

STATE OF IDAHO)
County of KOOTENAI) ss

FILED 3/14/12

AT 2:45 O'clock P.M
CLERK, DISTRICT COURT

Diane Clausen
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.

STANLEY LEROY STROISCH

Defendant.

Case No. **CRF 2007 20850**

**ORDER DENYING I.C.R. 35
MOTION, ORDER CORRECTING
MARCH 7, 2012, PROBATION
VIOLATION DISPOSITION ORDER,
AND NOTICE OF RIGHT TO APPEAL**

On February 14, 2008, STANLEY LEROY STROISCH (Stroisch) was sentenced as follows:

CRF 2007 20850 - ATTEMPTED STRANGULATION, (a felony), Idaho Code § I.C. 18-923, committed on August 26, 2007 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of THREE (3) years, for a total term not to exceed SIX (6) years.

This Court imposed that sentence and sent Stroisch on a period of retained jurisdiction.

On September 9, 2008, following completion of his retained jurisdiction, and due to poor performance by Stroisch during that period of retained jurisdiction, this Court sent Stroisch back for an *additional* period of retained jurisdiction. On February 9, 2009, following completion of that second period of retained jurisdiction, this Court placed Stroisch on supervised probation for four years.

Within a few months, on October 13, 2009, at the request of Stroisch's probation officer, this Court imposed 30 days of discretionary jail time for Stroisch violating his probation by smoking marijuana. On January 12, 2011, an Affidavit on Failure to

Complete Community Service was filed, showing that Stroisch had completed not a single hour of the one hundred hours of community service imposed on February 9, 2009.

On October 17, 2011, an agent's warrant was issued in Bonner County for new charges in Bonner County (sexual intercourse with a minor). A report of violation dated October 17, 2011, was filed on November 7, 2011, alleging that Stroisch had violated his probation by admitting he had sexual intercourse with a minor female on two separate occasions. Stroisch's probation officer recommended a retained jurisdiction. Even though Stroisch admitted these acts in writing to his probation officer, on November 17, 2011, Stroisch, through counsel, filed a written denial of these allegations. On December 7, 2011, Stroisch denied these allegations at his admit/deny hearing. An evidentiary hearing was scheduled for January 4, 2012. At the conclusion of that evidentiary hearing, the Court found Stroisch violated his probation as alleged by having sexual contact with a minor. Stroisch requested disposition be set out to a different date, and the matter was scheduled for a disposition hearing on March 7, 2012.

On March 7, 2012, the Court revoked Stroisch's probation, imposed the original sentence, and sent Stroisch to prison. The Court did not retain jurisdiction as recommended by his probation officer. Instead, Stroisch was sent to prison to serve his sentence. In its order of March 7, 2012, the Court recommended to the Idaho Department of Correction that they provide Stroisch with the Therapeutic Community to address Stroisch's addictions, and the Court also recommend Stroisch be given sex offender treatment if the Idaho Department of Correction were to assess that as being appropriate.

During the March 7, 2012, hearing, Stroisch took limited responsibility for his actions in having sex with a minor female of compromised mental abilities, but Stroisch labeled this event a "mishap." The Court found Stroisch to be minimizing his actions.

The Court pointed out the reprehensibility of Stroisch's actions by noting that Stroisch first had sex with the twenty-year-old daughter of the woman with whom he was living. That twenty-year-old female, while an adult, was compromised in her mental abilities. Then, Stroisch impregnated said twenty-year-old, mentally compromised female. Then, Stroisch had sex with a minor female child who was fifteen years old at the time, and that female child was also compromised in her mental abilities. That fifteen-year-old girl was the sister of the female "adult" whom he had just impregnated, and the other daughter of the woman under whose roof he was living. In fact, according to the police report, the mother of these two females, with whom Stroisch was living, was reluctant to report the crime with the fifteen-year-old, but only because Stroisch had already impregnated the twenty-year-old. To top it all off, Stroisch did all these things *while on supervised felony probation*. The Court told Stroisch that it had no hope of Stroisch ever being successful on probation, and that the public had to be protected from his actions.

