

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'clock \_\_\_\_ 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. )  
)  
)  
JAMIE MARIE GABOURY )  
)  
DOB: 10/06/83 )  
)  
SSN: xxx-xx-6932 )  
)  
IDOC: 70688 )  
)  
)  
Defendant. )

Case No. **CRF 2013 20396**  
**CRF 2013 22020**

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

On December 11, 2013, Gaboury, was sentenced and committed to the custody of the Idaho State Board of Correction, as follows:

CRF 2013 20396 - GRAND THEFT BY UNAUTHORIZED CONTROL, I.C. § 18-2402(3), 18-2407(1)(b), committed on October 15, 2013, - to the custody of the Idaho State Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of NINE (9) years for a total term not to exceed FOURTEEN (14) years.

CRF 2013 22020 - POSSESSION OF FORGED STOLEN NOTES, BANK BILLS OR CHECKS, I.C. § 19-3605, and I.C. § 19-2514 (habitual offender), committed on August 26, 2013, - to the custody of the Idaho State Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of TWENTY (20) years for a total term not to exceed TWENTY FIVE (25) years.

THESE SENTENCES RUN CONCURRENT.

The Court retained jurisdiction and recommended the Therapeutic community retained jurisdiction sentencing option. The Idaho Department of Correction gave Gaboury a “traditional” retained jurisdiction as there was not enough bed space at that time for a Therapeutic Community retained jurisdiction. On June 9, 2014, this Court placed Gaboury on supervised probation for four years. A Report of Probation Violation was filed on October 16, 2015, and on October 19, 2015, a bench warrant was issued as

Gaboury had absconded from probation. On January 3, 2015, Gaboury was taken back into custody, and on February 24, 2015, Gaboury admitted her probation violations. She requested disposition be set out so she could be considered for the Union Gospel Mission Women's Program here in Coeur d'Alene. On April 21, 2015, a hearing was held and the Court informed that Gaboury was not able to get into the UGM program, so the Court again retained jurisdiction, and again asked IDOC to provide her with the Therapeutic Community. On May 14, 2015, the Court was informed by IDOC that Gaboury was placed in the Therapeutic Community retained jurisdiction program.

On December 12, 2013, Gaboury filed an I.C.R. 35 Motion as a plea for leniency. That motion was never noticed up for hearing. While successive motions under I.C.R. 35 are prohibited (I.C.R. 35(b)), the motion filed on December 12, 2013, was never litigated. Thus, the Court finds that the instant motion must be addressed.

On September 14, 2015, Gaboury filed the instant I.C.R. 35 Motion requesting reconsideration of her Judgment and Sentence "...due to the elimination of the TC Rider Program." On October 7, 2015, the Court signed an order allowing Gaboury to participate telephonically in her hearing on her I.C.R. 35 Motion, scheduled for October 28, 2015. At that hearing Gaboury testified that when the TC Rider was terminated there suddenly was little programming, about two hours of classes a week. Gaboury felt she could get more treatment here in the community. At the conclusion of that hearing, the Court took Gaboury's I.C.R. 35 Motion under advisement, and requested a report filed by defense counsel, no later than November 16, 2015, as to what programming Gaboury will be given for the remainder of her retained jurisdiction. The Court stated "If she hasn't gotten into any treatment down there, I will sign an order transporting defendant back to Kootenai County" to consider probation, but the Court noted "the reason she is on a retained jurisdiction is because she failed to engage in treatment in the community." At that hearing, the Court informed counsel that the Court would attempt to find out from the Idaho Department of Corrections (IDOC) what what programming Gaboury had been given and was anticipated to receive. On October 28, 2015, this Court sent Ashley Dowell, Deputy Chief, Prisons Division, IDOC, the following email:

I had a Rule 35 hearing today on Jamie Gaboury, IDOC No. 70688. The focus of the Rule 35 Motion to Reconsider was that she wasn't getting much programming since the Therapeutic Community was dissolved. She said that for about four weeks after TC was dissolved they did nothing, not even AA/NA support meetings. Then, CSC started back up for about two

hours a week, then a case manager left and that stopped and has resumed with Ms. Ortiz but only about two hours a week. She is on level 4.1 of CSC right now. She says she heard she is supposed to start Helping Women Recover this Friday, and is scheduled to have Anger Management but no idea when that begins.

I postponed my decision until November 16, 2015, and at that time I asked her attorney to find out what, if any, additional programming she was in and when it would be expected to be completed.

Could you check and see with Ms. Gaboury's counsellors/program manager/rehabilitation specialists, and determine if there is anything she should stay and program on, or, if she should be transported now or sometime soon and be considered for probation? She's been in IDOC custody since April, but she's been in custody as a result of her probation violation since January.

In response, on November 5, 2015, Ashley Dowell in an email, wrote:

Ms. Gaboury completed Relapse Prevention on 10/19 and will complete Helping Women Recover and Anger Management on approximately 12/18. She will complete Cognitive Self Change on approximately 11/23.

In discussing Ms. Gaboury's case with treatment staff, they believe that she would benefit from completing these programs prior to her release on probation, if that decision is reached by the court.

Thus, Gaboury's present I.C.R. 35 Motion filed September 14, 2015, must be denied. The retained jurisdiction imposed on sentence imposed on April 21, 2015, was and is an appropriate disposition given Gaboury's social and criminal history, given the fact that she was unable to address her addiction in the community because she failed to attend such treatment, and given the crimes for which sentence was imposed. A lesser response would depreciate the seriousness of Gaboury's crimes. I conclude that the sentence imposed and retained jurisdiction imposed were and are necessary for the protection of society, the deterrence of Gaboury and others, and primarily, Gaboury's rehabilitation.

**IT IS THEREFORE ORDERED** that Gaboury's I.C.R. 35 Motion filed September 14, 2015, is **DENIED**.

#### **NOTICE OF RIGHT TO APPEAL**

**YOU, Gaboury, 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 24<sup>th</sup> day of November, 2015.

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John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of November, 2015 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Lisa M. Chesebro  
Prosecuting Attorney -

JAMIE MARIE GABOURY  
IDOC # 70688

Probation & Parole

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

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

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