

FILED 11-8-11

AT 10:00 O'clock A.M
CLERK, DISTRICT COURT

[Signature]
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.)
)
)
STEVEN DOUGLAS MCBRIDE)
)
)
)
)
)
Defendant.)

Case No. **CRF 2010 1435**

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

On December 30, 2010, Steven Douglas McBride (McBride) pled guilty to possession of a controlled substance, methamphetamine, an offense which occurred on January 7, 2010. This was a conditional guilty plea in which McBride reserved the right to appeal this Court's July 22, 2010, twenty-six page Memorandum Decision and Order Denying Defendant's Motion to Suppress.

A presentence report was ordered. That report showed McBride had committed a felony 2nd degree theft in Washington in 1985, two separate felony 2nd degree burglary offenses in Washington in 1988, a felony possession of a controlled substance charge in Washington in 1989, two felony possession of a controlled substance with the intent to deliver charges in Washington in 1991, a felony taking motor vehicle without owner's permission in Washington in 1994, a felony 2nd degree theft in Washington in 1995, two separate felony forgery offenses in Washington in 1997, a felony possession of stolen property in Washington in 1997, a felony 2nd degree theft in Washington in 2000, a

felony possession of a controlled substance charge in Washington in 2004, and a felony 2nd degree burglary in Washington in 2004. Presentence Report, pp. 4-12. The presentence report also showed numerous misdemeanor convictions. *Id.* Not surprisingly, McBride had spent significant time in prison prior to his January 7, 2010, offense in the present case. In his Presentence Report, and the State of Idaho Department of Corrections recommended this Court retain jurisdiction. The Court also ordered a mental health screening evaluation pursuant to I.C. § 19-2524. That report diagnosed McBride with: Axis I, Cannabis Dependence, Amphetamine Dependence, Cocaine Dependence, and Axis II, Antisocial Personality Disorder. On February 11, 2011, STEVEN DOUGLAS MCBRIDE was sentenced as follows:

POSSESSION OF A CONTROLLED SUBSTANCE
(METHAMPHETAMINE), (a felony), Idaho Code § 37-2732(c)(1),
committed on January 7, 2010 – to the custody of the Idaho State
Board of Correction for a fixed term of FIVE (5) years followed by
an indeterminate term of TWO (2) years, for a total term not to
exceed SEVEN (7) years.

Sentencing Disposition, p. 1. On February 11, 2011, this Court retained jurisdiction for up to one year, and sent McBride to a prison program aimed at chemical dependency treatment and changing McBride's protracted criminal thinking. *Id.*, p. 2. On March 17, 2011, McBride appealed this Court's decision on his motion to suppress. Notice of Appeal, p. 2.

On July 26, 2011, McBride returned to the Kootenai County Jail and appeared before this Court for his jurisdictional review hearing. A month before that hearing, the Idaho Department of Corrections (IDOC) had issued a report (Addendum to Presentence Investigation) from North Idaho Correctional Institution (Cottonwood, Idaho) dated June 17, 2011, in which the IDOC recommended this Court relinquish jurisdiction and have McBride serve the remainder of his sentence. The basis for that recommendation was

McBride's poor performance on his retained jurisdiction. The report noted McBride had five informal disciplinary sanctions while at Cottonwood. McBride's psychosocial rehabilitation specialist noted as to those five sanctions:

As Mr. McBride has spent several years in correctional institutions, I would expect him to follow the rules. However, his "timer" attitude needs to be considered while evaluating his behavior.

Addendum to Presentence Report, p. 2. His psychosocial rehabilitation specialist continued:

Mr. McBride has not demonstrated the necessary skills to facilitate his successful return to his community. Mr. McBride remained largely unwilling to participate in the group discussions, process sessions, and homework assignments.

Mr. McBride was not able to discover his criminal and addictive thinking distortions. * * * However, Mr. McBride steadfastly refused to demonstrate any form of empathy throughout the group. In the first couple of days of group, Mr. McBride stated that his judge messed up and that he should have put him on probation and that he was only here for a cotton ball in his girlfriend's purse.

Id., pp. 2-3.

The bottom line is Mr. McBride has either been late or has had to redo almost every presented assignment because he kept taking short cuts. It appears that Mr. McBride is only interested in jumping through hoops and has never been interested in doing what it would take to facilitate sincere change in his life.

Id., p. 3.

Should he be released, I do not believe that Mr. McBride has any intention of seeking community based drug treatment.

Id., p. 4.

While at North Idaho Correctional Institution, it appears that Mr. McBride demonstrated himself as a serious disciplinary problem. It is a serious concern that Mr. McBride presented himself as unwilling to correct his criminal thinking or to follow up on treatment that would help him correct it. Mr. McBride has followed the rules and guidelines of the institution for the most part. However, he has remained unwilling to sincerely participate in his "A New Direction" program. Mr. McBride has not responded to multiple staff interventions to address his failure to progress throughout the "A New Direction" program.

* * *

Multiple staff members have noted some aspect of Mr. McBride's unchecked "timer mentality." He is protective of his criminal behavior. He is antisocial and has had several issues with his negative sense of entitlement. Finally, he appears more interested in getting out than in making the necessary changes that it will take for him to be successful.

Id., p. 5. At the conclusion of that July 26, 2011, jurisdictional review hearing, this Court relinquished jurisdiction and sent McBride to prison. On August 10, 2011, McBride filed another Notice of Appeal, this time claiming the Court "...abused its discretion by relinquishing jurisdiction." (Second) Notice of Appeal, p. 2.

On September 16, 2011, McBride filed the instant "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35", requesting that "...the Court reconsider the Judgment and Sentence entered herein February 11, 2011." Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1. McBride bases this motion on "...a plea for leniency, and on the basis of new or additional evidence to be presented in this matter." *Id.* However, McBride gave no indication of what that "new or additional evidence" was. In his Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, McBride requested a hearing. Since McBride has failed to shed even a modicum of light as to what any "new or additional evidence" might be, the Court finds there is no reason for a hearing on such unidentified "new or additional evidence."

A motion to modify a sentence "shall be considered and determined by the court without the admission of addition 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).

The sentence imposed on February 11, 2011, was and is an appropriate sentence given McBride's anti-social personality, his extensive criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of McBride's crimes. Imposition of that sentence and relinquishment of jurisdiction following McBride's retained jurisdiction is warranted, given McBride's pathetic performance during his retained jurisdiction, coupled with his twenty-five year multiple felony history. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of McBride and others.

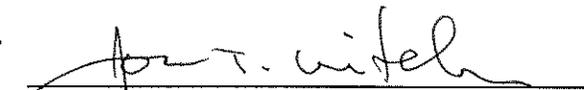
IT IS THEREFORE ORDERED that McBride's I.C.R. 35 Motion is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, STEVEN DOUGLAS MCBRIDE, 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 8th day of November, 2011.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of November, 2011 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Sean Walsh *Faxed*
Prosecuting Attorney - *446-1833*

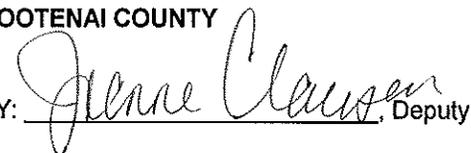
Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445 ✓

STEVEN DOUGLAS MCBRIDE
IDOC # 99390

Probation & Parole

#5322
5323

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy