

STATE OF IDAHO)
 County of KOOTENAI)
 FILED 10/19/2021)
 AT 1:30 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.)
)
TIMOTHY ALAN VINCENT)
)
 DOB: 11/10/1968)
)
 SSN: ***-**-5895)
)
 IDOC: 121272)
)
 Defendant.)

Case No. **CRF 2016 6588**

**MEMORANDUM DECISION
 AND ORDER DENYING
 I.C.R. 35 MOTION AND
 DENYING MOTION FOR
 MODIFICATION OF
 SENTENCE and ORDER
 GRANTING MOTION FOR
 CREDIT FOR TIME SERVED**

On April 26, 2021, before the Honorable John T. Mitchell, District Judge, you, TIMOTHY ALAN VINCENT (Vincent), appeared for sentencing for an evidentiary hearing on a probation violation. Also appearing was Art Verharen, a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Jeanne Howe. At that conclusion of that evidentiary hearing, the Court found that the plaintiff had proven by a preponderance of the evidence, Vincent's willful violation of his probation as alleged in the Report of Violation dated January 19, 2021, and the Court imposed the following sentence:

ROBBERY, – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of SEVEN (7) years, for a total term not to exceed TEN (10) years.

April 26, 2021, Probation Violation Disposition, 1-2. The Court imposed that sentence but retained jurisdiction *Id.* at 2. On August 26, 2021, this Court reviewed the report from Colin Young, Program Manager for IDOC Idaho State Correctional Institution, which was filed on that date and which reads in part:

Mr. Vincent has received a Class B Disciplinary Offense Report (DOR) during his time in his Rider. The DOR occurred on August 6, 2021 for sending a multitude of messages to his family including both threats of violence and death threats. Attached are just a few of the messages for the court to review, however the threats are numerous and disturbing. When confronted about these messages, Mr. Vincent was noncompliant to the point of verbal abuse of staff and destruction of property.

Upon investigation of these conversations and threats, it was discovered that this behavior had started back in December 2020, although it would seem the threats have significantly escalated since then. While staffing this with his case manager, clinician, and our security team, it was agreed that we do not feel that Mr. Vincent would be successful upon release to Probation at this time. Based on the nature of his behavior, the length of time it has been occurring, its escalation to death threats, and his history of Absconding when released, we do not feel comfortable in Mr. Vincent's release at this time and feel that he needs more time to consider the kind of commitment it will take to be successful upon release.

Due to Mr. Vincent's violent behavior, lack of accountability, and the security risk he poses to the community, a recommendation for relinquishment is respectfully submitted to the court for consideration.

August 26, 2021, Letter 1. As a result of that report, this Court entered its Retained Jurisdiction Disposition and Notice of Right to Appeal on August 30, 2021, in which this Court relinquished jurisdiction and imposed Vincent's above prison, without having a hearing. The Court also gave Vincent credit for time served in the amount of 777 days as of August 30, 2021.

On September 10, 2021, Vincent, 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. Vincent 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 Timothy Alan Vincent's sentence or to permit him to have another chance to complete the rider program." *Id.* at 2. Counsel for Vincent 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 Vincent’s I.C.R. 35 motion. The Court has also re-reviewed the minutes of the April 26, 2021, probation violation evidentiary and disposition hearing, and has re-reviewed the pre-sentence report filed October 18, 2016, and all other materials reviewed by the sentencing judge at Vincent’s October 24, 2016, sentencing hearing. This Court is very aware of Vincent through his participation in the Kootenai County Mental Health Court. There is nothing that could be presented at a hearing on this I.C.R. 35 motion that would be of benefit to the Court. A hearing would only waste counsel’s time and the Court’s time.

While Vincent 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), counsel for Vincent 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 I.C.R. 35 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.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, Vincent 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 Vincent might present in support of his Rule 35 Motion. Because Vincent 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, Vincent's statement that, "The pleading supports a request to modify Timothy Alan Vincent's sentence or to permit him to have another chance to complete the rider program", 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 Vincent'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 Vincent is any better risk to be placed on a period of retained jurisdiction now as compared to his April 26, 2021, disposition, sentencing hearing. There is likewise no evidence provided that Vincent should be given a fixed sentence less than three years or an indeterminate sentence of seven 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 an additional period of retained jurisdiction. There is all the evidence to the contrary, Vincent's behaviors from April 26, 2021, to the August 26, 2021, letter from Colin Young did not dissipate in frequency or severity. Vincent was convicted of the serious crime of robbery. Second, from a factual standpoint, nothing has been presented by Vincent that would change any of the facts presented to the Court at his October 24, 2016, sentencing hearing.

The sentence imposed on October 16, 2021, was an appropriate sentence given Vincent's social and criminal history and the crime for which sentence was imposed. Any

lesser sentences would depreciate the seriousness of Vincent's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Vincent and others. This Court's decision to relinquish jurisdiction on August 30, 2021, given the August 26, 2021, report from Colin Young was also necessary for the protection of society in general, and certain specific individuals given Vincent's threats of violence and death threats **which he sent from prison**. The decision not to utilize another period of retained jurisdiction as proposed in Vincent's I.C.R. 35 motion is likewise appropriate.

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

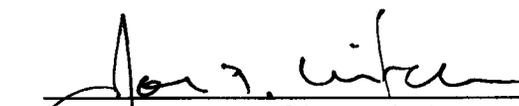
IT IS THEREFORE ORDERED that Vincent's I.C.R. 35 Motion is hereby **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, TIMOTHY ALAN VINCENT, 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.

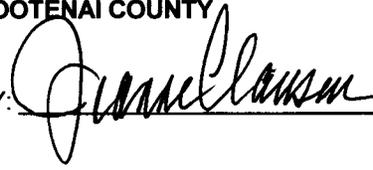
YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 19th day of October, 2021.



John T. Mitchell, District Judge

CERTIFICATE OF MAILING
I hereby certify that on the 19th day of October, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:
Defense Attorney – Jay Logsdon *pdfax@kegov.us*
Kootenai Co. Pros. Attorney *kepaicourts*
TIMOTHY ALAN VINCENT
IDOC NO. 137310
centralrecords@idoc.idaho.gov.

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY:  Deputy