

consequences at the sentencing on February 2, 2022.

4. The court should have done a comparative analysis of the sentence imposed on the other participants involved in the crime involving the Defendant. For instance, the adult offender Vadin Bartlett in CR28-21-10091 received a retained jurisdiction sentence. This participant was carrying a handgun whereas the Defendant was not.

5. The retaining jurisdiction would allow the court to determine if the Defendant is a person whose behavior regarding the crime reflect transient immaturity capable of rehabilitation verses not.

6. The Defendant is simply seeking an opportunity to demonstrate to the court that his performance on a retained jurisdiction can satisfy the courts sentencing goals of protection of society, deterrence, rehabilitation, and retribution.

7. The imposition of a retained jurisdiction is a plea of leniency balanced with the concept of o [sic] promoting respect for law and rehabilitation of the Defendant

ORAL ARGUMENT IS RQUESTED AND LENGTGH OF HEARING

Oral argument is requested, and estimated time is less than 20 minutes.

BASIS OF MOTION

The basis of this motion is all of the records and files of this action and the records of the Board of Corrections regarding the Defendant to be provided at the hearing in this matter.

Mot. for Rule 35, 1-2

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 by Creech, “[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 Creech’s “Motion for Rule 35” and has re-reviewed Creech’s entire file including the pre-sentence report filed January 26, 2022. There is nothing that could be presented at a hearing on Creech’s “Motion for Rule 35” that would be of benefit to the Court. A hearing would only waste counsel’s time and the Court’s time.

Essentially, all Creech claims he will bring to a hearing are the same facts which were present at sentencing. The only “new” item articulated by counsel for Creech is “records of the Board of Corrections regarding the Defendant to be provided at the hearing in this matter.” However, counsel for Creech entirely fails to state what that testimony or that evidence might be. That statement in Creech’s I.C.R. 35 Motion gives this Court absolutely no idea of what Creech’s evidence would be at any hearing on his “Motion for Rule 35.” That failure can be fatal to such motion, as is shown in the next paragraph. In Creech’s case, 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, Creech 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 Creech might present in support of his “Motion for Rule 35”. Because Creech has completely failed to give any indication of any facts which would support his claim, his “Motion for Rule 35” must be denied due to that failure alone.

There are additional reasons to deny Creech's Rule 35 Motion without a hearing. The first is the relief Creech seeks—a retained jurisdiction. Mot. for Rule 35, 2, ¶¶ 5-7. There has been no evidence provided that Creech is currently any more or less appropriate to be placed on a period of retained jurisdiction, as compared to the state of the evidence presented at his February 2, 2022, disposition hearing. There is simply no evidence provided at this juncture that Creech should be given the opportunity of a retained jurisdiction. Thus, no evidence has been presented that could allow this Court to reconsider its earlier decision to impose Creech's sentence. All the evidence to the contrary. Creech was first arrested at age twelve for Aggravated Assault and was sentenced to juvenile detention and later placed on juvenile probation. Presentence Report 4. "According to Juvenile Probation Officer Jared Mercer, the defendant 'didn't do anything on probation.' He spent a lot of time in detention and the individuals he chose to hang around with were not a good influence." *Id.* at 4-5. "Probation officer Mercer confirmed the defendant did test positive for marijuana and admitted to drinking alcohol while on supervision." *Id.* at 5. Creech last used marijuana on June 10, 2021, ten days after the May 31, 2021, crime. *Id.* 1, 9. That last use was also just a few days before he was arrested on June 14, 2021. Warrant of Apprehension and Detention, and Officer's Return 1. Prior to committing this crime, Creech did not complete court ordered outpatient treatment, and currently (at the time of sentencing) did not believe a drug treatment program was necessary for him at this time. Presentence Report 9. Creech has an extensive juvenile criminal record, a 2014 theft, 2015 runaway, 2016 three counts of assault and a probation violation, 2019 disturbing the peace an probation violation, 2019 curfew violation, 2020 resisting or obstructing an officer, unlawful entry and petit theft. Ultimately, Creech committed this Robbery on May 31, 2021, to which he pled guilty. Creech has proven himself to be unamenable to probation and to court-ordered and funded treatment. Historically, there is no reason to believe Creech would take advantage of the programming offered on a retained jurisdiction.

Second, Creech's attorney asked for such a period of retained jurisdiction at the February 2, 2022, sentencing hearing (he also asked for a withheld judgment which is inconsistent with a period of retained jurisdiction). 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.

Third, is the nature of the crime Creech committed. Creech and other committed a

premeditated crime with accomplices Vadin Bartlett and Gabriel Casper, to extort a drug dealer Matthew Holmberg. While Creech did not pull the trigger (Holmberg's passenger Dennen Fitterer did), Casper was left laying dead in the middle of the street with blood coming from his head and was shot multiple times. Presentence Report 1. Creech ran from the scene, leaving his lifelong friend Casper for dead. Creech did all of this on May 31, 2021, while he was on juvenile probation. At the February 2, 2022, sentencing hearing, this Court specifically found and told Creech that "You won't abide by probation", that since he committed this crime while on juvenile probation, "Felony probation won't mean anything to you."

Finally, counsel for Creech notes "the adult offender Vadin Bartlett in CR28-21-10091 received a retained jurisdiction sentence. This participant was carrying a handgun whereas the Defendant was not." Mot. for Rule 35, 2, ¶4. Why Judge Haynes gave Bartlett the benefit of a retained jurisdiction is unknown to this Court, and counsel for Creech in Creech's "Motion for Rule 35" sheds no light on this. The facts of Bartlett's criminal history are entirely unknown to this Court, and counsel for Creech in Creech's "Motion for Rule 35" sheds no light on this either. What is known to this Court is that on February 2, 2022, this Court knew that that Judge Haynes gave Bartlett the benefit of a retained jurisdiction on January 6, 2022, nearly a month before Creech's February 2, 2022, sentencing hearing, **because this Court was told such by Creech's attorney.** At the February 2, 2022, sentencing hearing in Creech's case, Creech's counsel pointed this fact out, that Creech's co-defendant receiving a retained jurisdiction. Thus, this is not a **new** fact for which this Court could properly consider in an I.C.R. 35 motion. Judge Haynes' decision was not new evidence, it was not additional evidence, and it was not evidence which could have been presented at sentencing but was not presented for some reason. See, *State v. Ramirez*, 122 Idaho 830, 839 P.2d 1244 (Ct. App. 1992); *State v. Brown*, 155 Idaho 423, 313 P.3d 751 ((2013); and *State v. Kuhn*, 139 Idaho 710, 85 P.3d 1109 (Ct. App. 2003).

The sentence in this case was an appropriate sentence given Creech's social and criminal history and the crime for which sentence was imposed. The imposition of that sentence was appropriate. Any lesser sentence or a retained jurisdiction would diminish the seriousness of Creech's crime. This Court concludes that the sentence imposed at the February 2, 2022, hearing, and the imposition of that sentence without a period of retained jurisdiction is and continues to be, the appropriate decision by this Court. That

decision is necessary for the protection of society from Creech and is necessary for the deterrence of Creech and others.

For the above reasons, Creech's "Motion for Rule 35" must be denied without a hearing.

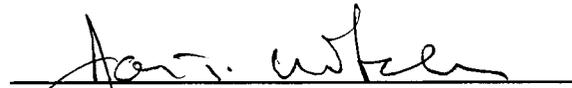
IT IS THEREFORE ORDERED that Creech's I.C.R. 35 Motion is hereby **DENIED**.

NOTICE OF RIGHT TO APPEAL

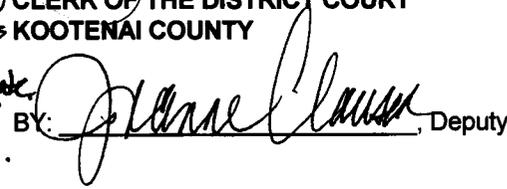
YOU, ASHTON JAMES CREECH, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

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 14th day of June, 2022.


John T. Mitchell, District Judge

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:
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CERTIFICATE OF MAILING
CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY:  Deputy