

five days (February 21, 2011), he could provide the Court written proof that he had been tested by the State of Washington for the presence of drugs and alcohol on a weekly random basis for the first year of his probation and then twice a month for the second year of his probation, and written proof that he was in fact accepted back to the State of Washington following his probation violation hearing, then the Court would place Anderson on probation. Five days came and went, no information was filed with the Court. On February 21, 2011, this Court filed its Probation Violation Disposition and Notice of Right to Appeal, sending Anderson on a retained jurisdiction.

On February 28, 2011, Anderson filed the instant one-page I.C.R. 35 Motion requesting that the Court reconsider the Judgment and Sentence entered herein on February 22, 2011. Anderson bases this motion on a plea for leniency. No additional information is given. No claim is made that Anderson now has the evidence the Court requested at the February 16, 2011, hearing. Additionally, Anderson has already been transported for his retained jurisdiction and is not longer in custody at the county jail.

Without being critical, the Court has noticed over the last decade that It is common for I.C.R. 35 motions made by the Office of the Kootenai County Public Defender to include nothing but the following two bits of information: that the defendant “requests that the Court to reconsider the Judgment and Sentence entered herein on _____”; and “This motion is made as a plea for leniency.” This Court realizes the time constraints involved and the requests placed upon counsel by their clients. However, if there is an issue that **was not** discussed at sentencing, or some legitimate basis for the Court to reconsider the sentence, that reason must be included in the motion itself in order to avoid the Court ruling on the motion without a hearing.

In his I.C.R. 35 Motion, Anderson requested a hearing. However, Anderson did not notice up his motion for 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, 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. 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. 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 January 2, 2008, was and is an appropriate sentence given 's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Anderson's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of and others.

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

NOTICE OF RIGHT TO APPEAL

YOU, TOBIAS SHELDON ANDERSON, 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 1st 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 - Anne C. Taylor 446-1701
Prosecuting Attorney - Art Verharen 446-1841

TOBIAS SHELDON ANDERSON
IDOC # 88341

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Idaho Department of Correction Records Division
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CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY:  Deputy