



at the hearing on November 5, 2008, again on March 25, 2010, and most recently, on February 17, 2011.

In Turner's motion, she requested a hearing. However, she did not file a Notice of 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, 2370 (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. The Court is quite familiar with Turner's case and her struggles over the past several years with her probation and with her addiction. 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).

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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. Toolhill*, 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 29, 2005, was and is an appropriate sentence given Turner’s social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Turner’s crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Turner and others.

The fact that Turner was given a retained jurisdiction on February 17, 2011, is an extreme exercise of this Court’s leniency. The first retained jurisdiction was an exercise of this Court’s leniency, as opposed to having Turner simply serve her prison sentence. The second retained jurisdiction was an even further exercise of this Court’s lenience, as opposed outright service of her prison sentence. This third period of retained jurisdiction is an unusual remedy and an extreme exercise of this Court’s leniency. Three periods of

retained jurisdiction are unusual. The only reason this third period of retained jurisdiction was implemented was because even though Turner has been unable to comply with the terms and conditions of her probation, Turner has made *slight* progress with her addiction over the course of the past six years and she is not a danger to the public. The Court is convinced that her mental health concerns are better addressed in the community as opposed to service of her sentence in prison. The Court is exercising as much patience, discretion and leniency as possible in allowing Turner to attempt to address her addiction in the community as well.

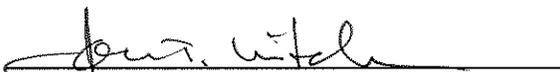
**IT IS THEREFORE ORDERED** that Turner's I.C.R. 35 Motion is **DENIED**.

**NOTICE OF RIGHT TO APPEAL**

**YOU, Turner, 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 1<sup>st</sup> day of March, 2011.

  
John T. Mitchell, District Judge

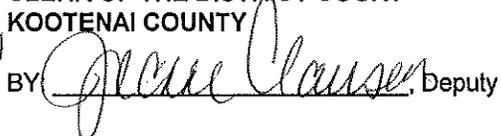
**CERTIFICATE OF MAILING**

I hereby certify that on the 1 day of March, 2011 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Jedediah Whitaker 446-1701  
Prosecuting Attorney – KCPA 446-1833  
Ann Eckhart – Special Deputy Pros. Atty. 769-2326

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

KARI B. TURNER  
IDOC # 55502  
Mary Marano – Koot. Co. Mental Health Ct. Coord. 446-1224  
Probation & Parole – Greg Willey 769-1481

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY  
BY  Deputy