

STATE OF IDAHO )  
County of KOOTENAI )<sup>ss</sup>

FILED 9-4-13

AT 2:20 O'clock P. M  
CLERK, DISTRICT COURT

*Glenn 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. )

JASON TERRY DEEMS )

Defendant. )

Case No. **CRF 2008 11555** ✓  
**CRF 2009 18896**

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

On September 2, 2008, JASON TERRY DEEMS was sentenced as follows:

CRF 2008 11555 – POSSESSION OF A CONTROLLED SUBSTANCE (Marijuana), I.C. § 37-2732(e), 18-204, committed on June 8, 2008 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of TWO (2) years, for a total term not to exceed FIVE (5) years.

Kootenai County Case No. CRF 2008 11555, Sentence Disposition, p. 2. On September 2, 2008, this Court suspended that sentence and placed Deems on five years of supervised probation. On September 5, 2009, Deems committed a new felony offense, possession of marijuana with the intent to deliver. To this new charge, on November 12, 2009, Deems pled guilty. The new charge also formed the basis of Deems' probation violation in Kootenai County Case No. CRF 2008 11555. On November 12, 2009, Deems suspended sentence in Kootenai County Case No. CRF 2008 11555 was revoked, his sentence was imposed, and in Kootenai County Case No. CRF 2009 18896, Deems was sentenced as follows:

CRF 2009 18896 – POSSESSION OF A CONTROLLED SUBSTANCE (OxyContin) WITH INTENT TO DELIVER, I.C. § 37-2732(a), committed on September 5, 2009 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of EIGHTEEN (18) years, for a total term not to exceed TWENTY (20) years.

Sentencing Disposition, Kootenai County Case No. CRF 2008 11555 and CRF 2009 18896, p. 2. These sentences were imposed consecutive to each other. *Id.* The Court imposed both prison sentences and sent Deems on a period of retained jurisdiction. *Id.*, pp. 3-4. On April 22, 2010, following the period of retained jurisdiction, this Court placed Deems on five years of supervised probation. April 22, 2010, Retained Jurisdiction Disposition, Kootenai County Case No. CRF 2008 11555 and CRF 2009 18896, pp. 1-2. On September 15, 2010, Deems was taken into custody for a probation violation. On September 22, 2010, a Report of Probation Violation was filed in both cases, alleging that Deems had failed to attend drug treatment, failed to submit to drug testing, failed to attend meetings with his probation officer, used OxyContin and failed to pay his costs of supervision. On September 30, 2010, Deems admitted these probation violations, and postponed disposition at Deems' request to allow Deems to be seen by Dr. Lickey. On December 1, 2010, this Court revoked Deems' probation, imposed both prison sentences and sent Deems on another period of retained jurisdiction. Probation Violation Disposition, Kootenai County Case No. CRF 2008 11555 and CRF 2009 18896, p. 2-3. On April 6, 2011, Deems was placed back on five years of supervised probation. April 6, 2011, Retained Jurisdiction Disposition, Kootenai County Case No. CRF 2008 11555 and CRF 2009 18896, pp. 1-2. On January 23, 2012, Deems was ordered to serve seven days of discretionary jail time for failing to submit to drug testing. Order of Commitment, p. 1. On February 15, 2012, Deems was arrested on an Agent's Warrant for using marijuana on at least two occasions, failing to report to his probation officer, and

associating with known felons. On February 17, 2012, Deems' probation officer filed a Report of Probation Violation. On April 10, 2012, Deems admitted to some of the alleged probation violations, specifically, that he failed to report to his probation officer, failed to make financial obligations, failed to obtain employment, had contact with two felons, smoked and ate marijuana. As a result of these probation violations, the Court imposed Deems' sentences and did not retain jurisdiction.

On April 24, 2012, Deems, through counsel, filed the instant I.C.R. 35 Motion requesting that "...the Court to reconsider the Judgment and Sentence entered herein on April 10, 2012. Motion for Reconsideration of Sentence Pursuant to I.C.R. 35. Deems bases this motion on "...a plea for leniency. *Id.* No additional reasons are set forth for the motion, no alleged facts, new evidence or changed circumstances are given in the motion. Counsel for Deems requested a hearing in that motion (*Id.*), but did not notice such for hearing until June 6, 2012, at which time the hearing was scheduled for June 28, 2012. On June 27, 2012, this Court signed an order allowing Deems to participate at such hearing telephonically. The hearing did not take place on June 28, 2012. On July 2, 2012, counsel for Deems noted the hearing on his Motion for Reconsideration for September 12, 2012.

While Deems 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).

This Court allowed Deems the benefit of probation on three different occasions, and each time Deems violated the terms of that probation. This Court attempted to provide Deems with the drug rehabilitation he needed, through two periods of retained jurisdiction.

Deems still violated his probation after each period of retained jurisdiction. At the April 10, 2012, hearing, Deems’ probation officer Angela Craddock recommended imposition of Deems’ prison sentences because he has very little initiative and does not take responsibility for his actions. After Deems relapsed he did not come forth directly with his probation officer and disclose his use, it was only after he tested positive that he admitted. It is important to note that in the year that he was most recently on probation, Deems never got a job. Deems has no physical or mental limitations that would prevent him from obtaining employment. Deems had drug charges as a juvenile. In his first felony offense as an adult (CRF 2008 11555 – POSSESSION OF A CONTROLLED SUBSTANCE (Marijuana), Deems was arrested with 700 grams of marijuana. The marijuana was found because Deems was accidentally shot and taken to Kootenai Medical Center. While on felony supervised probation for that offense, on September 5, 2009, Deems and his passenger were found to possess syringes and 690 80 mg. OxyContin pills. The danger to the public is obvious.

The sentences imposed on September 2, 2008, and on November 12, 2009, were and are appropriate sentences given Deems's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Deems's crimes. This Court concludes that the sentences imposed were and are necessary for the protection of society and the deterrence of Deems and others.

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

**IT IS FURTHER ORDERED** that Deems' hearing on his Motion for

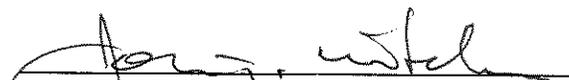
Reconsideration of Sentence Pursuant to I.C.R. 35, scheduled for September 12, 2012, is  
**VACATED.**

**NOTICE OF RIGHT TO APPEAL**

**YOU, JASON TERRY DEEMS, 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 4<sup>th</sup> day of September, 2012.

  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the 4 day of September, 2012 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Lynn Nelson 446-1701  
Prosecuting Attorney - 446-1833  
State Appellate Public Defender, re: Supreme  
Court No. 40006 208-334-2985  
Stephen Kenyon, Clerk of the Court, re: Supreme  
Court No. 40006 208-334-2616  
Atty Gen. Fax 208-854-8071

#4092

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

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY:  Deputy