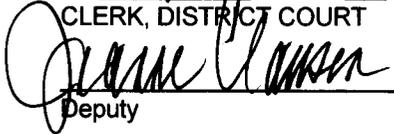


STATE OF IDAHO)
County of KOOTENAI) ss

FILED 9/6/2022

AT 11:40 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.)
)
TALON SCOTT ROSS)
DOB: 05-10-93)
SSN: 1246)
IDOC: 101511)
)
Defendant.)

Case No. **CRF 2011 9386**

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
I.C.R. 35 MOTION AND NOTICE OF
RIGHT TO APPEAL**

On September 27, 2011, TALON SCOTT ROSS (Ross) was sentenced as follows:

**ROBBERY (a felony), I.C. §§18-5601, 6502, 18-203, committed
on May 30, 2011 – to the custody of the Idaho State Board of
Correction for a fixed term of THREE (3) years followed by and
indeterminate sentence of SEVEN (7) years, for a total term not
to exceed TEN (10) years.**

Sentencing Disposition and Notice of Right to Appeal, 1. The Court retained jurisdiction on that date. *Id.* at 2. Following that period of retained jurisdiction, on February 8, 2012, this Court placed Ross on a three-year period of probation. Over the course of the next nine and one half years, this Court worked with Ross to try to help him with his addiction. This consisted of five more periods of retained jurisdiction; each followed by a period of supervised probation, and each eventually followed by another probation violation. The Court tried Drug Court, and Ross was in that program for about a year and a half but then absconded and was terminated from Drug Court. On January 27, 2020, this Court, following a three and one half hour long evidentiary hearing (where the allegations were

simply that Ross had committed new crimes), imposed Ross' prison sentence. Ross, through his attorney Ben Onosko, filed an appeal with the Idaho Supreme Court on January 30, 2020. On April 28, 2021, the Idaho Court of Appeals affirmed this Court. Ross filed a Petition for Review which was granted on July 19, 2021. On April 24, 2022, the Idaho Supreme Court issued a decision reversing this Court's finding that the crime of injury to child had been proven by a preponderance of the evidence, and remanded this Court's January 27, 2020, sentencing decision back to this Court to determine if the commission of that the crime of petit theft (which was affirmed by the Idaho Court of Appeals and the Idaho Supreme Court) would alone have resulted in imposition of Ross' prison sentence. On June 28, 2022, this Court held a hearing, Ross participated via Zoom from an Idaho Department of Correction facility. This time Ross was represented by Patricia Espeland. At the conclusion of that hearing, this Court found that committing the crime of petit theft would have on its own, have resulted in imposition of Ross' prison sentence back on January 27, 2020. On June 29, 2022, this Court entered a new Probation Violation Disposition on Remand and Notice of Right to Appeal, making that finding. This resulted in Ross having a new period of time within which to file a motion pursuant to I.C.R. 35 (as well as renewing the time within which to file a new appeal from this Court's decision reached on June 28, 2022).

On June 30, 2022, Ross timely filed the instant I.C.R. 35 Motion requesting that Ross be placed on probation with a suspended prison sentence as opposed to prison (currently) and parole at some time in the future. Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 3. Alternatively, Ross requested a reduction in the amount of his indeterminate portion of Ross' sentence from seven years to five years. *Id.* Ross bases this motion on a plea for leniency. *Id.* at 1. As to his request for relief that he be placed on probation, Ross claims that he would be supervised more

closely by this Court and have more access to community resources if he were on supervised probation, as opposed to parole. *Id.* at 2-3. Ross requested a hearing. *Id.* at 3. A hearing was held on August 9, 2022. At the conclusion of that hearing, this Court took the matter under advisement, pending Ross' ability to obtain and introduce as evidence, his "C-notes" which would document his performance both in prison and while on parole. The Court also required counsel for Ross to address how Ross would be drug tested while working remotely for a drilling company two weeks at a time (working two weeks on, one week off). Those materials were subsequently filed by counsel for Ross on August 18, 2022.

At the August 9, 2022, hearing, Ross testified that he made parole via the State of Idaho Parole Commission, was supervised on parole and was successful for about a year when he relapsed on fentanyl and asked his parole officer for help. Ross testified that his parole was then revoked and that the Parole Commission had kept him in custody continuously beginning in November 2021, and would likely keep him in custody until about May 2023, when he might have another parole eligibility hearing. Ross testified that if he were placed on supervised probation, he would live with his parents and would work for a drilling company.

On September 6, 2022, this Court held a hearing. Ross appeared by Zoom and was represented by Patricia Espeland. At that hearing, the Court announced its ruling (consistent with this written Order), discussed probation terms and discussed how Ross would be released from the custody of the Idaho State Board of Correction.

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. Copenhagen*, 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 exercised its discretion and held an evidentiary hearing at which Ross testified.

A motion to reduce sentence is a motion for leniency. *State v. Strand*, 137 Idaho 457, 463, 50 P.3d 472, 478 (2002); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The decision to grant or deny leniency is left to the sound discretion of the court. *Strand*, 137 Idaho at 463, 50 P.3d at 478. *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989).

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. *State v. Arambula*, 97 Idaho 627, 550 P.2d 130 (1976). Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly severe. *State v. Lopez*. 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984). . . .

However, if the sentence is not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with his motion.

State v. Forde, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); see also *State v. Adams*, 137 Idaho 275, 278, 47 P.3d 778, 781 (Ct. App. 2002).

For a sentence to be considered "reasonable" at the time of sentencing the court must consider the objectives of sentencing: whether confinement is necessary to accomplish the objective of protection of society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to the case. *State v. Toohill*,

103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). This requires the court focus on “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982).

The sentence imposed on September 27, 2011, was and is an appropriate sentence given Ross's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Ross's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Ross and others. As to Ross' requested relief that his indeterminate portion of his sentence be reduced, that is denied.

As to Ross' requested I.C.R. 35 relief that he be place on supervised probation with this Court, as opposed to the possibility of parole in the future, this Court exercises its discretion and finds that Ross' I.C.R. 35 Motion should be granted for the reasons set forth above. Ross is correct that this Court can supervise Ross more closely, have probation review hearings, and can act more quickly than the Parole Commission can act. To the extent Ross should be punished for his relapse while on parole, Ross being in custody in the Idaho penitentiary for the past nine months is more than sufficient punishment for a relapse. The crime of Robbery is punishable by a potential life sentence. I.C. § I.C. §§18-5601, 18-6502. Thus, this Court can keep Ross on supervised probation for the rest of his life. The parole commission can only keep Ross on parole for the unused amount of the seven-year indeterminate portion of his sentence (if he were in the future again be found to be parole eligible by the Parole Commission).

IT IS THEREFORE ORDERED that Ross's I.C.R. 35 Motion is **DENIED** as to the relief requested in the form of reduction of the indeterminate portion of his sentence.

IT IS FURTHER ORDERED that Ross' I.C.R. 35 Motion is **GRANTED** as to the requested relief that his prison sentence be suspended and that he be placed on a period

of supervised probation for three (3) years beginning September 6, 2022, on the terms and conditions attached to this Order.

IT IS FURTHER ORDERED that Ross is released from the custody of the State of Idaho Board of Correction immediately, however, IDOC has up to seven days to release him pending arrangement of transportation of Ross from the IDOC facility to Kootenai County.

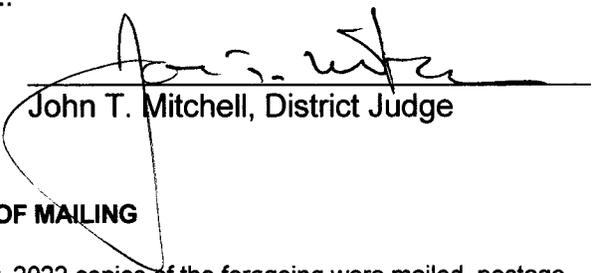
IT IS FURTHER ORDERED that Ross report to IDOC District 1 Probation and Parole within 24 hours of his actual release.

NOTICE OF RIGHT TO APPEAL

YOU, TALON SCOTT ROSS, 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 September, 2022.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of September, 2022 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Patricia Espeland *pd@fax.kc.gov.us*
Prosecuting Attorney – Monica Bushling *kp@paicourts.kc.gov.us*

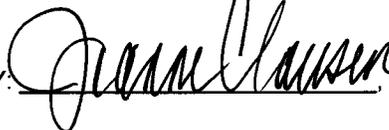
TALON SCOTT ROSS
IDOC # 101511 - *Central records*

IDOC Dist. 1 - Probation & Parole *dist1@idoc.idaho.gov*

lashford@idoc.idaho.gov

Idaho Department of Correction *Central records@idoc.idaho.gov*
Records Division (certified copy)
Fax: (208) 327-7445

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy

TERMS AND CONDITIONS OF PROBATION IMPOSED ON September 6, 2022

Unless stricken, the Probation Terms & Conditions for the above case are as follows:

IT IS FURTHER ORDERED, that you shall comply with each of the following **TERMS AND CONDITIONS OF PROBATION**:

1. That you shall commit no violations of any law of the United States of America, or of any law of any other country, or of any law of any state, county, city, or other political subdivision.
2. That you shall comply with all of the rules, regulations and requirements of the Idaho Department of Corrections.
3. That you shall pay court cost as previously ordered.
4. That you shall pay additional costs, fees, restitution and reimbursements as previously imposed.
5. All of the above sums shall be paid to the County Clerk at the KOOTENAI County Courthouse, in monthly installments to be determined by your probation officer, based upon your ability to pay. Based upon a periodic review of your financial circumstances, your probation officer may increase or decrease the amount of your monthly payment, it being the intent that your financial obligations under this sentence be paid in full prior to your discharge from probation. All payments shall be made in the form of cash, cashier's check or money order. The clerk shall distribute the payments in the priority set by the Idaho Supreme Court.
6. That the court shall reserve jurisdiction to determine the amount of restitution you shall pay your victim(s) in this matter. The amount shall be determined from time to time by stipulation or upon notice and hearing.
7. That you shall attend and complete such rehabilitation, educational, and vocational training programs as your probation officer may designate.
8. That you shall make every effort to obtain and maintain full time employment or be enrolled in a full time educational program.
9. That you shall attend and complete such substance abuse and mental health counseling as your probation officer may designate.
10. That you shall submit to analysis of your blood, breath or urine at your own expense at the request of your probation officer or any law enforcement officer. You shall submit to random substance abuse testing at your expense and as requested by your probation officer. **WEEKLY RANDOM UA/BREATH/ETG TESTING IS REQUIRED FOR THE FIRST TWO YEARS OF YOUR PROBATION. IF THE IDOC IS NOT ABLE TO PROVIDE THIS FREQUENCY OF RANDOM TESTING, YOU MUST SET UP SUCH RANDOM TESTING AT YOUR OWN EXPENSE, WITH THE RESULTS OF SUCH TESTING BEING PROVIDED TO YOUR PROBATION OFFICER. ONCE A MONTH RANDOM TESTING IS REQUIRED FOR THE THIRD YEAR OF PROBATION.**
11. That you shall not purchase, possess, or use any substance intended to alter the results of urinalysis testing for the presence of controlled substances or alcohol.
12. That you shall submit to searches of your person, personal property, automobiles, and residence without a search warrant at the request of your probation officer, any agent of your probation officer, or any law enforcement officer..
13. That you shall not consume or possess alcoholic beverages during the period of your probation. You shall not consume or possess any controlled substance not prescribed by your treating physician.

14. That you shall not enter any establishment wherein the primary source of revenue is the sale of alcoholic beverages.
15. YOU SHALL ATTEND A PROBATION REVIEW HEARING ON December 7, 2022
16. By accepting this probation you do hereby waive extradition to the State of Idaho and also agree that you will not contest any effort by any State to return you to the State of Idaho.
17. That you shall not associate with any individuals specified by your probation officer.
18. That you shall, at the request of your probation officer, submit to a polygraph examination at your expense.
19. If requested by your probation officer, you will be required to reside in the State of Idaho.
20. That you shall pay to the Idaho Department of Corrections its costs of supervision of your probation, in an amount not to exceed \$75.00 per month.
21. That in addition to any other local incarceration you are given ninety (90) days in the county jail to be served and imposed at the discretion of your probation officer and upon the written approval of the District Court. Probation officer has discretion to use eight (8) hours on the Sheriff's Labor Program per day of discretionary jail, instead.
22. If requested by your probation officer, you shall apply for admission to Drug Court / Mental Health Court. If accepted by the Drug Court / Mental Health Court, you shall fully participate in and satisfactorily complete the Drug Court / Mental Health Court program.
23. You shall immediately begin Dialectical Behavioral Therapy (DBT) and complete such program.
24. You shall attend 90 AA/NA/12 step/support/recovery meetings within 90 days beginning no later than 48 hours of release after which you shall attend at least three times a week for the first year of your probation and once a week thereafter for the remainder of your probation. You shall have a sponsor identified by no later than September 25, 2022
- 25.

The terms of the defendant's probation may be revoked, modified or extended at any time by the Court, and in the event of any violation of the conditions hereof, during the period of probation, the Court may revoke this Order and cause the sentence to be executed. Defendant is subject to arrest without a warrant for violation of any condition hereby imposed.

IT IS FURTHER ORDERED that so long as you abide by and perform all of the foregoing conditions, entry of judgment and sentence will continue to be suspended. If you successfully complete your probation, the charges against you may be reduced upon your application. If you violate any of the terms and conditions of your probation, you will be brought before the Court for imposition of your suspended judgment and sentence.

DATED this 6th day of September, 2022.



 John T. Mitchell, District Judge

RECEIPT BY DEFENDANT

I, **TALON SCOTT ROSS**, hereby acknowledge receipt of a copy of the foregoing disposition order and hereby accept and agree to the incorporated terms and conditions of probation. By accepting this probation, I do hereby agree that if I am placed on probation to a destination outside the State of Idaho, or if I leave the confines of the State of Idaho, with or without the permission of my probation officer, I do hereby waive extradition to the State of Idaho. I further agree that I will not contest any effort by any State to return me to the State of Idaho.

Dated this _____ day of _____, 2022.

TALON SCOTT ROSS

Witness