

PREVIOUSLY IMPOSED IN BONNER CO. CR09-18-3718, KOOTENAI CO. CR28-20-1909 and CR28-21-9316.

CR28-22-17207 Sentencing Disposition 1-2. The Court imposed that sentence and did not retain jurisdiction. *Id.* at 2. At that November 30, 2022, hearing, the Court also revoked Wilson's probation in his three other cases, and imposed Wilson's sentences in those three cases as follows:

**CR09-18-3718 –
POSSESSION OF A
CONTROLLED
SUBSTANCE (HEROIN),
committed on August 24,
2019**

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.

**CR28-20-1909 -
POSSESSION OF A
CONTROLLED
SUBSTANCE
(METHAMPHETAMINE),
committed on February 5,
2020**

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 FOUR (4) years for a total unified sentence of SEVEN (7) years.

**CR28-21-9316-
POSSESSION OF A
CONTROLLED
SUBSTANCE (HEROIN),
committed on May 28, 2021**

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 FOUR (4) years for a total unified sentence of SEVEN (7) years. THIS SENTENCE RUNS CONSECUTIVE TO THE SENTENCES PREVIOUSLY IMPOSED IN KOOTENAI COUNTY CASE NO. CR28-20-1909 AND IN BONNER CO. CASE NO. CR09-18-3718.

November 30, 2022, Probation Violation Disposition, 2. The Court imposed those sentences and committed Wilson to the custody of the State of Idaho Board of Correction on that date. *Id.* The Court did not retain jurisdiction in those three cases.

As of the date of this decision by this Court, no I.C.R. 35 Motion has been filed by Wilson in the Bonner County case. This Court notes that as of the date of this Memorandum Decision and Order, time remains within which to file such motion in that Bonner County case.

On December 21, 2022, Wilson, through his attorney, in all three Kootenai County cases, timely filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support (I.C.R. 35 Motion). In that motion, counsel for Wilson states, "This motion is made as a plea for leniency." Mot. for Modification of Sentence 1.

Counsel for Wilson states, “The basis for such argument consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future.” *Id.* at 2. Counsel for Wilson states the relief Wilson requests as, “a request to modify James Ray Wilson’s sentence and for the Court to retain jurisdiction.” *Id.*

Counsel for Wilson has not stated any new evidence that is being presented to support Wilson’s motions in those three cases. Counsel for Wilson simply avers, “Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant’s request.” *Id.* at 3. Finally, counsel for Wilson requested a hearing on Wilson’s I.C.R. 35 Motions. *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 Wilson’s I.C.R. 35 motion. The Court has also re-reviewed the minutes of the November 30, 2022, probation violation admit/deny hearing and disposition hearing in all three cases. The court has re-reviewed the pre-sentence report dated and filed on May 11, 2020, in CR28-20-1909 (and which was later used for sentencing in CR28-21-9316). The Court notes that no presentence report was ever prepared for Bonner County Case No. CR09-18-3718, even though Wilson was initially placed on probation at sentencing, in violation of I.C. §20-222, at least under this Court’s reading of that statute (“...no defendant shall be placed on probation until a written report of investigation by a parole and probation officer shall have been presented to and considered by the court...”). The undersigned was not sentencing judge for Wilson in that Bonner County Case. The Court has re-reviewed the Addendum to

Presentence Report filed on February 1, 2022, in the two older Kootenai County cases, which was prepared toward the end of Wilson's recent retained jurisdiction.

At the time (May 20, 2020) this Court sentenced Wilson on his February 5, 2020, felony possession of a controlled substance (methamphetamine) in CR28-20-1909, Wilson already had a felony conviction in 2013 in the State of Washington, and his felony conviction in Bonner County Case CR09-18-3718. Wilson committed that February 5, 2020, possession of a controlled substance methamphetamine crime while he was on felony supervised probation in the Bonner County case. Subsequently, Wilson committed another felony on May 21, 2021, in CR28-21-9316, while he was on felony supervised probation in both the Bonner County Case and Kootenai County Case CR28-20-1909. And, most recently, on October 2, 2022, Wilson committed the felony crime possession of a controlled substance methamphetamine in CR28-22-17207, while he was on felony supervised probation on his three prior Idaho felonies, Bonner County Case CR09-18-3718, and Kootenai County Case CR28-20-1909 and CR28-21-9316. Obviously, over the course of four years, probation was not working for Wilson. A primary purpose of a retained jurisdiction is to prepare one who is currently not likely to succeed on probation, for probation following that period of retained jurisdiction. Given the fact that this Court had also previously utilized a retained jurisdiction for Wilson, a subsequent second retained jurisdiction was an unlikely outcome for Wilson following the most recent possession of a controlled substance methamphetamine conviction in CR28-22-17207. This Court finds there is nothing that could be presented at a hearing on these I.C.R. 35 motions that would be of benefit to the Court. A hearing would only waste counsel's time and the Court's time.

Wilson's I.C.R. 35 Motions give this Court no idea of what Wilson's new evidence would be at any hearing on his I.C.R. 35 motions. Counsel for Wilson only speculated as to what types of evidence might be presented, writing, "Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant's request." Mot. for Modification of Sentence 3. Simply claiming the categories of evidence which will "likely" or "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, Wilson 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 Wilson might present in support of his Rule 35 Motions. Because Wilson has completely failed to give any indication of any relevant facts which would support his claims in his Rule 35 Motions filed in each of his three cases, those motions in each of those three cases must be denied due to that failure alone.

There is an additional reason to deny Wilson’s Rule 35 Motions in these Kootenai County cases without a hearing...the relief he seeks. As set forth above, counsel for Wilson states the relief Wilson requests as, “a request to modify James Ray Wilson’s sentence and for the Court to retain jurisdiction.” Mot. for Modification of Sentence 2. Thus, Wilson seeks *both* a reduction in the amount of years in all of his Kootenai County sentences, *and* a retained jurisdiction (rather than imposition of his prison sentences). This Court will address both of Wilson’s requests.

Wilson seeks a reduction in his sentences, without even making the claim that the sentences imposed were in any way unreasonable. Additionally, Wilson fails to mention what Wilson feels a more appropriate sentence(s) might be. At the November 30, 2022,

hearing, this Court specifically stated that the four-year fixed sentence imposed on that date in Kootenai County Case CR28-22-17207, was imposed *concurrent* to all other sentences previously imposed, for the expressed purpose of not adding any more fixed time Wilson would have to serve in CR28-20-1909 and CR28-21-9316, and even Bonner County Case CR09-18-3718. With credit for time served as of that November 30, 2022, hearing, Wilson had about seven months left to serve on the fixed portion of his two year sentence in Bonner County Case CR09-18-3718. Wilson had about 2.14 years left to serve on the fixed portion of his sentence in Kootenai County Case CR28-20-1909, and 2.2 years left to serve in Kootenai County Case CR28-21-9316. Given the fact that all three of the older sentences were imposed consecutively, Wilson had just under five years fixed left to serve as of November 30, 2022. Again, Wilson does not state why the sentences imposed in Kootenai County Case CR28-20-1909 and CR28-21-9316, Wilson's third and fourth felony convictions, were unduly harsh, nor does Wilson set forth how much of a reduction he desires. Again, Wilson is simply asking this court to guess. This Court finds that reducing any of Wilson's sentences in Kootenai County Case CR28-20-1909 and CR28-21-9316, would not allow this Court to fulfill its paramount responsibility, protecting the public.

Wilson 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. After Wilson committed his second felony drug offense in Kootenai County, this Court utilized a period of retained jurisdiction. Following which, Wilson violated his probation yet again by committing a new felony drug offense. On February 17, 2022, following a retained jurisdiction, this Court placed Wilson on probation in his two older Kootenai County cases and in his Bonner County case. On October 13, 2022, a Report of Probation Violation was filed in those three cases. The first allegation was that on October 8, 2022, Wilson committed the new felony crime of possession of a controlled substance in Kootenai County Case CR28-22-17207. This occurred less than eight months after being placed back on probation following Wilson's period of retained jurisdiction. However, Wilson's failures occurred much sooner than that new crime. Wilson began failing on probation within less than two months. The second allegation in that Report of Probation Violation reads: "In between 04/12/2022 and 05/02/2022, Wilson failed to report on four separate occasions for random substance abuse tests and was subsequently archived from Absolute Drug Testing." October 12,

2022, Report of Probation Violation 2, Allegation No. 2. However, even before those failures, Wilson had already tested positive for alcohol on testing on March 24, 2022, only five weeks after his retained jurisdiction. *Id.* at Allegation No. 3.

It is worth noting that the Idaho Department of Correction sent no notice to this Court, as to the fact that Wilson had failed to even show up for drug testing on four consecutive occasions from April 12, 2022 to May 2, 2022, until **after** Wilson had committed his new crime on October 8, 2022. The result of that complete failure by Wilson to even test, as far as the Idaho Department of Correction is concerned, was for Wilson to be “archived”, which simply means you don not even have to test any more. According to the notes attached to the Report of Probation Violation, Wilson was not even required to drug test again until August 9, 2022. This Court finds the supervision by the Idaho Department of Correction, in allowing an addict who is being supervised on three separate felony cases, to not have to drug test for over four months, to be completely inept. That inept supervision by the IDOC is compounded by abject lack of communication between that Idaho Department of Correction and this Court, given the fact that IDOC failed to report that over four month failure to drug test. These failures by Wilson and by the IDOC, give this Court no confidence that Wilson would be successful on probation following another period of retained jurisdiction. Certainly, it is Wilson’s responsibility to show up for drug tests in the first instance. Wilson clearly failed in that regard in April and May, 2022. But when the IDOC’s response to Wilson’s failure is to “archive” the supervised probationer such that Wilson was no longer required to drug test at all, the responsibility for that failure rests in the hands of the IDOC. The eventual outcome of that failure, Wilson’s commission of a new felony drug offense, cannot be unexpected by the IDOC, by Wilson, or by this Court.

The sentence imposed by this Court on Wilson on May 20, 2020, in CR28-20-1909, the sentence imposed on Wilson on July 7, 2021, in CR28-21-9316, and the sentence imposed on Wilson on November 30, 2022, in CR28-22-17207, were appropriate sentences given Wilson's social and criminal history, his abhorrent performance on probation in the past four years, the fact that he was on **supervised felony probation** (in the Bonner County case) each time he committed these three separate Kootenai County felony offenses which are the subject of Wilson’s I.C.R. 35 motions, and the crimes for which those three sentences were imposed. Any lesser sentences would depreciate the seriousness of Wilson's crimes. This Court concludes

that the sentences imposed were and are necessary for the protection of society, the protection of Wilson, the protection of the public, and the deterrence of Wilson and others. Wilson has given this Court absolutely no indication that he is not going to stop committing new crimes even while on supervised felony probation. Wilson's criminality is getting worse, not better. There is really nothing for this Court to do but to impose his reasonable prison sentences.

For the above mentioned reasons, Wilson's I.C.R. 35 Motions in each of these three cases must be denied without a hearing.

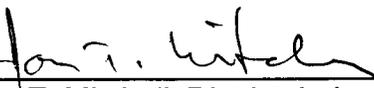
IT IS THEREFORE ORDERED that Wilson's I.C.R. 35 Motion in each of his three Kootenai County cases is hereby **DENIED** in each case.

NOTICE OF RIGHT TO APPEAL

YOU, JAMES RAY WILSON, 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 27th day of December, 2022.


John T. Mitchell, District Judge

I hereby certify that on the 28th day of December, 2022 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

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CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy