanor Probation, and Count II, Misdemeanor Driving Under the Influence , Idaho Code §18-8004, the Court sentenced Macdonald, to 180 days in jail with credit for 2 days served, 30 days to serve beginning immediately, 118 days suspended, and 30 days unscheduled jail time and two years of supervised probation. Both the jail time for each count and the period of probation for each count were consecutive, thus MacDonald is on supervised probation for four years. Judgment Count I 1, Judgment Count II 1.

Unfortunately, both defense counsel, defendant, and the deputy prosecuting attorney deemed the crime in Count I to be a felony at the time MacDonald entered his pleas on June 23, 2020. Accordingly this Court accepted those representations and ordered a presentence report to be prepared. One was prepared for sentencing. At sentencing, counsel for both sides determined that Count I was actually a misdemeanor. After sentencing, the Court sent an apology email to the Idaho Department of Corrections presentence author, that individual's supervisor, the District Manager and the state supervisor for probation and parole, explaining that it was the Court's ultimate responsibility for errantly ordering a

presentence report when the underlying crime was not a felony. At the September 1, 2020, hearing, the Court directed both counsel to issue an apology to at least the presentence author, for wasting that person's time.

Ten days later, on September 11, 2020, Macdonald timely filed the instant Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. Macdonald bases this motion on a "plea for leniency." Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 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. *Id.* at 2. "Additional evidence will likely include testimony or evidence from: 1. Peyton Charles Macdonald 2. Chuck Macdonald (father) 3. Nik Macdonald (brother) 4. Amber Wollaston (supervisor) and possible other individuals, and potentially documentation in support of the defendant's request. Additional documentation will be filed as soon as it is received." *Id.* at 3. The relief MacDonald wishes is two years of supervised probation to run concurrent, and a reduction from 365 days to 180 days on Count I. *Id.* MacDonald requested a hearing in his motion. *Id.* Also on September 11, 2020, MacDonald filed Defendant's First Rule 35 Supplemental, which had attached to that pleading an email letter from Amber Wollaston, General Manager of the Seltice McDonald's, where MacDonald works. That email avers that MacDonald, "has an excellent work ethic and applies himself to every aspect of his job. Over the period of his employment Peyton has been punctual and always stays late when needed." Def.'s First Rule 35 Supplemental 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 Wood's I.C.R. 35 motion, the Court has re-reviewed the minutes of the July 14, 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.

While MacDonald states, "additional evidence will likely include testimony" from four people, MacDonald fails to state what their testimony might be. This gives this Court no idea of what that evidence would be. The only actual evidence submitted by MacDonald was to his work ethic, which has no relevance to the underlying crimes nor the Court's sentences for those crimes. If anything, the letter shows that MacDonald has become so used to being a chronic marijuana or THC oil user, that he is still able to function at work while using. No actual other evidence was provided by MacDonald, nor was there any indication as to what that evidence might be.

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

There are additional reasons to deny MacDonald's Rule 35 Motion without a hearing. First, the relief he seeks, a reduction in jail time from 365 days to 180 days and concurrent probation periods, is relief this Court is not inclined to provide either request, no matter what evidence might be adduced at a hearing. In essence, MacDonald's Rule 35 Motion must be denied on the merits. At the September 1, 2020, sentencing hearing, the Court noted that his GAIN (chemical dependency) evaluation showed, "He described his use of marijuana as 'all day, everyday.' He stated he would typically use 'a quarter t0 half gram' of THC concentrates per day of use." Presentence Report 22. Although MacDonald claims he has no recollection of his driving while being high on "Molly" (MDMA) (*Id.* at 1), his driving posed an exceptional risk to the public. "The reporting party indicated a male had hit a post and a curb in the parking lot, and they were concerned the driver was unfit to drive." *Id.* "While enroute to the location, the reporting party stated the male was attempting to drive away from the scene, after having hit various items. Witnesses on the scene ultimately took the driver's keys to prohibit any additional damage." *Id.* To secure his own recognizance release, MacDonald agreed to not consume alcohol. Yet, pending sentencing, MacDonald tested positive for alcohol. At the sentencing hearing, MacDonald was not contrite, he did not take accountability for his actions, and he was argumentative with the Court.

Nothing has changed since the September 1, 2020, hearing. There is no evidence presented that the sentence imposed is too great given the offenses for which MacDonald was sentenced. There is no evidence presented that somehow in the past 10 days MacDonald is now an acceptable risk to be placed only on two years of supervised probation. MacDonald poses an unacceptable risk to the public unless he is supervised for potentially that length of time. Should MacDonald wish to turn his life around quickly and prove he has done so while on supervised probation, the Court can at any time shorten the period of supervised probation. Should MacDonald not wish to turn his life around while on supervised probation, the only way for this Court to protect the public is

to incarcerate MacDonald for as much of the year and a half combined consecutive sentence remains. There is no possible way to adequately protect the public by either 1) shortening the sentences and 2) reducing the period of time on probation, let alone both.

The sentences imposed on September 1, 2020, were and are an appropriate sentence given Macdonald's social and criminal history and the crime for which sentence were imposed. Any lesser sentences would depreciate the seriousness of Macdonald's crimes. This Court concludes that the sentences imposed were and are necessary for the protection of society and the deterrence of Macdonald and others.

IT IS THEREFORE ORDERED that Macdonald's I.C.R. 35 Motion be and the same is hereby **DENIED.**

NOTICE OF RIGHT TO APPEAL

YOU, PAYTON CHARLES MACDONALD, 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 12th day of September, 2020.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 2020 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:
Defense Attorney – Adrien Fox
Kootenai Co. Dep. Pros. Attorney – Molly Nivison
PAYTON CHARLES MACDONALD

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____, Deputy