

STATE OF IDAHO )  
 County of KOOTENAI )  
 FILED 4/20/2022 )  
 AT 4:40 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,** )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
**CLINTON BRADLEY JOHNSON** )  
 )  
 DOB: 11/03/1992 )  
 )  
 SSN: XXX-XX-6663 )  
 )  
 IDOC: 119672 )  
 )  
 Defendant. )

Case No. **CRF 2015 18385**  
**CRF 2015 19197**  
**CR28-18-8910**

**MEMORANDUM DECISION AND  
 ORDER DENYING MOTION FOR  
 MODIFICATION OF SENTENCE  
 PURSUANT TO I.C.R. 35(b)**

On April 6, 2022, before the Honorable John T. Mitchell, District Judge, you, CLINTON BRADLEY JOHNSON (Johnson), appeared for an evidentiary hearing on a probation violation (having entered denials to all allegations on March 25, 2022). Also appearing was Deputy Prosecuting Attorney Tristan Poorman, and your lawyer, Jed Nixon. At the April 6, 2022, hearing, you admitted violating your probation as alleged. The Court found that Johnson had willfully violated his probation as alleged in the March 8, 2022, Report of Violation, and the Court imposed the following sentences:

- CRF 2015 18385 - GRAND THEFT, I.C. § 18-2403 and 18-2407** To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of TWO (2) years for a total unified sentence of FOUR (4) years.
- CRF 2015 19197 - GRAND THEFT, I.C. § 18-2403(1) and 18-2407(1)(b)(1)** To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of TWO (2) years for a total unified sentence of FOUR (4) years.
- CR28-18-8910 – COUNT I - MAJOR CONTRABAND, I.C. § 18-2510(3)** To the custody of the State of Idaho Board of Correction for a fixed sentence of THREE (3) years followed by an indeterminate term of TWO (2) years for a total unified sentence of FIVE (5) years.
- CR28-18-8910 – COUNT II – POSSESSION OF A CONTROLLED SUBSTANCE (HEROIN) W/ INTENT TO DELIVER, I.C. § 37-2732(a)(1)(A)** 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.  
**ALL SENTENCES RUN CONCURRENT.**

April 6, 2022, Probation Violation Disposition, 1-2. The Court imposed those sentences *Id.*

On April 19, 2022, Johnson, through his attorney, timely filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b). Johnson bases this motion on a “plea for leniency.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 2. The only detail provided is as follows: “The defendant accepts responsibility for his actions and is requesting the court grant him leniency by moving a portion of the defendant’s determinate time to his indeterminate time thereby allowing him access to programming or the ability to enter a work camp at an earlier date.” *Id.* Counsel for Johnson then states, “Additional evidence may include testimony from the defendant” *Id.* 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 Johnson’s I.C.R. 35 motions filed in each of his three cases. The Court has also re-reviewed the minutes of the April 6, 2022 disposition hearing. The Court has re-reviewed Johnson’s entire files including the pre-sentence report filed May 26, 2016. This Court is very aware of Johnson 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 counsel for Curry states, “Additional evidence may include testimony from the defendant” (Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 3), counsel for Johnson fails to state what that testimony might be. That statement in Johnson’s I.C.R. 35 Motion gives this Court absolutely no idea of what Johnson’s evidence would be at

any hearing on his I.C.R. 35 motion. That failure can be fatal to such motion, as is shown in the next paragraph. In Johnson's cases, that failure is fatal to 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.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, Johnson 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 Johnson might present in support of his Rule 35 Motion. Because Johnson 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, Johnson's statement: "The defendant accepts responsibility for his actions and is requesting the court grant him leniency by moving a portion of the defendant's determinate time to his indeterminate time thereby allowing him access to programming or the ability to enter a work camp at an earlier date" is quite absurd. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 2. For over six years, and with two different judges, Johnson's behavior proved to be unchangeable. Johnson was accorded incredible

amounts of “programming” through several periods of retained jurisdiction and through multiple attempts at Mental Health Court. The claim that his sentences now deprive Johnson on programming is not supported by any evidence from the IDOC as to how that agency makes program eligibility determinations, and that claim is absolutely hollow given that Johnson for the last six years has been absolutely resistant to all “programming” offered to him.

There are additional reasons to deny Johnson’s Rule 35 Motion without a hearing. The first is the relief Johnson seeks—a reduction in the fixed portion of his sentences. There has been no evidence provided that Johnson is currently any more or less appropriate to be placed on a period of parole any earlier time, as compared to the state of the evidence presented at his April 6, 2022, disposition hearing. There is simply no evidence provided at this juncture that Johnson should be eligible for parole any earlier than the fixed portion of his sentence would allow. Thus, no evidence has been presented that could allow this Court to reconsider its earlier decision to impose his various sentences. All the evidence to the contrary. Johnson has a long history of drug use. He has absconded. In addition to periods of retained jurisdiction and serial attempts at Mental Health Court, Johnson has also tried Good Samaritan Rehabilitation. Johnson has proven he is treatment resistant. Most recently, Johnson has engaged in huffing, a practice which can be deadly. The Court is mindful of its obligation to protect both the public from Johnson, but also Johnson from himself.

Second, Johnson’s attorney asked for such a reduction of the fixed portion of Johnson’s sentences at the April 6, 2022, disposition hearing. That request was denied at that time. No additional evidence has been presented at this time which would allow the Court to even consider such a request.

The sentences in these cases imposed at various points in time, were appropriate sentences given Johnson’s social and criminal history and the crimes for which sentences were imposed. Any lesser sentences would diminish the seriousness of Johnson’s crimes. This Court concludes that the sentences not being reduced at the April 6, 2022, hearing, at the request of Johnson’s counsel, reiterated at present in this I.C.R. 35 Motion, is the appropriate decision by this Court. That decision is necessary for the protection of society and Johnson and is necessary for the deterrence of Johnson and others.

For the above reasons, Johnson’s I.C.R. 35 Motion must be denied without a

hearing.

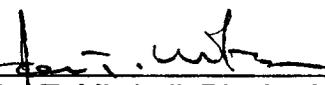
**IT IS THEREFORE ORDERED** that Johnson's I.C.R. 35 Motion is hereby **DENIED**.

**NOTICE OF RIGHT TO APPEAL**

**YOU, CLINTON BRADLEY JOHNSON, 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.

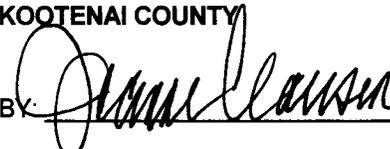
**YOU ARE FURTHER NOTIFIED** that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 11<sup>th</sup> day of April, 2022.

  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**  
I hereby certify that on the 20<sup>th</sup> day of April, 2022 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:  
Defense Attorney – Jed Nixon *Filing in Nixon law office*  
Kootenai Co. Pros. Attorney – Tristan Poorman *pa@exeregov.us*  
CLINTON BRADLEY JOHNSON  
IDOC NO. 137310

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY:  Deputy

*Central Records idoc.idaho.gov.*