During that March 7, 2012, disposition hearing, the Court stated that Stroisch's original sentence of three years fixed followed by three years indeterminate was being imposed. However, on March 7, 2012, the Court inadvertently in its order listed the sentence imposed as a two-year fixed followed by a four year indeterminate sentence, for a total sentence of six years. The Court's confusion stemmed from the Court's September 8, 2008, Retained Jurisdiction Disposition order in which the Court sent Stroisch back for an additional period of retained jurisdiction. The form used by the Court contemplated relinquishment of jurisdiction at that time and imposition of a modified sentence of two years fixed followed by four years indeterminate, with the total sentence remaining at six years. However, since the Court retained jurisdiction at that time, the Court did not relinquish jurisdiction, and thus, did not modify Stroisch's sentence at that

time. The “box” to be checked on the form if that modification were intended remained “unchecked”.

In any event, what is said on the record prevails. Under Idaho law, the legally cognizable sentence in a criminal case is the oral pronouncement in the presence of the defendant. *State v. Wallace*, 116 Idaho 930, 932, 782 P.2d 53, 55 (Ct.App.1989). The legal sentence consists of the words pronounced in open court by the judge, not the words appearing in the written order of commitment. *Id.*; *State v. Dreier*, 139 Idaho 246, 254, 76 P.3d 990, 998 (Ct.App.2003). Therefore, when there is a *disparity* between the sentence imposed in open court and that expressed in the written judgment of conviction, it is the orally pronounced sentence that is effective. *Dreier*, 139 Idaho at 254, 76 P.3d at 998; *State v. Watts*, 131 Idaho 782, 786, 963 P.2d 1219, 1223 (Ct.App.1998). Stroisch's three years fixed followed by a three-year indeterminate sentence is what was imposed on February 14, 2008, and that sentence is what was imposed on the record in open court on March 7, 2012.

On March 12, 2012, Stroisch filed the instant Motion for Reconsideration of Sentence Pursuant to I.C.R. 35 Motion requesting that “...the Court reconsider the Judgment and Sentence entered herein March 7, 2012.” Stroisch bases this motion on “...a plea for leniency.” No other reasons or basis for the motion were given in that motion.

In his I.C.R. 35 Motion, Stroisch requested a hearing. 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. 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).

* * *

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).

The sentence imposed on February 14, 2008, was and is an appropriate sentence given Stroisch's social and criminal history, the crime for which sentence was imposed, Stroisch's performance on probation, specifically Stroisch's new offense of having sexual intercourse with a minor child who had compromised mental abilities while Stroisch was on supervised felony probation. A lesser sentence would depreciate the seriousness of Stroisch's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of and others.

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

IT IS FURTHER ORDERED that the sentence listed on the March 7, 2012, Probation Violation Disposition and Notice of Right to Appeal is **RESCINDED** as it was incorrect, and is now hereby **CORRECTED**, and the original sentence imposed on February 14, 2008, is the sentence imposed which was imposed in open court on the record on March 7, 2012, as follows:

CRF 2007 20850 - ATTEMPTED STRANGULATION, (a felony), Idaho Code § I.C. 18-923, committed on August 26, 2007 – to the custody of the Idaho State Board of Correction for a fixed term of **THREE (3)** years followed by an indeterminate term of **THREE (3)** years, for a total term not to exceed **SIX (6)** years.

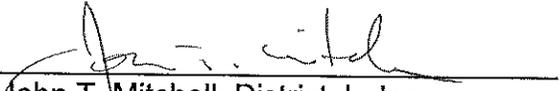
NOTICE OF RIGHT TO APPEAL

YOU, STANLEY LEROY STROISCH, 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 14th day of March, 2012 (order correcting sentence *nunc pro tunc* to March 7, 2012).


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 14 day of March, 2012 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

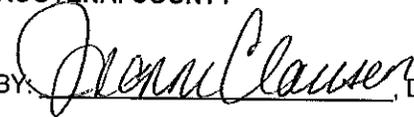
Defense Attorney - Chris Schwartz 446-1701
Prosecuting Attorney - 446-1833

STANLEY LEROY STROISCH
IDOC # 88211

Probation & Parole 769-1481
Judge Verby - Faxed. #620p

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

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy