STATE OF IDAHO)
County of KOOTENAI) ss

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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.
MICHAEL BRIAN LACAZE
DOB: 12/12/1972
SSN: xxx-xx-
IDOC: 137735
Defendant.

Case No. **CR28-20-5262**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S I.C.R. 35 MOTION AND DENYING MOTION FOR MODIFICATION OF SENTENCE

On October 13, 2020, before the Honorable John T. Mitchell, District Judge, defendant, Michael Brian LaCaze (LaCaze), appeared for sentencing. Also appearing were LaCaze's lawyer at the time, Zachary Jones, and a representative of the Prosecuting Attorney for Kootenai County, Idaho. At that conclusion of that hearing, the Court imposed the following sentence for the felony burglary, a violation of Idaho Code §§ 18-1401:

> 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.

Sentencing Disposition 1. The Court placed LaCaze on supervised probation for a period of five years. *Id.* at 2. Both the length of his prison sentence and the length of his probation were due to LaCaze's current crime and his significant past criminal history. LaCaze was charged with the habitual offender statute, Idaho Code § 19-2514 (Information 2), which was dismissed by the plaintiff in plea negotiations. While the habitual offender enhancement provision was dismissed, the Court was, and is, mindful of the prior felony convictions contained in the original Information in this case: 1) Attempt to Elude, Possession of a Controlled Substance, Riot with Deadly Weapon (Spokane County 2012), 2) Violation of a No Contact Order and Possession of Stolen Property (Spokane County 2011), 3) Vehicular Homicide (Spokane County 2007), 4) Burglary (Spokane County 1994), Residential Burglary and Conspiracy to Commit Burglary (Spokane County 1992). *Id.* Over the course of many

years, Lacaze had been busy committing, being charged with and being convicted of, serious crimes. Each of these serious individual crimes had victims, each of those serious crimes presented a negative impact on the victims of those serious crimes, and each of those serious crimes individually and especially collectively demonstrate an inability to protect that public from the defendant. The only reason this Court placed LaCaze on probation on October 13, 2020, was LaCaze represented to the Court he had been accepted into the Rising Strong program in Spokane, Washington, though he did not have an acceptance date at that time. At the time of sentencing, this Court was very familiar with the Rising Strong program and the degree of structure and supervision it has over people who live in the housing provided by that program. The Court made it clear that if LaCaze did not get into that program and successfully complete that program, he would go to prison. The final term and condition of LaCaze's probation imposed on October 13, 2020, was, "26. Furnish proof to the Court that you are living in the Rising Strong Program by November 10, 2020." Probation Terms 2, ¶ 26. On October 26, 2020, counsel for LaCaze filed with the Court a letter from Rising Strong dated October 13, 2020, which read in its entirety, "At this time Rising Strong has decided to not move forward with Michael LaCaze's referral. Michael will not be admitted into the Rising Strong Program." This Court then issued an order to show cause and scheduled a hearing on such for November 4, 2020. At that hearing, LaCaze denied violating term and condition 26, as the deadline had not yet passed for him to furnish proof that he had been accepted into the Rising Strong Program. An evidentiary hearing was scheduled for December 8, 2020. At that December 8, 2020, hearing, no evidence of acceptance into that program by November 10, 2020, was presented to the Court, so this Court revoked Lacaze's probation and placed LaCaze on a period of retained jurisdiction.

On April 5, 2021, an Addendum to the Presentence Report (APSI) was filed, which is an April 5, 2021, report from the Idaho CAPP Facility, signed by Deputy Warden, Darcy Acosta. That report reads, "As part of the investigation it was discovered that Mr. LaCaze was claiming to be a member of a Security Threat Group and trying to influence younger residents to follow his lead, confirmed by several interviews with other residents of the housing unit. The consensus was that Mr. LaCaze was not a member of an ST Group but was intimating that he was for the purposes of grooming younger residents." APSI 2. That report concluded:

> Mr. Lacaze (sic) is not an appropriate candidate to continue programming at CAPP. His attempts to create a following of younger residents and his

> unwanted sexual propositions make other residents feel unsafe. Behavior on this scale indicates a level of manipulation that makes him ill-suited for return to the community.

Id. at 3. The Court reviewed the APSI on April 6, 2021, and following that review, the Court filed its Retained Jurisdiction Disposition wherein this Court relinquished jurisdiction and imposed LaCaze's sentence described above. Retained Jurisdiction Disposition 1. The result of this action is that LaCaze will serve the remaining portion of his fixed five-year sentence in prison, and then be eligible to present his case to the State of Idaho Parole Commission regarding service of the remaining indeterminate five-year sentence.

On April 20, 2021, current counsel for defendant filed a Motion for Modification of Sentence Rule 35 and Memorandum in Support. In that motion, LaCaze requests, "Mr. LaCaze respectfully requests the Court modify the sentence in one or more of the following ways: 1. Modify the sentence from a term of imposition to a retained jurisdiction, or in the alternative, to a term or [of] probation; or, 2. Reduce the determinate portion of the sentence and/or the indeterminate portion of the sentence." Mot. for Modification of Sentence Pursuant to I.D.R. 35(b) and Mem. in Supp. 2. The basis articulated by LaCaze is, "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 3. The new evidence LaCaze claims he has is, "In addition to a written statement and/or testimony from Mr. Lacaze (sic), other evidence will likely include testimony from other individuals, and documentation in support of this request. Defense counsel anticipates documentation from the Idaho Department of Corrections, and will need time by which to secure such documentation in relation to a hearing on this motion." *Id.*

As to the relief requested that the Court allow him to return to a retained jurisdiction or be placed on probation or have his sentence reduced, the Court denies each of these requests for the following reasons.

In his I.C.R. 35 motion, LaCaze requested a hearing. *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 LaCaze's I.C.R. 35 motion, the Court has re-reviewed the file and finds 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 LaCaze states in his I.C.R. 35 motion that additional evidence is coming, LaCaze does not state what such evidence is or to what such evidence might pertain. LaCaze does state such additional evidence might in part consist of a "written statement" from "Mr. Lacaze (sic)." *Id.* There is no reason at all why such a statement from LaCaze could not be presented along with LaCaze's I.C.R. 35 motion. No reason exists for LaCaze to not wait to file his I.C.R. 35 motion until he creates and attaches such statement (or affidavit/declaration) because at the time LaCaze filed his motion he still had over 100 days left in which to file such a motion under I.C.R. 35. Ultimately, LaCaze fails to state what that testimony might be. *Id.* Thus, LaCaze has given this Court no idea of what his relevant admissible 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.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, LaCaze has not set forth any new evidence that could be adduced at hearing on an I.C.R. 35 motion. Because LaCaze 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 LaCaze's motion without a hearing. The first is the relief he seeks: being placed back on a period of retained jurisdiction or probation. There is no evidence provided that LaCaze is any more likely to perform appropriately on an additional period of retained jurisdiction at this time, as compared to when he started his period of retained jurisdiction. In fact, the evidence is just the opposite. LaCaze exhibited predatory behavior while on a retained jurisdiction in a controlled, custodial setting. LaCaze knew he would be observed in the controlled, custodial setting. That LaCaze would choose to choose to engage in that predatory behavior knowing that it would likely be observed is highly concerning to this Court. The Court cannot envision an admonishment to LaCaze at an I.C.R. 35 hearing which would cause LaCaze to suddenly change his behavior. LaCaze was told he was going to prison, and that a retained jurisdiction gave LaCaze his only chance of proving to this Court that he was an acceptable risk to later be placed on probation. LaCaze cannot really expect the Court to tell him, "Look, I know you probably didn't really believe me when I said I would send you to prison if you don't do well on this retained jurisdiction, and that's probably why you engaged in predatory behavior with other inmates, so I'll tell you one last time and I am really serious about this, I'm really going to send you to prison if you don't stop this." As there is a high likelihood that LaCaze affected other inmates adversely with his predatory behavior, the Court cannot in good conscience send him back to have the opportunity to repeat such. LaCaze's desired outcome of probation (as compared to another retained jurisdiction) is even more untenable given these facts. LaCaze has made many choices that prove that he is not a good candidate for probation, choices that prove he is not an acceptable risk to the public to be placed on probation. If he has no reservation in

engaging in predatory behavior when he knows he is being closely watched in prison, LaCaze is only more likely to engage in such conduct in the community when he is not being observed as closely as he was in prison.

The sentence imposed on October 13, 2020, was an appropriate sentence given LaCaze's social and criminal history and the crime for which the sentence was imposed. Any lesser sentence would depreciate the seriousness of LaCaze's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of LaCaze and others. The decisions to utilize a retained jurisdiction and subsequently to relinquish jurisdiction were likewise appropriate.

IT IS THEREFORE ORDERED that LaCaze's Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support filed on April 19, 2021, is hereby **DENIED.**

NOTICE OF RIGHT TO APPEAL

YOU, MICHAEL BRIAN LACAZE, 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 22nd day of April, 2021.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of April, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:
Defense Attorney – Nicole Huddleston pdfax@kcgov.
Kootenai Co. Dep. Pros. Attorney kcpaicourt@kcgov.us
MICHAEL BRIAN LACAZE
IDOC NO. 137310
Central records@kcgov.us

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____, Deputy