



THE IDAHO DEPARTMENT OF CORRECTION IS STRONGLY  
ENCOURAGED TO PROVIDE NICHOLAS JAMES RYAN WITH ALL  
APPROPRIATE SEX OFFENDER TREATMENT AND WITH THE  
THERAPEUTIC COMMUNITY PRIOR TO HIS ELIGIBILITY FOR PAROLE.

*Id.*

On , December 29, 2011, Ryan timely filed the instant I.C.R. 35 Motion (captioned simply "Motion") requesting: "To reduce the Defendant's sentence pursuant to Rule 35 of the Idaho Criminal Rules." No basis for the motion was given other than that. Apparently, Ryan bases this motion on a plea for leniency, yet no facts are provided as to why Ryan is entitled to any leniency.

In his "Motion", Ryan requested a hearing. A motion to modify a sentence "shall be considered and determined by the court without the admission of addition testimony and without oral argument, unless otherwise ordered by the court in its discretion." I.C.R. 35; see *State v. Copenhagen*, 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 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.

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. *Id., Strand; 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).

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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 (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).

Ryan had sex with a fourteen year-old female who was the custodial niece of a woman he was dating.

It was pointed out to Ryan by the Court at the December 13, 2011, sentencing hearing, that Ryan had a lengthy and an “incredibly bad criminal record”, consisting of a felony drug conviction in 1997, followed by misdemeanor domestic assault and stalking convictions, several misdemeanor alcohol related convictions, a felony drug conviction in 2008, a misdemeanor theft conviction that same year, followed by a DUI and multiple probation violations at the same time he was committing the acts in the instant case with

this fourteen year-old victim. Ryan was on probation the entire time he was having sex with this fourteen year old! The stalking charge occurred when, after Ryan found out that the woman he was dating (the same woman who had custody of this fourteen year old girl in the instant case) was sleeping with another man, Ryan, armed with a crossbow, went to confront that man only to find him not there. Determined to exact some punishment, Ryan shot the man's dog. The domestic assault occurred when Ryan who was "very high on methamphetamines", hit this same woman who had custody of the fourteen year-old girl in the instant case, and then ran out of the house naked.

It was pointed out to Ryan by the Court at the December 13, 2011, sentencing hearing, that the Court felt the evidence showed Ryan had "groomed" his victim. Ryan had given the victim alcohol. Ryan had spent months planning these events.

In the present case, after he was being investigated, Ryan, on several occasions, had verbal phone conversations which were recorded and text messages with the victim telling her to lie on Ryan's behalf.

It was pointed out to Ryan by the Court at the December 13, 2011, sentencing hearing, that Ryan had failed to obtain a psychosexual evaluation, and as such, the Court was unable to determine what risk Ryan posed to society if probation were to be considered. The duty to obtain a psychosexual evaluation was all upon Ryan, and he was told that when he entered his plea on October 31, 2011. It was pointed out to Ryan by the Court at the December 13, 2011, sentencing hearing, that Ryan was rationalizing his actions and that he was demonstrating even at the sentencing hearing his attitude that his actions were acceptable.

The sentence imposed on December 13, 2011, was and is an appropriate sentence given Ryan's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Ryan's crimes. This

Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Ryan and others.

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

**NOTICE OF RIGHT TO APPEAL**

**YOU, NICHOLAS JAMES RYAN, 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 13<sup>th</sup> day of February, 2013.

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

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of February, 2013 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - John Redal  
Prosecuting Attorney -

NICHOLAS JAMES RYAN  
IDOC # 102217

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

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

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