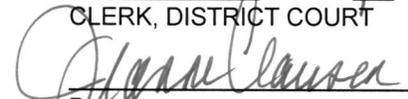


STATE OF IDAHO)
County of KOOTENAI)
FILED 5/24/2023)
AT 1:40) O'clock P. M
CLERK, DISTRICT COURT


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,)
)
) Plaintiff,)
)
 vs.)
)
 JONATHAN ROBERT CHRYSLER)
)
 DOB: 03/28/1997)
)
 SSN: xxx-xx-5291)
)
 IDOC: 123558)
)
) Defendant.)
)
)

Case No. **CR28-20-10425**

**MEMORANDUM DECISION AND
ORDER DENYING I.C.R. 35
MOTION AND NOTICE OF
RIGHT TO APPEAL**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On July 12, 2020, defendant Jonathan Robert Chrysler (Chrysler) committed the crime of Aggravated Driving under the Influence, a felony, in violation of I.C. § 18-8006. Criminal Complaint 1-2. He was also charged with the habitual offender enhancement of I.C. § 19-2514, having a felony conviction in 2015 for Possession of Stolen Property and a conviction in 2017 for Possession of a controlled substance. *Id.* Chrysler was under the influence of methamphetamine (Affidavit in Support of Probable Cause 1-3) wrecked the car he was driving into a power pole (*Id.* 1-8) on the passenger side, causing his passenger/victim Brenda Norris to have her arm severed. *Id.* Norris was life-flighted from the scene. *Id.* at 2.

On November 19, 2020, the Honorable Lansing Haynes sentenced Chrysler to a two-year fixed term followed by a six-year indeterminate term, for a total unified sentence of eight years. Judgment 2. Judge Haynes suspended that sentence and place Chrysler on probation for three years. *Id.* One of the terms of probation was that Chrysler serve

40 days in the Kootenai County jail. *Id.* 3. Four months after Chrysler was released from jail, Chrysler violated his probation by committing the new felony crime of Burglary, later reduced to Unlawful Entry. May 3, 2021, Report of Probation Violation 1, ¶1. On June 23, 2021, Judge Haynes imposed a period of retained jurisdiction. Judgment on Probation Violation 1. On February 7, 2022, Judge Haynes placed Chrysler back on probation for two years. Judgment on Retained Jurisdiction 1. Six weeks later, Chrysler was arrested on an Agent's Warrant for using illegal drugs. Agent's Warrant – Probation 1. On March 30, 2022, Magistrate Judge Timothy Van Valin set bond on the agent's warrant as follows:

I set bond at 5k, the reason I did that is because I can see what is going on. Normally that would be no bond and you would just sit there. I went against Judge Haynes. You have a hearing 4/29/2022 at 8:30 am and you better make it. If you don't, I will be in hot water with him.

March 30, 2022, Minutes 1. Chrysler posted the \$5,000.00 bond on April 4, 2022. On April 26, 2022, as a result of his probation violation, Judge Haynes continued Chrysler's period of probation and imposed ten-days on the sheriff's labor program. Judgment on Probation Violation 1. Three weeks later, on May 21, 2022, Chrysler committed new felony crimes of Delivery of a Controlled Substance Where Children are Present and Injury to a Child, and misdemeanor Injury to a Child. May 24, 2022, Report of Probation Violation 1. At this point in time, Judge Haynes had retired. Senior District Judge Scott Wayman issued a no bond bench warrant on May 31, 2022; that warrant was served the same day. Bench Warrant 1-2.

On September 6, 2022, Chrysler had his sentence imposed by Judge Wayman, as a result of another probation violation. At no point in time has any judge or Chrysler's attorney calculated credit for time served in this matter. The undersigned has made that calculation. As of September 13, 2022, the date counsel for Chrysler filed his I.C.R. 35

Motion, Chrysler had served 434 days in custody. As of the date of this decision, Chrysler has served 687 days in custody in this case. That order making those calculations is attached to this decision.

On September 13, 2022, Chrysler’s attorney Doug Pierce, timely (at least under the fourteen-day limitation following a probation violation pursuant to I.C.R. 35(b)) filed an “I.C.R. 35 Motion” on behalf of his client, Chrysler. In that I.C.R. 35 Motion, counsel for Chrysler moves this Court, “pursuant to I.C.R. 35, to reconsider and modify its DISPOSITION JUDGMENT, PROBATION VIOLATION(S) entered on September 6, 2022. The request will be based upon firming up the sentence with Mr. Chrysler’s federal case which was the basis for the probation violation.” Rule 35 Mot. 1. Counsel for Chrysler requested a hearing in his I.C.R. 25 Motion (*Id.* at 1-2), but never obtained a hearing date and never notice up such a hearing with this Court or any other District Judge previously assigned to this case. It has been 254 days since counsel for Chrysler filed his I.C.R. 35 Motion, and that is still the status; that is, no hearing has been requested of this Court’s clerk, and no hearing has been noticed up by counsel for Chrysler.

On May 16, 2023, this case was administratively reassigned to the undersigned. Once this Court reviewed the file, this Court discovered that nothing had occurred in the past 254 days on Chrysler’s I.C.R. 35 Motion.

Chrysler’s motion must be denied without a hearing based on the following.

II. ANALYSIS.

A. THIS COURT LACKS JURISDICTION TO HEAR CHRYSLER’S I.C.R. MOTION DUE TO IT NOT BEING DECIDED IN THE PAST 253 DAYS.

First and foremost, while Chrysler’s I.C.R. 35 Motion is timely, this Court can no longer address Chrysler’s motion. Chrysler and his attorney have waited too long to bring

this matter to any judge's attention. As such, this Court has lost jurisdiction to hear Chrysler's I.C.R. 35 Motion. To hear such motion at this time would invade the province of the State of Idaho Commission of Pardons and Parole. The Idaho Court of Appeals in *State v. Maggard*, 126 Idaho 477, 886 P.2d 782 (Ct. App. 1994), held:

At the outset, we are faced with the State's assertion that the district court lacked jurisdiction to decide Maggard's motion. The State's argument is based upon our Supreme Court's decision in *State v. Chapman*, 121 Idaho 351, 825 P.2d 74 (1992). In *Chapman*, the defendant had filed a motion for probation or for reduction of his sentence pursuant to I.C.R. 35. Twenty-nine months later, the district court entered an order denying the motion. Chapman then filed a motion for reconsideration, which the district court granted, ordering Chapman released on probation. This order occurred thirty-two months after the Rule 35 motion was filed. The State appealed from the order releasing Chapman on probation. The issue on appeal, as framed by the Supreme Court, was "Did the district court have jurisdiction to grant Chapman's motion?" 121 Idaho at 352, 825 P.2d at 75. The Court answered this inquiry in the negative, reversed the order granting probation to Chapman and directed reinstatement of the order denying probation to Chapman.

The Court reached its conclusion in *Chapman* on the ground that the period of time-thirty-two months-which expired before the district court granted Chapman's motion, was an unreasonable delay. The Court noted that "any delay which allows the trial court to infringe upon the duties of the parole board is per se unreasonable." *Chapman*, 121 Idaho at 355, 825 P.2d at 78. The Court further recognized, however, that a trial court should be allowed some period of time to decide a Rule 35 motion, beyond the 120-day period within which such a motion may be timely filed.

As [*United States v. Stollings*, 516 F.2d 1287 (4th Cir.1975)] made clear, a strict interpretation may often prejudice a defendant who filed a timely motion but was denied a ruling because the trial court was unable to act upon the motion within the 120-day period for reasons outside the defendant's control, such as illness or other case matters. In these situations, in which the district court delayed ruling on the motion not in order to evaluate the defendant's progress in prison, but simply because the court had not had time to consider it, it would be entirely unfair to the defendant to not allow the trial court a "reasonable" time after the 120-day period had expired to rule on the motion.

Chapman, 121 Idaho at 354, 825 P.2d at 77. The Court then held that the trial court overstepped its jurisdictional boundaries by granting Chapman's probation at the late date, thirty-two months after Chapman had filed his Rule 35 motion. Accordingly, while valid reasons may exist to delay

the decision on a Rule 35 motion in a particular case, the delay may not be for the purpose or with the likely effect of assuming the function of the parole authorities. If the purpose or effect of the delay is to infringe upon the constitutional duties of the parole commission, the delay is per se unreasonable and the court loses jurisdiction to grant relief under Rule 35.

Here, the record is silent with regard to the reasons for the district court's determination to take the motion under advisement and to delay a decision on the motion for a period of six months. There is no indication in the record that Maggard requested additional time to supplement the record or that he intended to submit any additional evidence after the motion was filed. Neither the state nor Maggard requested that the motion be held in abeyance, nor is there any indication that the delay was necessitated by the court's schedule. If the reason was to obtain more information about Maggard's circumstance or performance while in the custody of the Board of Correction, surely that information could have been gained in less than a six-month period. As it turned out, no new or additional information was ever submitted to support Maggard's motion. Consequently, the court had before it all information relevant to the motion on the day the motion was made. A decision on this motion should have been made thereafter within a reasonable period of time. Because there is nothing in the record to show the extent of the period otherwise necessary to decide the motion, we must conclude that the eight-month delay was unreasonable under the principles expressed in *Chapman* forbidding an infringement on the executive authority held by the Commission of Pardons and Parole. See *Brandt v. State*, 118 Idaho 350, 796 P.2d 1023 (1990).

The order denying relief under I.C.R. 35 is affirmed on the ground that the district court lost jurisdiction to grant the motion.

126 Idaho at 479-80, 886 P.2d at 784-85. *Maggard* makes clear that there need not be any nefarious reason by the defendant for the delay. Rather, it is the "effect" of the delay that is important; if the delay has the "likely effect of assuming the function of the parole authorities", the district court has lost jurisdiction. 126 Idaho at 479, 886 P.2d at 784. "If the purpose or effect of the delay is to infringe upon the constitutional duties of the parole commission, the delay is per se unreasonable and the court loses jurisdiction to grant relief under Rule 35." *Id.* (underlining added). At the time Chrysler filed his I.C.R. 35 Motion, he was only 296 days from having served the fixed portion of his sentence. The indeterminate portion of Chrysler's sentence is the purview of the State of Idaho Commission of Pardons and Parole. As of the date of this decision, due to Chrysler's

lack of prosecution of his I.C.R. 35 Motion, Chrysler is only 43 days away from having served all of the fixed portion of his sentence. This court finds that given the fact that Chrysler is purely within the purview of the State of Idaho Commission of Pardons and Parole within six weeks, this Court lacks jurisdiction to hear Chrysler's I.C.R. 35 Motion. Just as in *Maggard*, there is no indication that counsel for Chrysler has, "requested additional time to supplement the record or that he intended to submit any additional evidence after the motion was filed. Neither the state nor [Chrysler] requested that the motion be held in abeyance, nor is there any indication that the delay was necessitated by the court's schedule." 126 Idaho at 479-80, 886 P.2d at 784-85.

Seven years after *Maggard*, the Idaho Court of Appeals held in *State v. Tranmer*, 135 Idaho 614, 21 P.3d 936 (Ct. App. 2001):

On appeal, the state argues that the district court lost jurisdiction to reduce Tranmer's sentence because it delayed its decision for a period of eleven months. In pertinent part, Rule 35 provides that the trial court "may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction." However, it is well settled in Idaho that a trial court does not lose jurisdiction to act upon a timely filed motion under Rule 35 merely because the 120-day period expires before the judge can reasonably consider and act upon the motion. See *State v. Chapman*, 121 Idaho 351, 353, 825 P.2d 74, 76 (1992); *State v. Simpson*, 131 Idaho 196, 197, 953 P.2d 636, 637 (Ct.App.1998). A trial court will retain jurisdiction to rule upon a Rule 35 motion if it acts within a "reasonable time" after the 120 day limitation expires. *Chapman*, 121 Idaho at 353, 825 P.2d at 76; see also *Simpson*, 131 Idaho at 197, 953 P.2d at 637. The Idaho Supreme Court explained:

[A] strict interpretation [of Rule 35] may often prejudice a defendant who filed a timely motion but was denied a ruling because the trial court was unable to act upon the motion within the 120-day period for reasons outside the defendant's control, such as illness or other case matters. In these situations, in which the district court delayed ruling on the motion *not in order to evaluate the defendant's progress in prison*, but simply because the court had not had time to consider it, it would be entirely unfair to the defendant to not allow the trial court a "reasonable" time after the 120-day period has expired to rule on the motion.

Chapman, 121 Idaho at 354, 825 P.2d at 77 (emphasis added).

The reasonableness of any delay by the district court in ruling upon a Rule 35 motion must be evaluated in light of the purposes supporting the 120-day limitation and the reasons for the trial court's delay in each case. *United States v. Smith*, 650 F.2d 206, 209 (9th Cir.1981). The 120-day limitation serves two purposes: it protects judges from repeated pleas by those sentenced and it ensures "that the court does not usurp the responsibilities of the parole officials by acting on the motion *in light of the movant's conduct while in prison.*" *Simpson*, 131 Idaho at 197-98, 953 P.2d at 637-38 (emphasis added); *see also Chapman*, 121 Idaho at 353, 825 P.2d at 76. The second of these purposes insures that the district court's power to reduce a sentence will not be misused as a substitute for the consideration for parole by the Commission of Pardons and Parole by holding a timely motion for reduction of sentence in abeyance for months or years and then seeking to grant it on the basis of defendant's conduct in prison. *United States v. Taylor*, 768 F.2d 114, 117 (6th Cir.1985); *United States v. Krohn*, 700 F.2d 1033, 1037 (5th Cir.1983). The "reasonable time" granted to the trial court is "a reasonable time to decide the issue presented by the rule 35 motion, *not a license to wait and reevaluate the sentencing decision in the light of subsequent developments.*" *Diggs v. United States*, 740 F.2d 239, 246-47 (3d Cir.1984) (emphasis added); *see also Chapman*, 121 Idaho at 354, 825 P.2d at 77. Any delay "which allows the trial court to infringe upon the duties of the parole board is per se unreasonable." *Chapman*, 121 Idaho at 355, 825 P.2d at 78. Therefore, we conclude that Rule 35 is also not a substitute for the trial court's failure to utilize this state's retained jurisdiction program at the time a defendant's sentence is originally imposed.

The "reasonable time" rule was first adopted by the Idaho Supreme Court in *Chapman*. In that case, the district court ordered preparation of an inmate's progress report at the request of the defendant's counsel approximately one and one-half years after the defendant filed a Rule 35 motion. Initially, the district court denied the defendant's motion. In response to a motion to reconsider, the district court granted the defendant's motion after reevaluating the progress report and concluding that the defendant was a model prisoner and likely to become a productive member of society. The Idaho Supreme Court held that the decision by the district court was an invasion of the executive authority held by the Commission of Pardons and Parole. *Chapman*, 121 Idaho at 355, 825 P.2d at 78.

The Idaho Supreme Court and this Court have considered a number of cases in which the district court delayed its decision regarding a Rule 35 motion beyond the 120 day limitation. In many of these cases, it was held that the delay was unreasonable because the record was silent as to the basis for the delay. *See State v. Payan*, 132 Idaho 614, 619, 977 P.2d 228, 233 (Ct.App.1998); *Simpson*, 131 Idaho at 198, 953 P.2d at 638; *State v. Day*, 131 Idaho 184, 186, 953 P.2d 624, 626 (Ct.App.1998); *State v. Maggard*, 126 Idaho 477, 479, 886 P.2d 782, 784 (Ct.App.1994). In *State v. Book*, 127 Idaho 352, 900 P.2d 1363 (1995),

the Idaho Supreme Court held that the district court reasonably delayed its decision while waiting for the defendant to gather additional information in support of his Rule 35 motion, noting that the information eventually gathered was not new evidence. In *State v. Matteson*, 123 Idaho 622, 851 P.2d 336 (1993), the Idaho Supreme Court affirmed the district court's refusal to delay its decision for more than eight months in order to wait for the preparation of a psychiatric evaluation report. In *State v. Nickerson*, 123 Idaho 971, 855 P.2d 56 (Ct.App.1993), this Court held that the district court reasonably delayed its decision while waiting for the underlying sentence to be appealed. This Court explained in *Nickerson* that the authority of the parole officials was not infringed upon by the district court's delay because the Board of Correction did not have custody of the defendant as the district court had stayed the execution of the underlying sentence pending the appeal. *Id.* at 974, 855 P.2d at 59.

In the instant case, the district court did not utilize this state's retained jurisdiction program. Rather, upon reviewing Tranmer's Rule 35 motion, the district court delayed its consideration of the motion for a period of eleven months for the *sole* purpose of considering Tranmer's conduct while incarcerated. In thereafter granting Tranmer's motion, the district court essentially reduced the fixed portion of his sentence to time served. However, in doing so, the district court infringed upon the executive duties granted to the Commission of Pardons and Parole. As a result, we hold that the district court lost jurisdiction to act upon Tranmer's Rule 35 motion.

We recognize that in *State v. Brydon*, 121 Idaho 890, 828 P.2d 919 (Ct.App.1992), this Court concluded that a district court reasonably delayed its decision regarding a Rule 35 motion for a period of five months while waiting to receive additional progress reports from the Idaho Department of Correction, partially on the grounds that the defendant was not yet eligible for parole. This Court then affirmed the district court's denial of Brydon's Rule 35 motion. After further consideration of the standard adopted by the Idaho Supreme Court in *Chapman*, however, we are unpersuaded that a defendant's parole eligibility date is determinative when considering whether a trial court reasonably delayed its decision in regard to a Rule 35 motion.

As stated in *Chapman*, any delay "which allows the trial court to infringe upon the duties of the parole board is per se unreasonable." *Chapman*, 121 Idaho at 355, 825 P.2d at 78. A clear indication of infringement occurs when a district court reduces a sentence while the defendant is serving the indeterminate portion of his sentence. See *Chapman*, 121 Idaho at 355, 825 P.2d at 78. However, it is not the only indication that a district court has infringed upon the duties of the parole board. See *Simpson*, 131 Idaho at 198, 953 P.2d at 638 (holding delay unreasonable although defendant was not eligible for parole). A district court's delay also infringes upon the duties of the parole board by holding a timely motion for reduction of sentence in abeyance for months or years and then seeking to grant it on the basis of defendant's conduct in prison. *Taylor*, 768 F.2d at 117; *Krohn*, 700 F.2d at 1037. Such conduct was

committed by the district court in *Chapman* and held to have caused the district court to overstep its jurisdictional boundaries. *Chapman*, 121 Idaho at 355, 825 P.2d at 78. Insofar as the language in *Brydon* can be read to condone a trial court's purposeful delay in ruling on a Rule 35 motion simply in order to consider a defendant's subsequent conduct while incarcerated, it is overruled.

Based upon the foregoing discussion, we hold that the district court lost jurisdiction to act upon Tranmer's Rule 35 motion by unreasonably delaying its decision for the sole purpose of considering Tranmer's conduct while in prison. Therefore, the district court's order granting Tranmer's Rule 35 motion is reversed.

135 Idaho at 615-18, 21 P.3d at 937-940 (footnotes omitted) (*italics in original*). Based on *Tranmer*, it could be said that the delay in this case is due to Judge Haynes' retirement, and no judge previous to the undersigned having decided Chrysler's I.C.R. 35 Motion. That claim is put to rest by the next case. This Court finds the most on-point case to be *State v. Simpson*, 131 Idaho 196, 953 P.2d 636 (Ct. App. 1998), in which the Idaho Court of Appeals held:

Darrell K. Simpson pled guilty to two counts of forgery, I.C. §§ 18-3601, -3604. On June 12, 1995, the court imposed concurrent unified twelve-year sentences, with two years fixed and credit for eighty-one days served. Simpson filed a timely notice of appeal from the judgment of conviction. Simpson also filed *pro se* motions for appointment of counsel and for reduction of his sentence pursuant to Idaho Criminal Rule 35 on August 29, 1995. A pro tem district judge appointed the public defender to represent Simpson, and on January 6, 1997, a new district judge denied Simpson's Rule 35 motion after a hearing. Simpson again appealed, asserting that the district court's denial of his Rule 35 motion was an abuse of discretion.

At the outset, we address the state's claim that the district court lost jurisdiction when it waited over fifteen months before issuing a decision on Simpson's motion. Rule 35 provides that "[t]he court may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction...." Under certain circumstances, both this Court and the Idaho Supreme Court have declined to strictly construe the 120-day limitation, holding that a trial court must rule upon a Rule 35 motion within a *reasonable* time after the 120-day period expires. See *State v. Chapman*, 121 Idaho 351, 354, 825 P.2d 74, 77 (1992); *State v. Maggard*, 126 Idaho 477, 479-80, 886 P.2d 782, 785-86 (Ct.App.1994). Delays ranging from five months to one year after the expiration of the 120-day period have been deemed reasonable, while delays ranging from eight months to two years have been deemed

unreasonable. See *Chapman*, 121 Idaho at 354-55, 825 P.2d at 77-78 (two-year delay in issuing a decision on a Rule 35 motion is unreasonable); *State v. Day*, 131 Idaho 184, 953 P.2d 624 (App.1998) (nine-month delay awaiting resolution of direct sentence appeal is unreasonable absent some other legitimate explanation);²

Footnote 2. We emphasized therein that **when a Rule 35 motion is filed, it will of necessity become the responsibility of defense counsel to precipitate action on the motion within a reasonable time frame, or otherwise provide an adequate record and justification for the delay, in order to avoid the risk of the trial court losing jurisdiction.**

Maggard, 126 Idaho at 479-80, 886 P.2d at 784-85 (eight-month delay without any further action is unreasonable absent explanation for the delay); *State v. Nickerson*, 123 Idaho 971, 974, 855 P.2d 56, 59 (Ct.App.1993) (one-year delay reasonable where execution of sentence stayed and all parties, including trial court, agreed to hold Rule 35 motion in abeyance pending outcome of the defendant's direct appeal); *State v. Brydon*, 121 Idaho 890, 892, 828 P.2d 919, 921 (Ct.App.1992) (five-month delay reasonable where the delay was caused by trial court's stated need for additional information before ruling on the motion). However, in order for this Court to determine the reasonableness of a delay, a defendant must explain or identify some legitimate cause for the delay. The delay must not violate the policies served by the 120-day time limit, including protecting judges from repeated pleas by those sentenced and ensuring that the court does not usurp the responsibilities of parole officials by acting on the motion in light of the movant's conduct while in prison. *Chapman*, 121 Idaho at 353, 825 P.2d at 76, quoting *United States v. Stollings*, 516 F.2d 1287, 1288 (4th Cir.1975).

Here, the record is silent as to the basis for the district court's delay in deciding Simpson's motion. It does appear, however, that the district judge who was sitting at the time Simpson filed his motion was succeeded in office by a different judge and that it was the latter who eventually ruled on Simpson's motion. Under different circumstances, this explanation might be sufficient for this Court to consider the sixteen-month delay to be reasonable. See *State v. Torres*, 107 Idaho 895, 898, 693 P.2d 1097, 1100 (Ct.App.1984) (the consequences of a delay caused in part by the retirement of the original sentencing judge should not be visited upon the defendant). However, Simpson had almost completely served the fixed portion of his sentence and would soon be parole-eligible at the time the district court ruled on his motion. Under such circumstances, where the court's assertion of jurisdiction would infringe upon the authority of the Board of Pardons and Parole, we are constrained to agree that the district court lost jurisdiction to act upon Simpson's Rule 35 motion.

Accordingly, we affirm the district court's order denying Simpson's Rule 35 motion on the ground that the district court lacked jurisdiction to rule on the motion.

131 Idaho at 197-98, 953 P.2d 637-38 (footnote 1 omitted, bold added on footnote 2).

The bold portion of footnote two is especially pertinent to Chrysler's I.C.R. 35 Motion. At

no time has Chrysler's attorney Doug Pierce fulfilled "the responsibility of defense counsel to precipitate action on the motion within a reasonable time frame, or otherwise provide an adequate record and justification for the delay, in order to avoid the risk of the trial court losing jurisdiction." Chrysler's attorney has at no time asked for a hearing. Chrysler's attorney has not in any way justified the delay in prosecuting this motion.

Additionally, Chrysler has not filed an appeal to the Idaho Supreme Court. As such, Chrysler's situation is not similar to a person who files an I.C.R. 35 Motion and simultaneously appeals the district court, as was addressed in *State v. Nickerson*, 123 Idaho 971, 855 P.2d 56 (Ct. App. 1993).

This Court finds that this Court lacks the jurisdiction to hear Chrysler's I.C.R. 35 Motion. The following two reasons for denying Chrysler's I.C.R. 35 Motion are discussed only as alternative grounds.

B. CHRYSLER'S I.C.R. 35 MOTION MUST BE DENIED BECAUSE CHRYSLER HAS STATED NO NEW EVIDENCE.

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). "The 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).

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

Additionally, counsel for Chrysler has completely failed to indicate what sort of relief Chrysler seeks in his I.C.R. 35 Motion. Counsel for Chrysler simply asks this Court to “reconsider and modify” its decision entered on September 6, 2022, when Judge

Wayman finally imposed Chrysler's prison sentence. Counsel for Chrysler does not favor this Court with what sort of "modification" Chrysler is requesting. Again, this Court cannot be required to guess at the relief Chrysler seeks in his I.C.R. 35 Motion.

C. CHRYSLER'S I.C.R. 35 MOTION MUST BE DENIED ON THE MERITS (OR LACK THEREOF).

Given Chrysler's prior felony criminal record (recall the plaintiff dismissed the habitual offender enhancement provision in this case), given the horrific nature of this crime and the lifelong damage caused to Chrysler's victim, given Chrysler's abysmal failure while on probation in this case, said probation beginning November 19, 2020, to the date Judge Wayman imposed his prison sentence on September 6, 2022, during which time Chrysler committed new crimes on multiple occasions, and during which time Chrysler also served a period of retained jurisdiction in prison (which the Court notes Chrysler had a poor disciplinary report, January 14, 2022, Addendum to Presentence Investigation 3), and given the extreme danger Chrysler presents to the public, for Chrysler to even suggest that he is entitled to any reduction in his sentence, is the pinnacle of temerity.

The Court exercises its discretion and decides Chrysler's I.C.R. 35(b) motion without a hearing. This Court finds absolutely no new evidence and no relevant evidence has been presented by counsel for Chrysler in support of his I.C.R. 35(b) Motion. This Court specifically finds that reducing Chrysler's sentence would not allow this Court to fulfill its paramount responsibility, protecting the public. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Chrysler's current crime, his past felony crimes, his dismal performance on probation and his dismal performance on his period of retained jurisdiction, all set forth above, are testament to that incontrovertible fact.

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III. ORDER.

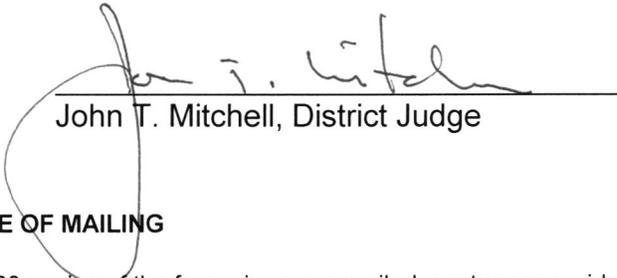
IT IS HEREBY ORDERED that defendant Chrysler's I.C.R. 35 motion is **DENIED** for the reasons set forth above: Chrysler has waited too long to have this matter heard, Chrysler has submitted no new evidence, and Chrysler motion is devoid of any merit.

NOTICE OF RIGHT TO APPEAL

YOU, JONATHAN ROBERT CHRYSLER, 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 24th day of May, 2023.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of May, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

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KOOTENAI COUNTY

BY:  Deputy