

STATE OF IDAHO)
County of KOOTENAI)
FILED 6/14/2022)
AT 10:00 O'clock A 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 DEFENDANT'S
PRO SE MOTIONS TO:
1) RECONSIDER ORDER
DENYING MOTION PURSUANT
TO I.C.R. 35(b), AND 2) MOTION
IN FORMA PAUPRIS [SIC]**

On April 20, 2022, this Court entered its Memorandum Decision and Order Denying Motion for Modification of Sentence Pursuant to I.C.R. 35(b). On May 18, 2022, defendant Clinton Bradley Johnson (Johnson) filed, through his court appointed counsel, Jed Nixon, a Notice of Appeal. On April 23, 2022, this Court appointed the State Appellate Public Defender to represent Johnson in that appeal, but specifically ordered that Jed Nixon remain counsel for Johnson for all other matters other than Johnson's appeal. To this date, Nixon has not filed a Notice of Withdrawal. Thus, Nixon remains Johnson's attorney before this Court.

On June 3, 2022, Johnson, *pro se*, filed a Motion in Forma Paupris [sic Pauperis] and a Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b).

The Motion in Forma Paupris [sic] must be denied for two reasons. First, Johnson still has defense counsel, Nixon, who should be preparing any filings on behalf of Johnson, and Johnson should not be filing *pro se* pleadings with this Court. Second, there is no motion filed by Johnson which would result in a filing fee being asked of Johnson. The only motion Johnson has filed, *pro se*, is his Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b), for which no filing fee is required. Thus, Johnson's Motion in Forma Paupris [sic] must be denies as it is a nullity, it requests that which is completely invalid.

Johnson's Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b), must be dismissed for four reasons.

First, again, as discussed above, Johnson still has defense counsel, Nixon, who should be preparing any filings on behalf of Johnson, and Johnson should not be filing *pro se* pleadings with this Court.

Second, unlike the Idaho Civil Rules of Procedure, there is no provision in the Idaho Criminal Rules for a motion for reconsideration of any kind. Thus, for that reason alone, Johnson's motion must be denied.

Third, Johnson has not sent a copy of either motion to his opponent, the attorney for the plaintiff, the State of Idaho, the Kootenai County Prosecuting Attorney. This failure by Johnson violates I.C.R. 49(a).

Fourth, Johnson's *pro se* Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b) would essentially be a prohibited second I.C.R. 35(b) motion. Idaho Criminal Rule 35(b) specifically states, in its concluding sentence, "A defendant may only file one motion seeking a reduction of sentence." Additionally, and more specifically, a motion to reconsider the denial of a motion under this rule (I.C.R. 35) is an improper successive motion and is prohibited. The prohibition of successive motions under this rule is a jurisdictional limit. *State v. Bottens*, 137 Idaho 730, 732-33, 52 P.3d 875, 877-78 (Ct. App. 2002). The Idaho Court of Appeals specifically held:

Today we make explicit that a motion to reconsider the denial of a Rule 35 Motion is an improper successive motion and is prohibited by Rule 35. We hold that the prohibition of successive motions under Rule 35 is a jurisdictional limit. Thus, the trial court in the instant case did not have jurisdiction to hear Bottens' motion to reconsider and was in error to reduce Bottens' sentence.

Id. This is the paramount reason Johnson's *pro se* Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b) must be denied. Even if this Court should consider a *pro se* motion filed by a person represented by Court-appointed counsel (it shouldn't), and even if the Idaho Criminal Rules allowed for a motion to reconsider (they don't), this Court lacks the jurisdiction to consider Johnson's *pro se* Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b).

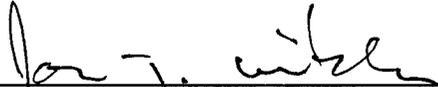
For the above reasons, Johnson's *pro se* Motion in Forma Pauperis [sic Pauperis] and Johnson's *pro se* Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b) must be denied without a hearing.

IT IS THEREFORE ORDERED that Johnson's *pro se* Motion in Forma Pauperis [sic

Pauperis] is hereby DENIED.

IT IS FURTHER ORDERED that Johnson's *pro se* Motion to Reconsider Oder Denying Motion Pursuant to I.C.R. 35(b) is hereby DENIED.

DATED this 14th day of June, 2022.



John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of June, 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 *Keppion*
CLINTON BRADLEY JOHNSON
IDOC NO. 137310
ISCI

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY:  Deputy

P. O. Box 14
Boise, ID 83707 ✓