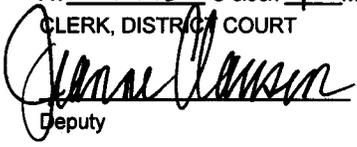


STATE OF IDAHO)
County of KOOTENAI)
FILED 5/16/2023)
AT 2:25 O'clock P. M)
CLERK, DISTRICT COURT)

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,)	Case No. CR28-20-9103
Plaintiff,)	CR28-22-18381
vs.)	MEMORANDUM DECISION AND
JASON ROBERT GUFFEY)	ORDER DENYING DEFENDANT'S
DOB: 10/24/1987)	MOTIONS FOR MODIFICATION OF
SSN: xxx-xx-6666)	SENTENCE PURSUANT TO I.C.R. 35(b),
IDOC: 111337)	AND NOTICE OF RIGHT TO APPEAL
Defendant.)	

This Court denies the I.C.R. 35(b) motion filed by defendant Jason Robert Guffey (Guffey) in each of these two cases, because Guffey has submitted no relevant evidence and no new evidence in support of those motions.

I. PROCEDURAL HISTORY.

On April 4, 2023, in Kootenai County Case CR28-22-18381, this Court sentenced Guffey for the misdemeanor crime of possession of paraphernalia, to 365 days in the Kootenai County jail, with credit for 158 days time served (leaving a balance of 207 days to be served, less the obligatory request for "good time" by the Kootenai County Sheriff). Also on April 4, 2023, the court imposed Guffey's felony sentence in CR28-20-9103, as follows:

POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)	To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of THREE (3) years for a total unified sentence of FIVE (5) years.
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The Court imposed that sentence consecutive to the more recent misdemeanor sentence in CR28-22-18381. The purpose of doing so was stated in the Probation Violation Disposition and Notice of Right to Appeal in CR28-20-9103, **"AND THIS REMAINING 207 DAYS (IN CR28-22-18381) RUNS CONSECUTIVE TO THE PRISON SENTENCE THIS COURT NOW IMPOSES IN THE PRESENT CSE (CR28-20-9103) ON JASON ROBERT GUFFEY. The Court's purpose for sentencing JASON ROBERT GUFFEY**

consecutively in CR28-22-18381 is to protect the public by maximizing the number of days defendant remains in custody.” Probation Violation Disposition 3. (bold and capitalization in original). The Court imposed that prison sentence and did not retain jurisdiction. *Id.* at 2-3.

On April 13, 2023, Guffey, through his attorney, Jay Logsdon, in both cases, timely filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. In that motion, counsel for Guffey stated the basis of his motion as follows: “The basis for such argument consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 2. Counsel for Guffey continues, “The pleading supports a request to modify Jason Robert Guffey’s sentence either by reducing the fixed portion, retaining jurisdiction, or placing him back on probation in CR28-20-9103. It also supports reducing his sentence in CR28-22-18381 to time served or placing him on probation in that matter, or to run the time concurrent.” *Id.* Counsel for Guffey then claims additional evidence will be presented as follows:

Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant’s request. Attached is a letter from Mr. Guffey as to his beliefs about what has held him back from success and his hope that by coming out he will stop repeatedly stumbling. Counsel has also attached John Pachankis et al., *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*, 83(5) J. CONSULT CLIN PSYCHOL. 89-901 (Oct 2015), which is a nuanced and thorough study about the effects of concealed sexuality on mental health. Other evidence may include letters from Mr. Guffey’s mother and brother.

Id. at 3. In the attached letter to Judge Michell [sic], Guffey writes:

As you know from my last few arrests in the past 2 years, I was with Devin Logan. I have tried to play this off as a simple friendship, however this is not the case. I love Devin, I have been in a romantic relationship with him for almost 2 years. Devin and I have hidden this from every one.

* * *

I am not going to get any better trying to avoid who I really am. I can’t keep lieing [sic] and hiding that I am gay. I know that by being open about who I am I wont [sic] have to keep abusing drugs and trying to hide my feelings.

Id. at 5-18. Next is the article referenced by Guffey’s attorney in Guffey’s I.C.R. 35(b) motions: *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*. *Id.* at 9-34. In Guffey’s letter to the Court, Guffey does not

reference this study in any way.

