

STATE OF IDAHO)
 County of KOOTENAI)
 FILED 10/16/2021)
 AT 5:00 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.)
)
THADDEUS JAMES COLLETT)
)
 DOB: 05/28/1978)
)
 SSN: xxx-xx-9908)
)
 IDOC: 56551)
)
 Defendant.)

Case No. **CR28-20-2142**

**MEMORANDUM DECISION
 AND ORDER DENYING
 I.C.R. 35 MOTION AND
 DENYING MOTION FOR
 MODIFICATION OF
 SENTENCE**

On June 9, 2021, before the Honorable John T. Mitchell, District Judge, you, THADDEUS JAMES COLLETT (Collett), via Zoom appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Lisa Chesebro, filling in for assigned lawyer, Jeanne Howe. At that hearing, the Court imposed the following sentence:

SEXUAL ABUSE OF A CHILD, (a felony), I.C. 18-1506(1)(a) and/or (b), committed between October 1, 2019 and November 30, 2019 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) years followed by an indeterminate term of FIVE (5) years, for a total term not to exceed TWENTY-FIVE (25) years.

June 9, 2021, Sentencing Disposition 2. The Court imposed that sentence *Id.*

On October 5, 2021, Collett, through different counsel, Jay Logsdon, timely filed the instant Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. Collett bases this motion on a “plea for leniency.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 1. The only detail provided is as follows: “The pleading supports a request to modify Thaddeus James Collett’s sentence to a shorter period of fixed prison and indeterminate time. Mr. Collett may also request that the Court consider a period of retained jurisdiction.” *Id.* at 2. Collet states, “Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant’s request.” *Id.* at 3. Defendant requested a hearing on his I.C.R. 35 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 Collett’s I.C.R. 35 motion. The Court has also re-reviewed the minutes of the June 9, 2021, 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 on this motion that would be of benefit to the Court. A hearing would only waste counsel’s time and the Court’s time.

While Collett states, “additional evidence will likely include testimony from the defendant 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) 3), Collett fails to state what that testimony might be. This gives this Court no idea of what his evidence would be at any hearing on his motion.

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, Collett 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 Collett might present in support of his Rule 35 Motion. Because Collett 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.

Finally, Collett’s statement that, “The pleading supports a request to modify Thaddeus James Collett’s sentence to a shorter period of fixed prison and indeterminate time”, is circular nonsense. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 2. The “pleading” referred to is the Motion for Modification of Sentence Pursuant to I.C.R. 35(b) itself. The Court has already explained that the motion itself has no evidence nor any explanation of any evidence that might be presented. Thus, to claim, “The pleading supports a request to modify” is simply false.

There are additional reasons to deny Collett’s Rule 35 Motion without a hearing. First, is the relief he seeks, a reduction in the fixed portion of his sentence or being placed on a period of retained jurisdiction. There is no evidence provided that Collett is any better risk to be placed on a period of retained jurisdiction now as compared to his June 9, 2021, sentencing hearing. There is likewise no evidence provided that Collett should be given a fixed sentence less than twenty years. Thus, there is no evidence that has been presented that could allow this Court to reconsider its earlier decision to impose the sentence it did and its decision to not utilize a retained jurisdiction. Second, from a factual standpoint, nothing has been presented by Collett that would change any of the facts presented to the Court at his June 9, 2021, sentencing hearing. The fact is Collett pled guilty on April 6, 2021, to Sexual Abuse of a Child. He admitted doing everything the Second Amended Information accused him of. The Second Amended Information accused him of engaging in a sexual act and sexual contact with a minor child (age 15 at the time) not amounting to lewd conduct, consisting of soliciting the minor to engage in

sexual acts with him and also engaging in such acts including oral-genital and manual-genital touching. Second Am. Information 1-2. At his June 9, 2021, sentencing hearing Collett expressed no remorse for what he had done. In fact, he viewed himself as the victim. At that hearing, Collett took absolutely no responsibility for what he had done. Collett never once mentioned his victim at that sentencing hearing. These same observations were made by the presentence investigator well before his sentencing hearing. Presentence Report 13-14. The Court found Collett to have exhibited grooming and manipulating behavior over a long period of time. That behavior is set forth in the text messages between Collett and his minor victim. Pl.'s Additional Sentencing Materials, Ex. 1. That behavior is disturbing beyond description given the fact Collett was a 41-year-old male and his victim was a 15-year-old girl. The Court found Collett to pose an immense danger to the public. The Court explained specifically why a retained jurisdiction was not appropriate for Collett. Collett's criminal career began 23 years ago, dispensing liquor to a minor. Presentence Report 9. He committed his first felony a few months later. *Id.* He went on to commit four other felonies, one of which was escape. *Id.* Then he committed this crime for which he was sentenced on June 9, 2019. Collett's Presentence Report recommended imposition of a prison sentence. *Id.* at 14.

The sentence imposed on June 9, 2021, was an appropriate sentence given Collett's social and criminal history and the crime for which sentence was imposed. Any lesser sentences would depreciate the seriousness of Collett's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Collett and others. The decision not to utilize a retained jurisdiction was likewise appropriate.

For the above mentioned reasons, Collett's I.C.R. 35 Motion must be denied without a hearing.

IT IS THEREFORE ORDERED that Collett's I.C.R. 35 Motion is hereby **DENIED**.

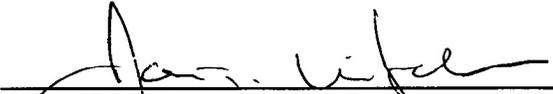
NOTICE OF RIGHT TO APPEAL

YOU, THADDEUS JAMES COLLETT, 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 6th day of October, 2021.



John T. Mitchell, District Judge

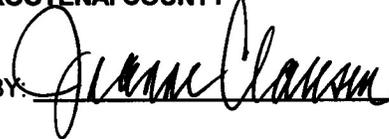
CERTIFICATE OF MAILING

I hereby certify that on the 8th day of October, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Jay Logsdon *pd.tay@kcoo.gov*
Kootenai Co. Pros. Attorney *thp@kcoo.gov*
THADDEUS JAMES COLLETT
IDOC NO. 137310

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

centralrecords@idoc.idaho.gov

BY:  Deputy