

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.

**BRADLEY RICHARD BOGGS**

DOB: 08/30/1983  
SSN: 542-27-\*\*\*\*  
IDOC: 69588

Defendant.

Case No. **CRF 2013 5332**  
**CRF 2015 14399**

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

**I. INTRODUCTION AND PROCEDURAL HISTORY.**

On June 5, 2013, BRADLEY RICHARD BOGGS was sentenced as follows:

CRF 2013 5332 - OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS (a felony), Idaho Code § 18-8004(1)(A), committed March 20, 2013 – to the custody of the Idaho State Board of Correction for a fixed term of TEN (10) years followed by an indeterminate term of ZERO (0) years, for a total term not to exceed TEN (10) years.

The Court placed Boggs on supervised probation for ten years and suspended that prison sentence. The Court absolutely suspended Boggs' driving privileges for five years. The primary reason for giving Boggs the maximum sentence was Boggs' extensive criminal record over the previous thirteen years. The primary reason the Court considered probation was Boggs had been accepted into the Kootenai County Drug Court program. This Court ordered Boggs to successfully complete the Drug Court Program, as a term and condition of his probation. Boggs "successfully" completed the Drug Court Program on July 14, 2014 (the Court notes that the month before he was to graduate he tested positive for cannabinoid, and he told the Drug Court team he consumed a "hemp seed smoothie"). The day he graduated, he failed to submit to a drug test. A month after graduating from Drug Court, Boggs violated his probation by testing positive for

methamphetamine, and he stopped attending continued drug treatment. This Court continued him on probation, and Boggs seemed to respond well and comply with probation. On April 14, 2015, this Court placed Boggs on unsupervised probation. On September 2, 2015, Boggs committed two new offenses, Aggravated Assault and Domestic Battery. While new charges were pending and while the probation violation in his 2013 case was pending, the Court ordered that Boggs be placed back on supervised probation with the additional term that he complete the Good Samaritan Rehabilitation (drug treatment) program. On October 27, 2015, a Report of Violation was filed accusing Boggs of violating his probation by being terminated by the Good Samaritan program on October 21, 2015. Boggs was taken into custody. Due to Boggs' physical health issues, neither the probation violation in the 2013 case nor the new 2015 case proceeded very fast. On February 4, 2016, this Court released Boggs on his own recognizance, with the requirement that he drug test, so that he could attend Level I Intensive Outpatient Treatment. Boggs failed to drug test and on May 5, 2016, the Court took Boggs back into custody.

On May 18, 2016, the Court revoked Boggs probation in CRF 2013 5332 and imposed the following prison sentences in CRF 2015 14399:

CRF 2015 14399 - COUNT I - AGGRAVATED ASSAULT, (a felony), I.C. §§ 18-901, 18-905, committed on September 2, 2015 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of THREE (3) years, for a total term not to exceed FIVE (5) years.

CRF 2015 14399 – COUNT II – DOMESTIC BATTERY, (a felony), I.C. §§ 18-903, 18-918(2), committed on September 2, 2015 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of EIGHT (8) years, for a total term not to exceed TEN (10) years.

THESE SENTENCES RUN CONCURRENT WITH EACH OTHER, BUT CONSECUTIVE TO THE SENTENCE PREVIOUSLY IMPOSED IN CRF 2013 5332.

The Court retained jurisdiction and made the following recommendation to the State of Idaho Department of Correction:

THE COURT RECOMMENDS for the defendant AS MUCH COGNITIVE RESTRUCTURING AS POSSIBLE AND TO PLEASE UTILIZE THE ENTIRE 365 DAY PERIOD. DEFENDANT WILL HAVE TO ENTER INTO GOOD SAMARITAN FOR AN ENTIRE 10 MONTH RESIDENTIAL PROGRAM FOLLOWING THE RETAINED JURISDICTION. DEFENDANT IS TO HAVE NO CONTACT OF ANY KIND WITH AMANDA

WULF. DEFENDANT IS TO HAVE NO CONTACT WITH JOSEPH RYDER WULF AND IZAIAH JOHN WULF EXCEPT IN WRITING BUT ONLY THEN THROUGH HIS ATTORNEY, WHO MUST THEN DISCLOSE SUCH TO THE PROSECUTING ATTORNEY AND THE COURT, AND THE COURT MUST APPROVE OF SUCH WRITTEN COMMUNICATION IN ADVANCE OF IT BEING SENT BY THE DEFENDANT.

On September 15, 2016, the Idaho Department of Corrections issued a report that recommended that the Court “relinquish jurisdiction” due to the fact that “Mr. Boggs did not actively participate in programming and missed more than half of his scheduled classes.” Sept. 15, 2016, Addendum to Presentence Investigation, 1. On November 2, 2016, the Court granted Boggs motion to continue the jurisdictional review hearing. On December 5, 2016, the Court held the jurisdictional review hearing. At the conclusion of that hearing, as a result of Boggs’ poor performance while on his period of retained jurisdiction, the Court imposed the above sentences.

On January 13, 2017, Boggs, through his attorney, filed the instant I.C.R. 35 Motion requesting, “the Court to reconsider and modify the Judgment and Sentence entered herein December 5, 2016.” Mot. for Recons. of Sentence Pursuant to I.C.R. 35. This motion was made as a “plea for leniency.” On January 31, 2017, counsel for Boggs filed a Notice of Hearing, scheduling Boggs’ Rule 35 motion for hearing on March 27, 2017. On March 15, 2017, counsel for Boggs filed an Amended Notice of Hearing, scheduling his Rule 35 motion for hearing on May 1, 2017. On April 3, 2017, Boggs, pro se, filed a “Defendant’s ICR 35 Supplement.” On April 23, 2017, Boggs’ counsel filed an Amended Notice of Hearing scheduling his Rule 35 motion for hearing on July 31, 2017. On July 31, 2017, a hearing was held. Boggs testified. Because Boggs filed his Defendant’s ICR 35 Supplement pro se, at a time when he had counsel, the Court indicated that it had not read such pleading prior to the July 31, 2017, hearing. Counsel for Boggs indicated that Boggs wished the Court to read such pleading. Accordingly, the Court took the matter under advisement.

## **II. ANALYSIS.**

### **A. BOGGS’ 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 sentence is reinstated. *State v. Liggins*, 113 Idaho 62, 63-64, 741 P.2d 349, 350-51 (Ct. App. 1987).

Sentence in CRF 2013 5332 was imposed on June 5, 2013. Boggs' time to file a motion under I.C.R. 35 ended about October 5, 2013. Thus, Boggs' motion filed January 13, 2017, is time barred by about thirty-nine months in CRF 2013 5332. Sentences in CRF 2015 14399 were imposed on May 18, 2016. Boggs' time to file a motion under I.C.R. 35 ended about September 18, 2016. Thus, Boggs' motion filed January 13, 2017, is time barred by about four months. Accordingly, Boggs' motion must be denied in both cases as it is time barred.

#### **B. BOGGS' 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 Boggs’ DUI sentence imposed June 5, 2013, was reasonable. Boggs admitted he was driving under the influence of Ritalin, Haldon and Xenadrin, and stated he had used methamphetamine three days earlier. Presentence Report, 3. Later in his Presentence Report, Boggs admitted he used methamphetamine the day before the March 20, 2013, arrest. At that time, Boggs’ prior record consisted of: 2002 failure to purchase driver’s license (misdemeanor); 2002 possession of a controlled substance (misdemeanor); 2002 another failure to purchase driver’s license (misdemeanor); 2002 another failure to purchase driver’s license (misdemeanor); 2002 possession of a controlled substance with the intent to deliver (felony), 2003 driving under the influence of methamphetamine (misdemeanor); 2004 driving without privileges (misdemeanor); 2005 two counts of delivery of a controlled substance, cocaine (felonies); 2010 driving without privileges (misdemeanor); 2010 another driving without privileges and possession of drug paraphernalia (misdemeanors); 2010 another driving without privileges (misdemeanor); 2011 driving without privileges. The Court on June 5, 2013, made it clear that if Boggs could not do well in Drug Court and could not do well on essentially nine years of probation following Drug Court, then the Court would have to do its job and protect the public by incarcerating Boggs. Boggs arguably should not have graduated Drug Court, and, quite obviously, Boggs resumed his criminal conduct IMMEDIATELY after graduating from Drug Court. Boggs turned to violence in committing his new crimes in 2015.

The Court finds the sentences imposed on May 18, 2016, were also reasonable. Making Boggs Aggravated Assault and Domestic Battery felony charges all the more problematic was the fact that Boggs was still on probation for his 2013 felony DUI. Still, this Court tried to give Boggs a way out, a way forward, by successfully completing a period of retained jurisdiction followed by a year at Good Samaritan Rehabilitation. Instead, Boggs chose not to cooperate on the period of retained jurisdiction.

It is clear to this Court that Boggs has an extensive drug problem. It is clear to the Court given Boggs’ past record that he has absolutely no intention of complying with the laws of the United States or the State of Idaho or any other state he might live in.

The sentences imposed on June 5, 2013, and May 18, 2016, take into consideration not only the serious nature of Boggs offenses committed on March 20,

2013, and on September 2, 2015, but also his prior record and his failures to comply with court orders, laws of society, and probation. The sentences imposed are appropriate. The decision to impose Boggs' prison sentences was appropriate. A lesser sentence would depreciate the seriousness of Boggs' crimes. This Court concludes that the sentences imposed were and are necessary for the protection of society and the deterrence of Boggs and others.

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

**NOTICE OF RIGHT TO APPEAL**

**YOU, BRADLEY RICHARD BOGGS, 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 31<sup>st</sup> day of August, 2017.

\_\_\_\_\_  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

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

Defense Attorney - Amanda Montalvo  
Prosecuting Attorney -

BRADLEY RICHARD BOGGS  
IDOC # 69588

Probation & Parole

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

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY: \_\_\_\_\_, Deputy