

STATE OF IDAHO)
 County of KOOTENAI) ss
 FILED 11/11/2021
 AT 1:40 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,)	Case No. CR28-18-10612
)	
Plaintiff,)	
)	
vs.)	
)	MEMORANDUM DECISION
ROBERT SHAWN BECK)	AND ORDER DENYING
DOB: 02/09/1968)	I.C.R. 35 MOTION AND
SSN: XXX-XX-3017)	DENYING MOTION FOR
IDOC: 129752)	MODIFICATION OF
)	SENTENCE
Defendant.)	
)	

On November 4, 2020, before the Honorable John T. Mitchell, District Judge, you, ROBERT SHAWN BECK (Beck), via Zoom appeared for a probation violation in CR28-18-10612. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Lisa Chesebro. At that hearing, Beck admitted violating probation as alleged in Allegation No. 6 of the Report of Violation dated August 3, 2020, and disposition followed. The Court imposed the following sentence (which was originally imposed on August 8, 2018):

OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE, To the custody of the State of Idaho Board of Correction for a fixed sentence of SIX (6) years followed by an indeterminate term of FOUR (4) years for a total unified sentence of TEN (10) years.

November 4, 2020, Sentencing Disposition 1. The Court retained jurisdiction. *Id.* It is important to note that a retained jurisdiction was the STIPULATED outcome by both the plaintiff and Beck, through his attorney.

On January 4, 2021, Beck, through his attorney, filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. In that motion, Beck requested a hearing. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 3. Beck requests probation rather than a retained jurisdiction. *Id.* at 2.

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 Beck’s I.C.R. 35 motion, the Court has re-reviewed the minutes of the November 4, 2020, sentencing hearing, and has re-reviewed the pre-sentence report and all other materials previously 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 Beck states in his motion, “additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant’s request”, Beck fails to state what that testimony might be. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 3. Thus, Beck gives this Court no idea of what his evidence relevant evidence at a Rule 35 hearing would 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.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, Beck has not set forth any new evidence that could be adduced at hearing on an I.C.R. 35 motion. Because Beck 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 other reasons to deny Beck's motion without a hearing. First, is the relief he seeks, being placed on probation rather than a period of retained jurisdiction. There is no evidence provided that Beck is any better risk to be placed on probation now as compared to her November 4, 2020, probation violation disposition hearing. That being the case, Beck's only option other than a retained jurisdiction is to have this Court impose his prison sentence.

Second, Beck's motion is untimely. As Beck notes in his motion, I.C.R. 35(b) allows a court to "reduce a sentence on revocation of probation or on made within 14 days after the filing of the order revoking probation." Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 2. This Court's order revoking probation was filed on November 4, 2020, right after the hearing. Beck's Rule 35 motion was filed on January 4, 2021. Under I.C.R. 35, the last day to have filed such motion would have been on November 19, 2020, fourteen days after the Court's order which was filed on November 4, 2020. Thus, Beck's I.C.R. 35 motion is untimely.

Third, Beck's motion must be denied on the merits (or lack thereof). The sentence imposed on August 8, 2018, was an appropriate sentence given Beck's social and criminal history and the crime for which sentence was imposed. Any lesser sentence would depreciate the seriousness of Beck's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Beck and others. The decision to utilize a retained jurisdiction was likewise appropriate.

IT IS THEREFORE ORDERED that Beck's Motion for Modification of Sentence

Pursuant to I.C.R. 35(b) is hereby DENIED.

NOTICE OF RIGHT TO APPEAL

YOU, ROBERT SHAWN BECK, 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 11th day of January, 2021.

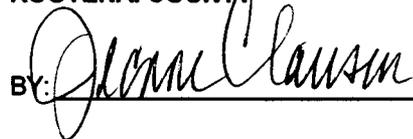

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of January, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Lisa Chesebro *patax@legov.us*
Kootenai Co. Dep. Pros. Attorney – *kepa@courts*
ROBERT SHAWN BECK *centralrecords@*
IDOC NO. 137310 *idoc.idaho.gov*

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy