STATE OF IDAHO)
County of KOOTENAI) ss

FILED_____

AT _____ O'clock ___ 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.

DESTINY DAWN STENBOM
DOB: 03/05/1990
SSN: XXX-XX-2451
IDOC: 119201

Defendant.

Case No. **CRF 2016 125**

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

On May 3, 2016, DESTINY DAWN STENBOM was given a withheld judgment for a period of three years for the felony crime Grand Theft by Possession of Stolen Property, a violation of Idaho Code § 18-2407(1), (3) and § 18-2403(4), committed on January 3, 2016. At that hearing on May 3, 2016, Stenbom was placed on three years of supervised probation. On August 31, 2016, Stenbom admitted violating her probation by smoking methamphetamine on six occasions while on probation, drinking on five occasions while on probation, failing to drug test on six occasions, entering an establishment where the primary revenue source is alcohol on two occasions, and by failing to complete the Good Samaritan Rehabilitation program. As a result, on August 31, 2016, this Court revoked Stenbom's probation, revoked Stenbom's withheld judgment, and imposed the following sentence:

CRF 2016 125 - THEFT BY RECEIVING, POSSESSING OR DISPOSING OF STOLEN PROPERTY, ETC.	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.

The Court retained jurisdiction for up to one year, recommending that the Idaho Department of Correction (IDOC) provide her with chemical dependency treatment, any treatment available for her past trauma, and cognitive restructuring. On February 23, 2017, the IDOC issued a report recommending probation, but on March 24, 2017, IDOC issued a report informing the Court and counsel that Stenbom had been in a physical altercation on March 17, 2017, and since in doing so she did not apply the skills taught on the retained jurisdiction, the IDOC changed its recommendation for probation to a recommendation that the Court relinquish its jurisdiction and impose Stenbom's prison sentence. On April 5, 2017, this Court held a jurisdictional review hearing. At the conclusion of that hearing the Court gave Stenbom a choice: she could return to her retained jurisdiction (there was still over four months left on the one year maximum period), try to improve her conduct, and get a recommendation for probation, or the Court could impose her prison sentence. Stenbom responded that she did not want to do her rider, that she would rather serve her time. On April 17, 2017, Stenbom, through counsel, filed the instant I.C.R. 35 Motion requesting that this Court reconsider her sentence. Mot. for Recons. of Sentence Pursuant to I.C.R. 35, 1. Stenbom bases this motion on a plea for leniency. *Id.* In that motion, Stenbom requested a hearing. *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 the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, the Court minutes from the various hearings, the pre-sentence report, the addendum to the presentence report, and the March 24, 2017, report from IDOC. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel and the Court's time.

A. STENBOM'S MOTION IS TIME BARRED AS IT IS UNTIMELY FILED.

The Idaho Court of Appeals has held that a sentence is "imposed" within the meaning of Rule 35 when it is originally pronounced. The 120-day period for seeking Rule 35 relief runs from that date, not from the subsequent date when jurisdiction retained under I.C. § 19-2601(4) is relinquished. *State v. Salsgiver*, 112 Idaho 933, 934-35, 736 P.2d 1387, 1388-89 (Ct. App. 1987). The 120-day period for filing for relief under Rule 35 begins running from the initial pronouncement of the sentence, not from the time probation is revoked and the original suspended sentenced is reinstated. *State v. Liggins,* 113 Idaho 62, 63-64, 741 P.2d 349, 350-51 (Ct. App. 1987).

Sentences in this case were imposed on August 31, 2016. Stenbom's time to file a motion under I.C.R. 35 ended about December 31, 2016. Thus, Stenbom's motion filed April 17, 2017, is time barred by about four and a half months. Accordingly, Stenbom's motion must be denied as it is time barred.

B. STENBOM HAS NOT SET FORTH A VALID BASIS FOR HER MOTION, NOR HAS STENBOM SET FORTH ANY EVIDENCE TO SUPPORT HER 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.2nd 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, counsel for Stenbom has not only not set forth any evidence that could be adduced, counsel for defendant still fails to state the basis for the Rule 35 Motion other than as a claim for leniency. The Court cannot be required to guess at what evidence Stenbom might present in support of her Rule 35 Motion. Because Stenbom has failed to set forth the basis for her motion other than as a claim for leniency, and because she has completely failed to give any indication of any fact which would support her claim, her Rule 35 Motion must be denied due to that failure.

C. STENBOM'S MOTION HAS NO MERIT.

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 to 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 Court finds Stenbom's sentence imposed on August 31, 2016, was reasonable. On the date of sentencing, the Court, through the Presentence Report, was aware of the following facts. Stenbom had a limited prior criminal record: she was convicted of petit theft on March 4, 2011, and she was convicted of trespass on June 17,

2011. Stenbom had a drug problem. Prior to her initial sentencing on May 3, 2016, she was previously terminated from the 24/7 residential drug rehabilitation program. At that initial sentencing hearing on May 3, 2016, Stenbom said she wanted to enter into the Good Samaritan inpatient drug treatment program. Accordingly, this Court ordered her to complete such treatment as a term of probation. Stenbom subsequently was terminated from that drug treatment program. Because she had failed two residential programs, the Court felt on August 31, 2016, that Stenbom needed drug treatment in a custodial environment, hence, the retained jurisdiction. But then, Stenbom got into a physical altercation with another inmate, which resulted in the recommendation for imposition of sentence. When given the choice between serving her prison sentence and attempting to rectify her retained jurisdiction, Stenbom chose the former.

The sentence imposed on August 31, 2016, takes into consideration not only the serious nature of her offense committed on January 3, 2016 (she had possession of several credit cards and driver's licenses, which had been reported stolen, and she was found in a motel room with other stolen property), and the numerous illegal actions she committed in the brief three-month period she was on probation, the sentence imposed is appropriate. The sentence imposed on August 31, 2016, was and is an appropriate sentence given Stenbom's social and criminal history and the nature of the crime for which sentence was imposed, coupled with her dismal performance on probation. As far as the decision to impose her sentence, the Court was faced with a person who had failed two inpatient programs, needed treatment, and could not be safely treated in the community. The Court then turned to a prison based program, but Stenbom assaulted another inmate. When given the choice between prison and further attempts to rehabilitate, Stenbom chose prison. A lesser sentence would depreciate the seriousness of Stenbom's crimes. This Court concludes that the sentence imposed was and is

necessary for the protection of society and the deterrence of Stenbom and others.

D. NO HEARING IS NEEDED.

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 the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, the Court minutes, the previous Report of Probation Violation, the pre-sentence report, the addendum to presentence report and the March 24, 2017 report. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel and the Court's time.

E. ALTERNATIVE RELIEF NOT SOUGHT BY STENBOM.

The Court notes that there is still four months left on the period of her retained jurisdiction (not counting the additional 30 days allowed under I.C. § 19-2601(4)), and if Stenbom were to reconsider her decision to choose prison over completion of her retained jurisdiction, the Court remains willing to ask the IDOC to accept her back to complete her period of retained jurisdiction. This Court acted quickly on Stenbom's

Motion to Reconsider Sentence Pursuant to I.C.R. 35, in order to preserve as much of that time as possible. However, at the present time, Stenbom has made no such request.

IT IS THEREFORE ORDERED that Stenbom's Motion to Reconsider Sentence Pursuant to I.C.R. 35 is **DENIED.**

NOTICE OF RIGHT TO APPEAL

YOU, DESTINY DAWN STENBOM, 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, if any.

DATED this 24th day of April, 2017.

_____
John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of April, 2017 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Jay Logsdon
Prosecuting Attorney -

DESTINY DAWN STENBOM
IDOC # 119201

Probation & Parole

Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____, Deputy