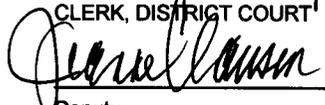


STATE OF IDAHO )  
County of KOOTENAI )  
FILED 12/21/2022 )  
AT 5:00 O'clock P. M )  
CLERK, DISTRICT COURT )  
  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	Case No. <b>CR28-22-6499</b>
Plaintiff,	)	
vs.	)	<b>MEMORANDUM DECISION AND</b>
<b>ANTHON RAY HENDERSON</b>	)	<b>ORDER DENYING DEFENDANT'S</b>
DOB: 12/31/1977	)	<b>MOTION FOR MODIFICATION OF</b>
SSN: XXX-XX-8632	)	<b>SENTENCE PURSUANT TO I.C.R. 35(b),</b>
IDOC: 100696	)	<b>AND NOTICE OF RIGHT TO APPEAL</b>
Defendant.	)	

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On August 22, 2022, in Kootenai County Case CR28-22-6499, before the Honorable John T. Mitchell, District Judge, ANTHON RAY HENDERSON (Henderson), appeared for a sentencing hearing. Also appearing was Casey Drews, Deputy Prosecuting Attorney for Kootenai County, Idaho and your lawyer Jed Nixon. At that hearing, this Court sentenced Henderson as follows:

**POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) WITH THE INTENT TO DELIVER, (a felony), I. C. 37-2732(a)(1), committed on May 6, 2022** – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of FOUR (4) years, for a total term not to exceed SEVEN (7) years.

CR28-22-6499 Sentencing Disposition 2. The Court imposed that sentence and did not retain jurisdiction. *Id.*

On December 20, 2022, Henderson, through his attorney, timely filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b). That motion also contained briefing or a memorandum on behalf of Henderson. In that motion, counsel for Henderson states his motion is “essentially a plea for leniency.” Mot. for Modification of Sentence 2. Counsel for Henderson states, “Additional evidence may include testimony from defendant and additional witnesses.” *Id.* Counsel for Henderson states the relief Henderson requests as, “his sentence be modified to a retained jurisdiction or in the alternative move a portion of the defendant’s determinate time to his indeterminate time.”

*Id.*

Counsel for Henderson has not stated any new evidence that is being presented to support Henderson's motion. As mentioned, counsel for Henderson simply avers, "Additional evidence may include testimony from the defendant and additional witnesses." *Id.* Simply identifying who "may" be testifying does not give this Court any idea of what new evidence might be shown at such a hearing. Finally, counsel for Henderson requested a hearing on Henderson's 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 Henderson's I.C.R. 35 motion. The Court has also re-reviewed the minutes of the August 22, 2022, sentencing hearing in this case. The court has re-reviewed the pre-sentence report dated and filed in this case on August 15, 2022.

At the time of the sentencing hearing, this Court was very familiar with Henderson, who had participated in and successfully completed Kootenai County Mental Health Court in Kootenai County Case CR2014 14184. In that case, Judge Christensen imposed a three-year fixed sentence followed by a three-year indeterminate sentence for the felony crime of driving under the influence. Henderson performed poorly on probation, committing several probation violations over several years, before entering into Mental Health Court in that case on December 18, 2018. On October 1, 2020, Henderson graduated from Mental Health Court. He discharged from supervised probation early on March 22, 2021, and on July 29, 2021, was discharged from all probation and had his felony dismissed in that case. But, on May 6, 2022, committed the serious crime of

possession of a controlled substance methamphetamine, with the intent to deliver.

Henderson's I.C.R. 35 Motion gives this Court no idea of what Henderson's new evidence would be at any hearing on his I.C.R. 35 motions. Counsel for Henderson only speculated as to what types of evidence might be presented, writing, "Additional evidence may include testimony from the defendant and additional witnesses." Mot. for Modification of Sentence 2. Simply enumerating the source of testimony which "may" be potentially be presented, is not enough at this I.C.R. 35 juncture.

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, Henderson has not set forth any relevant evidence that could be adduced at hearing on his I.C.R. 35 motion. The Court cannot be required to guess at what relevant evidence Henderson might present in support of his Rule 35 Motion. Because Henderson has completely failed to give any indication of any relevant facts which would support his claims in his Rule 35 Motion, that motion must be denied due to that failure alone.

There is an additional reason to deny Henderson's Rule 35 Motion without a hearing...the relief he seeks. As set forth above, counsel for Henderson states the relief Henderson requests as, "his sentence be modified to a retained jurisdiction or in the alternative move a portion of the defendant's determinate time to his indeterminate time." Mot. for Modification of Sentence 2. Thus, Henderson seeks *both* a reduction in the amount of years in the fixed portion of his sentence, *or* a retained jurisdiction (rather than imposition of his prison sentences). This Court will address both of Henderson's requests.

Henderson seeks a reduction in his sentences, without even making the claim that the sentences imposed were in any way unreasonable. Additionally, Henderson fails to mention what Henderson feels a more appropriate sentence might be. Neither stating how much of a reduction he desires, nor why the sentence imposed was unreasonable, Henderson is simply asking this court to guess. This Court finds that reducing any of the fixed portion of Henderson's sentence in this case, would not allow this Court to fulfill its paramount responsibility, protecting the public. Henderson was admittedly driving under the influence of methamphetamine at the time he was stopped on May 6, 2022. Presentence Report 1-2. He was found to be in possession of methamphetamine, marijuana and fentanyl. *Id.* He was driving with another Mental Health Court graduate at the time. *Id.* at 2. She was on felony supervised probation at that time. *Id.* at 6. Thus, Henderson is involving others in the commission of new felony crimes. This event occurred only 10 months after Henderson had completed probation and had his rights restored from his prior felony crime. He was found with a lockbox containing 30 fentanyl pills. *Id.* at 7. He "admitted to selling and/or arranging for the sale of drugs." *Id.*

Henderson also seeks a retained jurisdiction rather than imposition of his prison sentences. This also flies in the face of this Court's paramount obligation to protect the public via its sentencing decisions. For Henderson to commit the serious crime of possession of a controlled substance methamphetamine with the intent to deliver, *after* having recently completed the very intense Mental Health Court program, and then request a retained jurisdiction, defies logic. One would have to wonder what additional rehabilitation could be given to Henderson on a period of retained jurisdiction which he did not already receive in Mental Health Court? The irrelevance of a retained jurisdiction after completing Mental Health Court is only amplified by the fact that Henderson has

been through two prior periods of retained jurisdiction before Mental Health Court. In Kootenai County Case CR2014 14184, Henderson went on a retained jurisdiction on May 4, 2016, following a probation violation which was based on the commission of several new misdemeanor crimes. On January 6, 2017, following that retained jurisdiction, Henderson was placed back on probation. Eleven months later an agent's warrant was used for Henderson's committing new misdemeanor crimes, including a new driving under the influence charge. On March 13, 2018, Judge Luster, filling in for Judge Christensen placed Henderson on a second period of retained jurisdiction. Following that retained jurisdiction, Henderson was placed back on probation on August 1, 2018. Two months later an agent's warrant was again used, this time for admitted methamphetamine use and driving without privileges. Following that probation violation, Henderson was placed into Mental Health Court. This Court finds that a retained jurisdiction for Henderson at the present time would be a waste of taxpayer resources and would severely depreciate the seriousness of Henderson's current offense.

The sentence imposed by this Court on Henderson on August 22, 2022, was an appropriate sentence given Henderson's social and criminal history, the fact that he is involving others who are on probation in his criminal activity, and the very serious crime for which that sentence was imposed. Any lesser sentence would depreciate the seriousness of Henderson's current crime. This Court concludes that the sentence imposed was and is necessary for the protection of society, the protection of Henderson, the protection of the public, and the deterrence of Henderson and others. Henderson's criminality is getting worse, not better. There is really nothing for this Court to do but to impose Henderson's reasonable prison sentence.

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

**IT IS THEREFORE ORDERED** that Henderson's I.C.R. 35 Motion in this case is hereby **DENIED**.

#### **NOTICE OF RIGHT TO APPEAL**

**YOU, ANTHON RAY HENDERSON, 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.

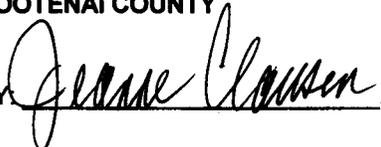
**YOU ARE FURTHER NOTIFIED** that if you are unable to pay the costs of an

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 27<sup>th</sup> day of December, 2022.

  
John T. Mitchell, District Judge

I hereby certify that on the 28<sup>th</sup> day of December, 2022 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:  
Defense Attorney – Jed Nixon *filing@jednixonlaw.com*  
Kootenai Co. Pros. Attorney *kepa@kocourts.gov*  
ANTHON RAY HENDERSON  
IDOC NO. 137310  
*centralrecords@idoc.idaho.gov*

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