In Kootenai County Case No. CR28-20-9103, Guffey was charged with possession of a controlled substance, methamphetamine, for events which transpired on June 10, 2020. In Guffey's vehicle, inside Guffey's jacket was found three loaded syringes suspected to contain methamphetamine. Probable Cause Decl. 2. Arrested with Guffey was his brother Joshua Guffey. *Id.* No one else was in the vehicle. Devin Logan was not present in the vehicle. On July 31, 2020, Guffey pled guilty to the charge possession of a controlled substance, methamphetamine, and Guffey was released on his own recognizance. On October 1, 2020, an Affidavit was filed alleging that Guffey had failed to appear for his Presentence Interview on September 17, 2020, and failed to attend again when that interview was rescheduled a week later. On October 5, 2020, a bench warrant was issued for Guffey's arrest. Guffey was arrested that same day. Sentencing was rescheduled for December 22, 2020. Guffey was screened for Mental Health Court and on November 19, 2020, was determined eligible for that program. At sentencing, Judge Wayman sentenced Guffey to two years fixed, three years indeterminate, but suspended that prison sentence and placed Guffey on three years of supervised probation, term and condition of probation number 26 was that Guffey "enroll in and successfully complete Kootenai County Mental Health Court. Remain in custody until further order of the Court." Judgment and Sentence 1-3, 9 ¶26. Guffey was released on Monday, January 4, 2021. Guffey was drug tested about three times a week in Mental Health Court. Guffey remained in recovery until May 25, 2021, when he was driving without a valid license, with Devin Logan as his passenger. Warrant Request 1. Logan was wanted on a bench warrant for stealing firearms. *Id.* Guffey was not approved by his probation officer to be associating with Logan. *Id.* On June 3, 2021, the Mental Health Court treatment team voted for termination of Guffey from that program, and the undersigned, the presiding Mental Health Court judge, agreed with that decision. At his probation violation hearing on June 10, 2023, the Court minutes reflect Guffey telling the Court, when asked "Who's this person you gave a ride to?", Guffey's response was:

Devin Logan. I didn't know he had a criminal record. But now I know he's no good. He stole weapons from his family. Not a person to be around. I have known him for 3 weeks. I told him about going to shelter and NA. He told me he didn't have any warrants. I was just trying to help. I drove that day to help that person. I was going to take him to St. Vincent's.

June 10, 2021, Court Minutes 2. The Court then asked Guffey why he did not get Logan

approved by his probation officer, Guffey responded:

I thought I could've helped him. Weapons involved. I didn't want him to get hurt.

Id. Thus, even if Guffey knew nothing about Logan's warrant status, as of his May 25, 2021, event with Logan, Guffey clearly knew Logan had weapons. At the end of the June 10, 2021, hearing, this Court sent Guffey on a period of retained jurisdiction. Guffey had been on two prior periods of retained jurisdiction. On January 3, 2022, the Addendum to the Presentence Report was filed. This report documented Guffey's performance while on this period of retained jurisdiction. Guffey did not have a good disciplinary record. Addendum to Presentence Report 2. On January 6, 2022, this Court held a jurisdictional review hearing for Guffey. This Court placed Guffey on three years of supervised probation and ordered Guffey to re-apply to Mental Health Court within 24 hours of his arrival back in Kootenai County. Guffey immediately failed on his probation. He admitted using methamphetamine intravenously on February 3, 2022, February 11, 2022, February 15, 2022; he failed to complete his court-ordered mental health evaluation and he moved out of his approved residence without getting his probation officer's permission. February 16, 2022, Progress Report 1-2. On March 2, 2022, Guffey was arrested on an Agent's Warrant. He was found across the street from Idaho Department of Corrections Probation and Parole, he was driving while using methamphetamine. March 4, 2022, Report of Probation Violation 1-2, ¶¶ 1, 7. On March 22, 2022, this Court sent Guffey on yet another period of retained jurisdiction, his fourth. This time his Addendum to Presentence Investigation showed Guffey had a good disciplinary record. On August 4, 2022, this Court placed Guffey on a period of supervised probation for three years, and ordered Guffey to re-apply to Mental Health Court. On September 7, 2022, Guffey had completed the process of re-application, but was determined not to be eligible for that program. A Report of Probation Violation dated October 31, 2022, was filed on November 4, 2022, alleging that Guffey had committed the new crimes of possession of a controlled substance, methamphetamine, and possession of paraphernalia, based on events that occurred on October 30, 2022. Those events formed the basis of the new charges in Kootenai County Case No. CR28-22-18381. In Guffey's older case in which he was on probation, CR28-20-9103, this Court issued a bench warrant for Guffey, which was served on Guffey on November 8, 2022. Guffey has remained in custody since that date. On December 7, 2022, Guffey denied violating his probation as alleged, but on

March 8, 2023, Guffey admitted violating his probation by possessing paraphernalia on October 30, 2022, but denied the allegation that Guffey had committed the felony crime of delivery of a controlled substance. Even though the Kootenai County Prosecuting Attorney had on March 20, 2023, moved to dismiss the felony charge of delivery of a controlled substance, methamphetamine in CR28-22-18381, that office chose to proceed with an evidentiary hearing alleging delivery of a controlled substance as the other alleged probation violation in CR28-20-9103. On April 4, 2023, an evidentiary hearing was held on that allegation. Officer Jonah Russell, of the Coeur d'Alene Police Department testified that on October 30, 2022, he witnessed Guffey driving in a car with Devin Logan the passenger. Guffey pulled the vehicle over without being pulled over by Officer Russell, and Officer Russell then witnessed both Guffey and Logan exited the vehicle as Officer Russell arrived. Guffey admitted to Officer Russell that Guffey had used methamphetamine in the past two days, and that he was on felony probation. Officer Russell located methamphetamine in a clear plastic container located in Logan's underwear. At the jail, while being booked, Logan told Russell that Guffey had given him the methamphetamine because Guffey had told Logan that Guffey was more likely to be searched because Guffey was on probation. Devin Logan testified that he told all three of the police officers involved that Guffey had given him the methamphetamine. At the conclusion of the evidentiary hearing, this Court found the plaintiff, the State of Idaho, had proven by a preponderance of evidence that Guffey had committed the felony crime of possession of a controlled substance, methamphetamine, on October 30, 2022, and had thus, violated his probation in CR28-20-9103. The Court then imposed Guffey's prison sentence in that case and sentenced Guffey on the misdemeanor paraphernalia charge in CR28-22-18381.

Even before committing the crime in CR28-20-9103 on June 10, 2020, Guffey's Presentence Report in that case shows that Guffey had committed the following: June 28, 2006, petit theft and a probation violation from a prior (unlisted) crime; July 13, 2006, malicious injury to property; August 2, 2006, battery and malicious injury to property; October 11, 2006, battery and probation violation; January 27, 2007, felony burglary; April 18, 2008, minor consuming alcohol; April 1, 2013, petit theft and probation violation; May 11, 2013 malicious injury to property; July 8, 2014, resisting and obstructing an officer and probation violation; September 24, 2014, destruction of evidence and a probation violation; March 14, 2015, driving with a suspended license; May 2, 2015, false

information to an officer; August 6, 2015, driving with an invalid license; February 4, 2016, theft by receiving stolen property; July 15, 2016, driving without privileges; July 26, 2017, driving a motor vehicle without the owner's consent; February 3, 2017, disturbing the peace; July 1, 2017, two counts of assault, exhibition or use of a deadly weapon and a probation violation; July 5, 2017, resisting and obstructing an officer and a probation violation; March 29, 2018, two separate charges of driving with a suspended license on the same date; April 9, 2018, false information to law enforcement; April 29, 2018, felony possession of a stolen vehicle amended to felony taking a motor vehicle without owner's consent; May 25, 2018, petit theft; June 14, 2018, driving with an invalid license; December 4, 2018, driving with a suspended license; December 15, 2018, felon possession of a controlled substance; April 15, 2019, failure to give notice of an accident; April 30, 2019, assault, driving a motor vehicle without the owner's consent; October 4, 2019, theft; January 13, 2020, false statement to law enforcement; and June 10, 2020, driving without privileges (which was in connection with and in addition to the felony crime in CR28-20-9103, possession of a controlled substance, methamphetamine).

Presentence Report, 9-14. In that Presentence Report, Guffey was assessed with a LSI-R (an assessment tool which assesses a person's risks and needs regarding recidivism) score of 38 which is "high."

Finally, Guffey in his I.C.R. 35(b) motions has requested a hearing. Mot for Modification of Sentence Pursuant to I.C.R. 35(b), 3.

II. GUFFEY'S I.C.R. 35(b) MOTIONS IN EACH CASE MUST BE DENIED AS NO NEW EVIDENCE HAS BEEN PRESENTED.

This Court specifically finds the following is not new evidence: Guffey's claim that, "The basis for such argument consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future" (Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 2). This not new evidence, it is not any evidence. It is simply a claim. It is a claim which is entirely irrelevant to any sentencing decision. Nowhere in *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982), or in any of the large litany of cases subsequently citing *Toohill*, is the factor "the collateral negative impact a sentence of the current nature places upon the defendant and his future," listed as a consideration for a sentencing judge. The four *Toohill* factors are: "(1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment." 103 Idaho at 568, 650 P.2d at 710.

Guffey's claims that additional evidence will be presented as follows:

Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant's request. Attached is a letter from Mr. Guffey as to his beliefs about what has held him back from success and his hope that by coming out he will stop repeatedly stumbling. Counsel has also attached John Pachankis et al., *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*, 83(5) J. CONSULT CLIN PSYCHOL. 89-901 (Oct 2015), which is a nuanced and thorough study about the effects of concealed sexuality on mental health. Other evidence may include letters from Mr. Guffey's mother and brother.

Id. at 3. As mentioned above, in the attached letter to Judge Michell [sic], Guffey writes:

As you know from my last few arrests in the past 2 years, I was with Devin Logan. I have tried to play this off as a simple friendship, however this is not the case. I love Devin, I have been in a romantic relationship with him for almost 2 years. Devin and I have hidden this from every one.

* * *

I am not going to get any better trying to avoid who I really am. I can't keep lieing [sic] and hiding that I am gay. I know that by being open about who I am I wont [sic] have to keep abusing drugs and trying to hide my feelings.

Id. at 5-8. Next is the article referenced by Guffey's attorney in Guffey's I.C.R. 35(b) motions: *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*. *Id.* at 9-34. In Guffey's letter to the Court, Guffey does not reference this study in any way. None of this is "new" evidence.

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). "The 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 Guffey's I.C.R. 35 motions. The Court has also re-reviewed the minutes of the entire April

4, 2023, probation violation hearing in CR28-20-9103 and sentencing hearing in CR28-22-18381. Guffey's entrenched drug use was impacting others (Devin Logan who agreed to take the methamphetamine Guffey asked him to hold on to), and poses a danger to the community. Guffey has proven time and time again that he cannot follow the rules of the Idaho Department of Correction, orders of this Court, or the laws of the State of Idaho.

All the evidence presented to this Court showed that Guffey consistently makes decisions which have devastating effect on himself and others. Those decisions pose an unacceptable risk to those people and to the public.

Where a sentence as originally imposed is not illegal, the defendant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). "To establish that the sentence imposed was improper, the defendant must show that in light of the governing criteria, [the] sentence was excessive under any reasonable view of the facts." *Id.* (quoting *State v. Broadhead*, 120 Idaho 141, 143-45, 814 P.2d 401, 403-05 (1991) (citations omitted)). When a defendant does not identify what evidence he or she might have produced at a hearing that could not have been produced through affidavits, the district court does not abuse its discretion in refusing to hold a hearing on his or her Rule 35 motion. *State v. Ramirez*, 122 Idaho 830, 836, 839 P.2d 1244, 1250 (Ct. App.1992). Specifically, the Idaho Court of Appeals held:

This Court has previously held that while a defendant is entitled to be present at sentencing and at resentencing when a prior invalid sentence is corrected, no such right exists on a motion to reduce a sentence. *State v. James*, 112 Idaho 239, 242, 731 P.2d 234, 237 (Ct. App.1986). "Indeed, the decision whether even to conduct a hearing on a Rule 35 motion has always been discretionary with the district court." *Id.* A trial court abuses its discretion on whether to hold a hearing on a Rule 35 motion when it unduly limits information considered in deciding the motion. *James*, 112 Idaho at 242, 731 P.2d at 237. Ramirez has failed to show that the district court unduly limited the available information in this case. Ramirez does not even identify what evidence he might have produced at a hearing that he was unable to produce through the affidavits which were submitted.

Id. (footnote omitted). Here, Guffey has not set forth any new evidence that could be adduced at hearing on his I.C.R. 35 motion. Ignoring for the moment that Guffey has not submitted an affidavit (his counsel has only "attached" a "letter" from Guffey to the I.C.R. 35(b) motion), Guffey's claim regarding his sexual orientation is not new evidence. This Court imposed Guffey's sentences on April 4, 2023. Guffey's attorney filed Guffey's

I.C.R. 35(b) motions on April 20, 2023. Guffey's attached "letter" to the Court is undated, but read in context was written after this Court imposed Guffey's sentences ("I am asking you to please reconider [sic] my most recant [sic] sentence [sic] and give me 1 last chance to show who I really am." Mot for Modification of Sentence Pursuant to I.C.R. 35(b), 7), and there is no claim in that letter that Guffey suddenly became aware of his sexual orientation sometime in the sixteen days between April 4, 2023, and April 20, 2023, when his attorney filed his I.C.R. 35(b) motion to which this "letter" is attached.

There are some State of Idaho appellate cases which discuss whether the evidence presented in an I.C.R. 35(b) motion must be "new" evidence. One of those cases is *State v. Campbell*, 170 Idaho 232, 509 P.3d 1161 (May 16, 2022). In that case, the Idaho Supreme Court held:

The district court did not abuse its discretion in denying the Rule 35(b) motion for leniency. In Campbell's original Rule 35 motion, he stated that "additional information" showed that he was at a greater risk of violence in adult prison and that rehabilitation efforts would be thwarted by the current sentence, citing a wide range of both legal and scientific articles regarding juvenile offenders published between 1994 and 2017. In denying Campbell's motion, the district court effectively concluded that this information was not new because it had already considered Campbell's age at sentencing.

The information presented by Campbell was not "new" in that it did not pertain specifically to his case or culpability. See e.g., *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In *Huffman*, this Court considered a motion for leniency where the "new" information presented by the defendant consisted of "statements made by the parole board when revoking his parole" on a prior sentence. *Id.* Such information specifically related to the defendant himself and his criminal punishments. *Id.* Here, Campbell merely presented research regarding juvenile offenders that existed long before Campbell's criminal conduct occurred. As we concluded above, the district court fully considered Campbell's youth and its potential mitigation at sentencing; consequently, additional information regarding Campbell's juvenile status was not new information for purposes of Rule 35(b). As such, we conclude that the district court did not abuse its discretion in denying Campbell's Rule 35(b) motion.

170 Idaho at 246, 509 P.3d at 1175. The same reasoning would apply in Guffey's case. The research in the article found by Guffey's attorney existed long before Guffey's most recent criminal conduct occurred, the conduct for which this Court imposed Guffey's prison sentence and local jail sentence.

Another case which discusses whether the evidence must be "new" is *State v.*

Smith, 161 Idaho 162, 384 P.3d 409 (Ct. App. 2016). The Idaho Court of Appeals held:

In presenting a Rule 35 motion, a defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Thus, any colorable merit to a Rule 35 motion must arise from new or additional information presented in the motion or accompanying documentation that would create a basis for reduction of the sentence. *Wade*, 125 Idaho at 525, 873 P.2d at 170. **A Rule 35 motion that does not present such new information is not one that a reasonable person with adequate means would bring before the district court at his or her own expense and is, therefore, frivolous.** *Carter*, 157 Idaho at 903, 341 P.3d at 1272. Moreover, a Rule 35 motion is frivolous if the basis for the claim was previously considered by the district court. *Carter*, 157 Idaho at 902–03, 341 P.3d at 1271–72.

161 Idaho at 164, 384 P.3d at 411. This Court specifically finds that Guffey's I.C.R. 35(b) motions in both cases present no new information, and no relevant information.

Accordingly, Guffey's Rule 35(b) motion in each case is frivolous. Guffey's attorney is court appointed at no expense to Guffey. However, in each of these cases, Guffey has presented no new information and no relevant information, and this Court finds that no reasonable person with adequate means would bring such a I.C.R. 35(b) motion before the district court at his or her own expense. The Idaho Court of Appeals concluded in *Smith*:

B. Rule 35 Motion

Alternatively, Smith argues that the district court abused its discretion in denying his Rule 35 motion on the merits. A motion for reduction of sentence under Rule 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *Huffman*, 144 Idaho at 203, 159 P.3d at 840.

As discussed above, the information Smith provided in support of his Rule 35 motion was information that was already in his possession and already considered by the district court in imposing Smith's sentence. Because Smith provided the district court with no new or additional information to support finding Smith's sentence excessive, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Smith's Rule 35 motion is affirmed.

161 Idaho at 165-66, 384 P.3d at 412-13.

The concept of “new” evidence is discussed more in federal case law. One reason for that is the applicable federal rule does a better job of defining new evidence. The Federal Criminal Rule is different from I.C.R. 35. Federal Rule of Criminal Procedure 35(b)(2)(A)-(C) reads:

- (2) *Later Motion*. Upon the government’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved:
 - (A) information not known to the defendant until one year or more after sentencing;
 - (B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or
 - (C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

In the present case, Guffey knew of his sexual orientation at the time of his sentencing in the newest of these two case and at the time of his probation violation disposition in the oldest of these two cases. Guffey made the decision to not disclose that to the Court or to anyone else at that time. Guffey’s sexual orientation is not “new” evidence as of the time of sentencing and disposition on April 4, 2023, it is not “new” evidence at the time of his “letter” attached to his I.C.R. 35(b) motion. It is instead, **“existing” evidence which was not disclosed by Guffey, by his own choice.**

Even though I.C.R. 35 is not as detailed as its federal counterpart in discussing what evidence is “new”, it cannot be that I.C.R. 35 contemplates, because of that lack of specificity as to what constitutes “new” evidence, that it is acceptable for the defendant to withhold evidence from the judge at sentencing, only to later disclose that evidence after sentencing in support of a subsequent I.C.R. 35 motion. Idaho Criminal Rule 35 does not support sandbagging the Court, saving an argument for later just to have an I.C.R. 35 argument when the defendant does not like the judge’s sentencing decision. We are not peeling onions here.

In *United States v. Edna Coonan*, 750 F.Supp. 652, 657 (S.D. New York, 1990) citing *U.S. v. Ellenbogen* (2d Cir.) 390 F.2d 537, 543, *cert. denied*, 393 U.S. 918, 89 S.Ct. 241, 21 L.Ed.2d 206 (1968), the trial court held: “Rule 35 was intended to provide the sentencing judge with an opportunity to reconsider the sentence imposed in light of new evidence not available at the time of sentencing.” In *Coonan*, this “new” evidence

was statements made by the co-defendants after the trial. The court granted Coonan's Rule 35 Motion and placed her on probation. In *U.S. v. Gaertner*, 590 F.Supp. 271, 273 (E.D. Wisconsin, 1984), the trial court held one of the purposes of Rule 35 is to permit defendants to present new evidence not available at the time of sentencing. *U.S. v. Gaertner*, 590 F.Supp. 271, 273 (E.D. Wisconsin, 1984).

II. GUFFEY'S I.C.R. 35(b) MOTIONS IN EACH CASE MUST BE DENIED AS NO RELEVANT EVIDENCE HAS BEEN PRESENTED.

There are several reasons why Guffey's current revelation that his is gay (Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 5-8), even coupled with the article referenced by Guffey's attorney in Guffey's I.C.R. 35(b) motions: *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study* (*Id.* at 9-34), are not in any way, shape or form, relevant.

A. The Article, *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*, provides Guffey with no explanation, let alone an excuse for his actions.

According to Guffey's attorney in Guffey's I.C.R. 35(b) motions, the article "is a nuanced and thorough study about the effects of concealed sexuality on mental health." *Id.* at 3. With all respect, that statement by Guffey's attorney tells this Court absolutely nothing.

Even if a person's "concealed sexuality" had some profound effect on a person's mental health, and if a person's mental health were the driving factor behind a person's decision to use controlled substances, then at best, the "concealed sexuality" may provide an "explanation" as to why a person would use controlled substances. Such would never be an "excuse." There are lots of "explanations" as to why a person would use controlled substances: I liked the first high I got, I use to numb my feelings from the trauma I have suffered, I use to self medicate my mental health symptoms, I use to avoid the symptoms of withdrawal, I use because my partner uses, I use because I am addicted, I use to avoid the reality of the unpleasant circumstances I live in, to name but a few. None of these "explanations" would amount to an "excuse" in a criminal sentencing or probation violation disposition. None of these "explanations" are listed in the four *Toohill* factors a court must consider in its sentencing or probation violation decisions.

Mental illness is not a defense in a criminal action, although a defendant can

introduce evidence of mental illness if it negates intent to commit a crime. *State v. Diaz*, 170 Idaho 79, 87, 507 P.3d 1109, 1117 (2021). Guffey made no such claim in either of his cases at any time, nor does he make such a claim of his intent being negated in his I.C.R. 35(b) motions.

B. The Article, *The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*, actually cuts against Guffey's claims made by his attorney in Guffey's I.C.R. 35(b) motion.

In order for Guffey's claims of being in the closet throughout all of his criminal career, and his "new evidence" of his recent outing via his letter to the Court, and the implicit argument that now being "out" should change his mental health (one would assume for the better), the article cited and provided by Guffey's counsel (*The Mental Health of Sexual Minority Adults in and Out of the Closet: A Population Based Study*, (Mot. for Modification of Sentence Pursuant to I.C.R. 35(b), 9-34) would need to support such an implicit claim. It does not. In fact, the article comes to completely the opposite conclusion. There is nothing "nuanced" about that fact, contrary to Guffey's attorney's argument. *Id.* at 3. The first page of this article, under the heading "Abstract-Results", the following is written, in its entirety:

Results—Closeted men (n=84) were less likely to be depressed than out men (n=1,047; OR=0.41 95% CI: 0.17-0.996). Men who were recently out (n=201) experienced higher odds of major depressive disorder (OR=6.21 95% CI: 1.53-24.47) and generalized anxiety disorder (OR=5.51 95% CI: 1.51-20.13) as compared to closeted men. Men who were distantly out (n = 846) also experienced higher odds of major depressive disorder than men who were closeted (OR=2.91; 95% CI: 1.10-7.69). Recently out women (n=243) experienced lower odds of depression than closeted women (n=63) (OR=0.21; 95% CI: 0.05-0.96).

Id. at 9. The very next heading, "Conclusion" reads:

Conclusion—Whether being in or out of the closet is associated with depression and anxiety largely depends on gender. Clinical and policy implications are discussed in terms of the unique stressors facing men and women both in and out of the closet.

Id. So, if Guffey were female (he is not), the article found by Guffey's attorney might support the implicit argument Guffey now makes in his I.C.R. 35(b) motion, that being out might make his mental health better. But Guffey is a male. The very article found by Guffey's attorney indicates that Guffey can expect more mental health depression than if

he had remained in the closet.

Just in case the Abstract of the article does not track the contents of the article, this Court has read the entire article. A thorough reading convinces the Court that the Abstract and the article itself are, not unexpectedly, consistent. There is nothing “nuanced” about this article, unless Guffey’s counsel has found himself a thesaurus which lists “nuanced” as a synonym for “exact opposite.” The article itself indicates worse outcomes for anxiety: “However, disclosure and anxiety seem to be particularly associated for men (e.g., Rosario et al., 2001).” *Id.* at 10. Under the heading “Is Being Closeted Associated with Poorer Mental Health Than Being Out?” the following was written: “In a model controlling for all covariates and age of coming out (Table 3), sexual minority men who were closeted experienced a 41% lower odds of reporting major depressive disorder compared to men who were out, OR = 0.41; 95% CI: 0.17-0.99, $p < .05$ (see Figure 1).” *Id.* at 16. The next heading is: “Is Being Recently Out Associated with Poorer Mental Health Than Being Closeted?”, and the following is written: “As reported in Table 3 and depicted in Figure 1, sexual minority men who were recently out were more likely to report major depressive disorder than those who were closeted, OR = 6.12; 95% CI: 1.53-24.47, $p < .05$.” *Id.* at 17. Under the heading “Discussion” the following is written:

Our results suggest that the mental health correlates of being in and out of the closet in adulthood largely depend on gender and outness. Men who were recently out were at higher risk for major depressive disorder and generalized anxiety disorder than men who were closeted. Men who were recently out also reported marginally significantly higher odds of generalized anxiety disorder than men who were distantly out. Men who were distantly out reported higher odds of major depressive disorder than men who were closeted. Finally, men who were closeted appear to have avoided the high odds of experiencing major depression experienced by those who were out.

Id. at 18. The report ends with:

In conclusion, results suggest that being in and out of the closet can be associated with major depressive and generalized anxiety disorders among sexual minority adults in the general population, depending on gender. Among men, being closeted is associated with lower odds of depression than being out, while being recently out is associated with higher odds of experiencing generalized anxiety disorder than being closeted. Men’s odds of major depressive disorder are highest when they are recently out.

Id. at 22. Thus, if the Court were to consider the material submitted by Guffey’s attorney,

including Guffey's "letter" to the Court that he is officially "out", there is actually more evidence to support this Court's imposition of Guffey's local jail sentence and prison sentence. This would be true, according to this article, because Guffey's mental health symptoms, statistically at least, are likely to increase now that he is "out."

The Court will not utilize this report to bolster its prior decision to impose Guffey's sentences. The reason for that is this Court finds whether a person is gay, or lesbian, or queer, or pansexual, or anything other than heterosexual, is entirely irrelevant in any sentencing decision. It was entirely irrelevant in Guffey's decision. For this Court to do otherwise is really inconceivable. What if, **at sentencing**, this information was just presented to this Court, that Guffey is gay, and that being freshly outed will cause his mental health to decline (or symptoms to increase), and this Court used that information to **increase** Guffey's punishment? The cries from the defense bar would be, appropriately, deafening. This Court specifically finds the issue of sexual orientation to be a non-factor in any of its sentencing decision, and the issue of Guffey's sexual orientation for a fact was a non-factor in Guffey's sentencing decisions made by this Court.

III. Guffey is Not Entitled to a Hearing on his I.C.R. 35(b) Motions in Each Case.

The Court cannot be required to guess at what relevant evidence Guffey might present at a hearing in support of his Rule 35 Motion. Because Guffey has completely failed to give any indication of any relevant facts which would support his claims in his Rule 35 Motions, those motions must be denied due to that failure alone.

The Court exercises its discretion and decides these I.C.R. 35(b) motions without a hearing. A hearing is currently scheduled for May 23, 2023, before this Court on these I.C.R. 35(b) motions in each case. This Court finds absolutely no new evidence and no relevant evidence has been presented by counsel for Guffey in support of his I.C.R. 35(b) Motions. This Court specifically finds that reducing either of Guffey's sentences in either of his two cases, would not allow this Court to fulfill its paramount responsibility, protecting the public. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Guffey's current crimes, his past crimes, his dismal performance on most of his periods of retained jurisdiction and at all times while on felony probation and misdemeanor probation, all set forth above, are testament to that incontrovertible fact.

Oral arguments on Guffey's I.C.R. 35(b) motions in each case were scheduled for May 23, 2023. Because this Court has exercised its discretion in deciding these motions without a hearing, the hearing scheduled for May 23, 2023, is vacated.

For the above mentioned reasons, Guffey's I.C.R. 35 Motion in these two cases must be denied without a hearing.

IT IS THEREFORE ORDERED that Guffey's I.C.R. 35 Motion in each of these two cases are hereby **DENIED**.

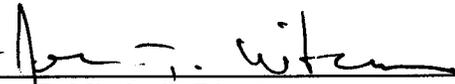
IT IS FURTHER ORDERED that the hearing scheduled for May 23, 2023, in each case, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, JASON ROBERT GUFFEY, 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.

DATED this 16th day of May, 2023.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of May, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Jay Logsdon *pd fax e kgov. us*
Kootenai Co. Pros. Attorney *Repair Courts E kgov. us*
JASON ROBERT GUFFEY

IDOC NO. 111337

C/O pd fax e kgov. us

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY


BY: Jeanne Clausen, Deputy