

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 3-14-12

AT 8:15 O'clock A. 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.

REX ALAN WILLIS

Defendant.

Case No. **CRF 2009 10617**

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

On August 12, 2009, REX ALAN WILLIS (Willis) was sentenced as follows:

AGGRAVATED ASSAULT 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 THREE (3) years for a total unified sentence of FIVE (5) years.

This Court imposed that sentence and sent Willis on a period of retained jurisdiction. On February 18, 2010, following completion of his retained jurisdiction, this Court placed Willis on probation.

On September 16, 2010, due to Willis' violations of his probation, this Court revoked Willis' probation, imposed sentence and sent Willis on another period of retained jurisdiction, this time recommending the Therapeutic Community retained jurisdiction program. He was given the CAPP retained jurisdiction instead. On February 2, 2011, following completion of his retained jurisdiction, this Court again placed Willis on probation.

Almost immediately, Willis again began violating the terms and conditions of

probation. Willis first failed to report for a drug test on March 4, 2011, and thereafter missed eleven more drug tests. On April 9, 2011, Willis drank alcohol to the point of intoxication and committed several battery offenses. A month later he was associating with known felons. At some point in March 2011, his cell phone showed a picture of him unlawfully holding a shotgun, dressed in gang attire and exhibiting a gang hand sign. Willis refused to attend substance abuse treatment, refused to attend CAPP Aftercare, refused to do any community service, and failed to pay fees, fines, restitution and costs of supervision, all of which were violations of his probation. A report of probation was filed on June 29, 2011, with his probation officer recommending that Willis' prison sentence be imposed. A bench warrant was issued on July 8, 2011, and executed on July 20, 2011. On September 13, 2011, Willis admitted these probation violations and requested a mental health evaluation.

On November 17, 2011, this Court sent Willis on a third retained jurisdiction, this time recommending a CRP retained jurisdiction to focus on Willis' violence and gang involvement, as well as his substance abuse issues. By this point in time, Willis had credit on his sentence in the amount of 563 days. Almost immediately, Willis refused to program on his retained jurisdiction. Willis received a recommendation from the Idaho Department of Correction, that this Court simply relinquish jurisdiction. On March 6, 2012, this Court held a hearing. Through his stipulation and agreement, Willis appeared telephonically from prison. Willis admitted his actions in prison as shown in the report recommending relinquishment of jurisdiction. Willis stated that he wanted to finish his sentence in prison, the deputy prosecuting attorney recommended imposition of his prison sentence, and Willis' attorney, at Willis' request, concurred in imposition of sentence. This Court imposed Willis' sentence on March 6, 2012.

Incredibly, six days later, on March 12, 2012, Willis filed the instant "Motion for

Reconsideration of Sentence Pursuant to I.C.R. 35” requesting that “...the Court...reconsider the Judgment and Sentence entered herein March 6, 2012.” Willis bases this motion on “...a plea for leniency.”

Willis requested a hearing in his I.C.R. 35 Motion so that he could “...present oral argument and/or testimony in support of the foregoing motion.” 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, the pre-sentence report, and Willis’ multiple reports of violation and the most recent report from Willis’ last period of retained jurisdiction. There is nothing that could be presented at a hearing that would be of benefit to the Court. Given the fact that on March 6, 2012, the Court did exactly what Willis asked the Court to do...impose his prison sentence, 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 August 12, 2009, was and is an appropriate sentence given Willis's 1) social and criminal history, 2) the crime for which sentence was imposed, 3) Willis' abysmal performance the brief periods he was given the opportunity of probation, 4) the additional violent acts committed by Willis while on probation, 5) Willis' attitude, conduct and lack of performance on the most recent retained jurisdiction which was focused on addressing Willis' violent behaviors, and 6) given Willis' own request that such sentence be imposed. A lesser sentence would depreciate the seriousness of Willis's crimes. Willis has made his decision...he wants to serve his time in prison. This is exactly what he told the Court on March 6, 2012. That decision is consistent with his

performance on the most recent retained jurisdiction, that decision is consistent with his poor performance the brief periods of time he was placed on probation. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Willis and others.

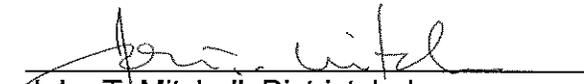
IT IS THEREFORE ORDERED that Willis's I.C.R. 35 Motion is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, REX ALAN WILLIS, 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.



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 - Jed Whitaker 446-1701
Prosecuting Attorney - 446-1833

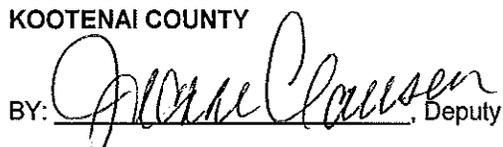
REX ALAN WILLIS
IDOC # 93768

Probation & Parole

769-1481
#6164

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy