

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.)
)
JARON KEITH MORRIS)
DOB: 11/04/1992)
SSN: XXX-XX-1467)
IDOC: 113399)
Defendant.)

Case No. **CRF 2014 15362**

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

I. INTRODUCTION AND PROCEDURAL HISTORY.

On December 2, 2014, JARON KEITH MORRIS was sentenced as follows:

COUNT I - BURGLARY To the custody of the State of Idaho Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of FIVE (5) years for a total unified sentence of TEN (10) years.

COUNT II - BURGLARY To the custody of the State of Idaho Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of FIVE (5) years for a total unified sentence of TEN (10) years.
THESE SENTENCES RUN CONCURRENT.

Sentencing Disposition and Notice of Right to Appeal 1-2. District Judge Haynes (filling in for the undersigned) imposed that prison sentence but retained jurisdiction for up to one year to see if Morris could be rehabilitated with programming while in the penitentiary. The Court notes that the retained jurisdiction aspect was part of a binding I.C.R. 11(f) agreement between Morris, the State and the Court. At sentencing, the Court recommended to the Idaho Department of Corrections that Morris be given the New

Directions program which provided some substance abuse treatment. Morris received that programming. Addendum to Presentence Investigation, March 24, 2015. As a result, on April 8, 2015, the undersigned placed Morris on supervised probation for three years.

At a hearing on October 20, 2015, Morris admitted violating his probation as alleged in the Report of Probation Violation dated August 14, 2015, by committing a new crime of Driving Without Privileges, absconding, failing to attend New Directions Aftercare group. Report of Probation Violation 1-3. As a result, this Court continued Morris's probation, ordered he remain in custody for fifteen additional days at which time he would be released to enter into the eight-month Good Samaritan Rehabilitation program.

At a hearing on May 24, 2016, Morris admitted violating his probation as alleged in the Report of Probation Violation dated April 18, 2016, by being charged with felony possession of a stolen motor vehicle, leaving the State of Idaho to commit that crime, and failing to complete his community service. At the conclusion of that hearing, this Court imposed Morris' prison sentences. Probation Violation Disposition and Notice of Right to Appeal 1-2.

Sixty-nine days later, on August 1, 2016, Morris filed the instant Motion Pursuant to I.C.R. 35 (Rule. 35 Motion) requesting that "the Court reconsider the Judgment and Sentence entered herein [on] May 24, 2016." I.C.R. 35 Mot. 1. Morris's motion was timely relative to the May 24, 2016, hearing, as it was within the 120 days allowed under I.C.R. 35, but it was not timely relative to the December 2, 2014, sentencing hearing. Morris bases his motion on "a plea for leniency and in the interest of justice." *Id.* No additional basis was given. In his Rule 35 Motion, counsel for Morris requested a hearing. On August 1, 2016, counsel for Morris also filed a Notice of Hearing, scheduling the hearing for August 29, 2016. On August 26, 2016, three days before the date scheduled

for the hearing, counsel for Morris filed an Amended Notice of Hearing, now scheduling the matter for October 12, 2016. On September 23, 2016, the Court continued the October 12, 2016, hearing to November 1, 2016. Those three weeks are not attributable to Morris. On November 1, 2016, counsel for Morris appeared, as did a deputy prosecuting attorney, but counsel for Morris requested a continuance as he was having difficulty contacting his client in prison, and thus, difficulty finding out how his client was doing in prison. At that hearing, the Court asked counsel for Morris if performance in prison was the basis for the Rule 35 Motion, to which counsel responded “in part”. The hearing was rescheduled for December 5, 2016. On December 1, 2016, counsel for Morris filed a Motion to Continue Rule 35 Hearing With No Objection because Morris could not be reached at the telephone number previously provided for the December 5, 2016, hearing. On December 2, 2016, this Court granted the continuance and rescheduled the hearing for January 9, 2017. To date, other than to state on the record that the I.C.R. 35 Motion was “in part” due to institutional performance, no basis for the motion has been given by counsel for Morris.

II. ANALYSIS.

For a variety of reasons this Court has determined that Morris’s Rule 35 Motion must be denied. The Court also has determined that no hearing is necessary.

A. MORRIS’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 December 2, 2014. Morris's time to file a motion under I.C.R. 35 ended about March 2, 2015. Thus, Morris's motion filed August 1, 2016, is time barred by about seventeen months. Accordingly, Morris's motion must be denied as it is time barred.

B. MORRIS'S MOTION IS TIME BARRED BECAUSE HE UNREASONABLY DELAYED IN BRINGING IT TO A HEARING.

Additionally, this Court finds the hearing now scheduled for January 9, 2017, is not reasonably timely, even if the I.C.R. 35 Motion itself was timely filed (which it was not). More than four months have passed from the time Morris's Rule 35 Motion was filed on August 1, 2016, to the time now set for hearing on January 9, 2017. Backing out the three-week delay caused by the Court, there has still been over 100 days which have passed from the date of the Motion until the scheduled hearing. The Court finds that delay to be unreasonable. The Idaho Court of Appeals discussed that issue in *State v. Torres*, 107 Idaho 895, 897-98, 693 P.2d 1097, 1099-1100 (Ct. App. 1984):

The State further contends that even if Torres' motion was timely, the district court lost jurisdiction to rule on it after the 120-day period had expired. Again, we disagree. In the federal system, the 120-day time limit for filing Rule 35 motions is jurisdictional and may not be extended. *United States v. Addonizio*, 442 U.S. 178, 99 S.Ct. 2235, 60 L.Ed.2d 805 (1979). However, several federal courts have held that rulings on timely filed motions are not limited to the same 120-day period. The federal district courts are allowed to act on timely motions within a reasonable period after they are filed, even if that period extends beyond 120 days from judgment. See *United States v. Johnson*, 634 F.2d 94 (3rd Cir.1980); *United States v. Stollings*, 516 F.2d 1287 (4th Cir.1975); *United States v. Mendoza*, 565 F.2d 1285 (5th Cir.1978), modified 581 F.2d 89 (1978); *United States v. DeMier*, 671 F.2d 1200 (8th Cir.1982); *United States v. United States District Court*, 509 F.2d 1352 (9th Cir.1975), cert. denied sub nom. *Rosselli v. United States*, 421 U.S. 962, 95 S.Ct. 1949, 44 L.Ed.2d 448 (1975). Recently, the Ninth Circuit summarized the federal interpretation of Rule 35: "This court and other appellate courts have mitigated the arbitrary operation

of the Rule by treating the time limit with some flexibility, allowing district courts to retain jurisdiction over timely-filed motions for a ‘reasonable time’ beyond the deadline.” *United States v. Smith*, 650 F.2d 206, 209 (9th Cir.1981) (citations and footnote omitted).

We are persuaded that this approach is better reasoned than the jurisdictional cutoff urged by the State. Therefore, we hold that a district court does not lose jurisdiction to act upon a timely motion under Rule 35 merely because the 120-day period expires before the judge reasonably can consider and act upon the motion. In this case the delay was caused in part by the retirement of the original sentencing judge. We will not visit the consequences of such delay upon Torres.

Morris unreasonably delayed more than 100 days in bringing his Rule 35 Motion to issue.

Accordingly, Morris’s Rule 35 Motion must be dismissed for that additional reason.

C. MORRIS HAS NOT SET FORTH A VALID BASIS FOR HIS MOTION, NOR HAS MORRIS SET FORTH ANY EVIDENCE TO SUPPORT HIS 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.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 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 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 defendant 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 which is in part based on institutional performance. The Court cannot be required to guess at what evidence Morris might present in support his Rule 35 Motion. Because Morris has failed to set the basis for his motion other than performance in prison (in part), and because he has completely failed to give any indication of any fact which would support his claim, his Rule 35 Motion must be denied due to that failure. Even if Morris had evidence of favorable performance in prison, that would have little or no bearing on his Rule 35 Motion. As mentioned in more detail below, the pertinent time period at which reasonableness of a sentence is to be reviewed under I.C.R. 35, is at the time of sentencing. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987). The Idaho Court of Appeals has held that although good conduct while in prison is worthy of consideration, it may not necessarily result in a reduction of a prisoner's sentence. *State v. Gain*, 140 Idaho 170, 176, 90 P.3d 920, 926 (Ct. App. 2004) (*citing Hassett v. State*, 127 Idaho 313, 317, 900 P.2d 221, 225 (Ct.App. 1995); *State v. Sanchez*, 117 Idaho 51, 52, 785 P.2d 176, 177 (Ct.App. 1990)). The evidence concerning a defendant's good conduct while incarcerated must be viewed in light of the entire record and may not be an accurate indicator of future conduct in a non-custodial setting. *Id.*, *citing Sanchez*, 117 Idaho at 52, 785 P.2d at 177.

D. MORRIS'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 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 Morris’s sentence imposed on December 2, 2014, was reasonable. On the date of sentencing, the Court, through the Presentence Report, was aware of the following. The August 9, 2014, burglaries for which Morris was sentenced, were a string of motor vehicle burglaries at night where, according to Morris, he and another were “looking in cars for money or change so that we could get some food.” Presentence Report, 3. In 2007, Morris at age 14 raped his 7 year old niece. *Id.*, 4. This was a juvenile offence for which Morris had to register as a sex offender. *Id.*, 6. In 2013,

Morris, on three separate occasions, committed misdemeanor theft, felony failure to register as a sex offender and felony burglary. *Id.*, 4. In 2014, Morris committed misdemeanor theft and two misdemeanor criminal trespass crimes. *Id.*, 5. Morris reported that when he is not incarcerated, he is homeless. *Id.*, 7. Morris reported that he had never worked other than “under the table.” *Id.*, 8.

The sentence imposed on December 2, 2014, was and is an appropriate sentence given Morris's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Morris's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Morris and others.

E. 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 Pursuant to I.C.R. 35, the Court minutes, the two previous Report of Probation Violations and the pre-sentence

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.

III. ORDER.

IT IS THEREFORE ORDERED that Morris's I.C.R. 35 Motion is **DENIED**.

IT IS FURTHER ORDERED the hearing scheduled for January 9, 2017, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, JARON KEITH MORRIS, 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 6th day of January, 2017.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Jed K. Nixon
Prosecuting Attorney – Barry McHugh

JARON KEITH MORRIS
IDOC # 113399

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy