

(Prisoner), and a Motion for Hearing.

Idaho Criminal Rule 35 provides in part that

The court may correct an illegal sentence at any time and may correct a sentence that has been imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. The court may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation.

The sentence imposed on September 29, 2004, is within the range of lawful sentences for the crime for which sentence was imposed. Reinke has failed to even suggest any basis for determining that the imposed sentence is an illegal sentence. Since it is a legal sentence, under I.C.R. 35, the 120 time period applies.

Under the facts of this case, the last day Reinke could have filed an I.C.R. 35 motion in this action was 14 days after June 1, 2011, the date of the Amended Probation Violation Disposition and Notice of Right to Appeal. This court is without jurisdiction to grant leniency under I.C.R. 35. See *State v. Sutton*, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1988). This is also a second I.C.R. 35 Motion and successive motions are not allowed under *State v. Heyrend*, 130 Idaho 482, 943 P. 2d 72 (Ct.App. 1996).

In any event, the Court has reviewed the file, and finds that it did in fact give Reinke credit for time served from September 16, 2010 to February 17, 2011, in this Court's Minute Entry Order Credit for time Served in conjunction with Reinke's Retained Jurisdiction Disposition Order also dated February 17, 2011. And, on September 16, 2010, this Court did in fact give Reinke credit for time served from August 12, 2010 to September 16, 2010, in this Court's Minute Entry Order Credit for time Served in conjunction with Reinke's Probation Violation Disposition Order also dated September 16, 2010. Thus, the Court has already given Reinke all credit for time served which he now

seeks in his untimely filed Motion for Reconsideration or Reduction of Sentence, I.C.R. 35 Motion.

IT IS THEREFORE ORDERED that Reinke's I.C.R. 35 motion is **DENIED** and the same hereby is dismissed for lack of jurisdiction. Since the Court has no jurisdiction to hear the I.C.R. 35 motion, the Motion for Hearing and Motion for Partial Payment of Court Fees are **DENIED** as well.

NOTICE OF RIGHT TO APPEAL

YOU, Reinke, 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 27th day of January, 2013.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Ed Reinke
P. O. Box 14
Boise, ID 83707

Prosecuting Attorney -

EDWARD W. REINKE
IDOC # 75728

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy

