

STATE OF IDAHO)
 County of KOOTENAI)
 FILED 9/18/2023)
 AT 2:10 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,)
)
 Plaintiff,)
 vs.)
)
AUTUMN MARIE HOPKINS)
 DOB: xx/xx/1997)
 SSN: XXX-XX-9978)
 IDOC: 145755)
)
 Defendant.)
)

Case No. **CR28-19-16477**

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

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On February 26, 2019, defendant Autumn Marie Hopkins (Hopkins) and an accomplice, Donald L. Stinson, conspired to deliver methamphetamine to a confidential informant. Complaint 1, 2. A complaint was filed on October 1, 2019, and efforts to serve Hopkins a summons proved unsuccessful. A warrant was issued on February 13, 2020, which was served nearly two and one half years later, on July 22, 2022. At Hopkins' arraignment hearing before this Court on September 6, 2022, Hopkins plead guilty to the amended charge of Possession of a Controlled Substance, Methamphetamine. The Court released Hopkins on her own recognizance and scheduled sentencing for November 1, 2022. Oddly enough, Hopkins chose not to appear for her presentence investigation obligations and on October 18, 2022, this Court issued a bench warrant. Hopkins also chose not to attend her November 1, 2022, sentencing hearing. This Court's bench warrant was served on Hopkins on January 20, 2023, and this Court set sentencing for March 27, 2023. Not to be deterred, Hopkins, through counsel, filed a

motion for an own recognizance relief on February 8, 2023. At a hearing on February 14, 2023, that motion was denied by this Court.

On March 27, 2023, this Court sentenced Hopkins to three-years fixed, followed by four-years indeterminate, for a total unified sentence of seven years. The Court also retained jurisdiction. Shortly after arriving at South Boise Women's Correctional Center to begin her rehabilitation, on June 5, 2023, the Idaho Department of Correction filed an Addendum to the Presentence Report (APSI) which recommended this Court relinquish jurisdiction on Hopkins. APSI 1. The reason for that recommendation was as follows:

On 05-25-2023, at approximately 1304, K9 Officer Fischer and I were conducting K9 searches on vehicles entering the South Boise Complex (SBC) through the Point of Entry (POE). During this time a green Ford Mustang (Idaho Plate #: REDACTED for security purposes) with a black stripe approached the POE. When contact was made, the driver (civilian) stated he was going to South Boise Women's Correctional Center (SWBCC) to pick up a visiting application. I asked (civilian) if staff were aware he was coming and he stated they were not. I advised him at that time, that the appropriate way to retrieve a visiting application is online or sent by the offender through the mail. I then stated we were conducting Narcotic Searches with K9s and asked if he would allow us to have a K9 search the exterior of his vehicle. (Civilian) responded by telling me he had "narcotics" in the vehicle and displayed a pill bottle (full of white pills) that he had retrieved from the center console. I stated that we were searching for illegal narcotics, and he replied that we could search his vehicle. Fischer had K9 Jax search the exterior of the vehicle which yielded no alerts to the odor of illegal narcotics that he is trained to find. During that period, I asked (civilian) who he was wanting to fill out a visiting application for and responded it was for Offender #1. (Civilian) then turned around and departed the complex without further incident. During that time, I observed a group of offenders standing by the education area at SBWCC looking towards the POE. Upon entering the POE, I began reviewing Offender #1's phone calls to see if there was another reason (civilian) was coming out to the facility.

Phone Call #1(CSN:346802480)

5-25-2023 / 11:36:46

Offender #1: "You know what I want you to drop, huh?"

Civilian: "Huh?"

Offender #1: "You're dropping something for me, right?"

Civilian: "Huh?"

Offender #1: "Pain pills on the floor."

Civilian: "I don't have them with me."

Offender #1: "Well, get them please."

Civilian: "Ok."

Offender #1: "Just drop like four of them."

Civilian: "Oook."

Offender #1: "And then you come inside and grab the freaking application."
Offender #1: "Have to park at the end so you can see I'll be sitting out there."
Civilian: "(Un-auditable) ok South Boise Correctional Facility?"
Offender #1: "Yes, that's where you get the application from." They then discuss that is where he will get the application from, and (civilian) states that he needs to re-new his driver's license.

The Phone call then ends shortly thereafter.

Phone Call #2 (CSN:346804932)

5-25-2023 / 12:18:23

Offender #1: "I forgot to tell you that the visitor parking is in front of the education building so make sure you park there."

Civilian: "In front of the education building?"

Offender #1: "Yes."

Civilian: "Ok."

Offender #1: "When you get here."

Civilian: "Alright."

Offender #1: "Are you on your way?"

Civilian: "Nope, I'm going to leave here about 1230."

Offender #1: "Oh, Ok."

Civilian: "Huh?"

Offender #1: "Then you're going to pick up your ID then come over right?"

Civilian: "No, I'm going to um..."

Offender #1: "Yeah, I know what you're doing, but I'm just asking you if you're going (un-auditable) then come over right?"

Civilian: "Yeah."

Offender #1: "Ok, Cool."

Civilian: "I've got my ID with me."

Offender #1: "Ok."

Offender #1: "I'm talking about something else; you know what I am talking about."

Civilian: "Yeah."

Offender #1: "So, just do like four or five of them if you can, maybe six... whatever."

Civilian: "Ummm, I'm short but I can see what I can do."

Offender #1: "Ok, Ok, alright. I love you so much."

Phone Call #3 (CSN:346777302)

5-24-2023 / 20:38:05

Offender #1: "I need you to come and pick up an application."

Civilian: "Ok."

Offender #1: "And you drive in the parking lot, and you drop something by for me."

Civilian: "And, where do you get it?"

Offender #1: "And pick up an application."

Civilian: "Ok."

Offender #1: "Ok...when can you do that? I'll have the applications ready for you."

Civilian: "Ok, probably...probably tomorrow."

Offender #1: "Ok, yeah."

They then discuss being able to see each other and waving to each other when he comes to SBWCC.

Offender #1: "Ok, I'll be out there twelve thirty, one o'clock ok."

Civilian: "Ok."

Offender #1: "Um...are you following?"

Civilian: "Am I what?"

Offender #1: "Following what I'm telling you?"

Civilian: "Yeah."

Offender #1: "Ok, cool. I love you. "

The conversation the ends shortly later.

During the investigation and after conducting multiple interviews, it was uncovered that Offender Autumn Hopkins #145755 was going to be one of the recipients of the contraband that (civilian) was intending on delivering to SBWCC. At approximately 1411, I began my interview with Hopkins in the Unit One Staff Conference Room. During my interview with Hopkins, she denied being anywhere near the area during the time in question. However, the ankle monitor tracking system shows Evans in the following places: 12:44 – 13:08: Education / 13:09 – 13:11: Unit 1 Parking. Furthermore, SBWCC investigator reviewed security camera footage and observed Hopkins and Offender #1 speaking multiple times after (civilian) was turned away from the POE. Hopkins further stated during the interview that she was unaware of what was going on or who was involved. During the interview, I asked where she was from, and she replied she was from Washington. I then asked if she was in county jail with the other individual involved and she replied, "Erika?", which is one of the other suspected individuals in this situation.

Policy 318.02.01.001 Section 4 states if an inmate conspires with or assists another inmate in attempting, planning, or committing a disciplinary offense, including withholding information from staff, the conspiring and/or assisting inmate is also considered a principal and can be charged with the same offense as the inmate committing or attempting to commit the offense, unless there is a specific disciplinary offense for an accomplice or assisting behavior."

Unauthorized Communication 1: Using the phone, mail, or other means to harass or intimidate anyone, or passing unauthorized messages that threaten the safety or security of the institution or using phone or mail for the purpose of bringing contraband into the institution, or conducting a business. End of Report.

APSI 2-5.

After reviewing the APSI and the above description about the illegal efforts Hopkins is willing to exert, exposing others to criminal liability, just to satisfy her addiction and indulge her self-centered and manipulative behaviors, this Court relinquished its jurisdiction on Hopkins on June 7, 2023, and did so without having a hearing. Retained Jurisdiction Disposition 1-3. The Court exercised its discretion and relinquished its jurisdiction without having a hearing, which this Court is allowed to do. *Id.*

On September 18, 2023, Hopkins, through counsel, chose to file a "Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support" (I.C.R.

35(b) Motion).

Hopkins, through counsel, states: “The pleading supports a request to modify Autumn Marie Hopkins’ sentence to order a new period of retained jurisdiction or in the alternative, to modify the sentence to a fixed period of 1 year, to be followed by an indeterminate period of 3 years.” I.C.R. 35(b) Motion 3. Counsel for Hopkins claims:

The basis for such argument consists of the facts that defendant is now on mental health medication that is now properly working and that she would currently be able to successfully complete programming on a period of retained jurisdiction based on that medication. Further, the direct negative impact an imposed sentence of the current nature places upon the defendant and her to access programming is another basis for the argument to grant this plea for leniency.

Id. at 2. Counsel for Hopkins claims, “Additional evidence will likely include records from IDOC showing her current mental health treatment and medication as well as testimony from the defendant.” *Id.* at 3. Counsel for Hopkins requested a hearing before the Court on her I.C.R. 35(b) Motion. *Id.*

This Court finds Hopkins’ I.C.R. 35(b) motion must be denied without a hearing for the following reasons.

II. ANALYSIS.

A. HOPKINS’ I.C.R. 35 MOTION MUST BE DENIED BECAUSE HOPKINS HAS STATED NO 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. Copenhaver*, 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).

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.2nd 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, Hopkins has not set forth any relevant evidence that could be adduced at hearing on an I.C.R. 35 motion. The Court cannot be required to guess at what relevant evidence Hopkins could have presented at a hearing in support of her Rule 35 Motion. Because Hopkins has completely failed to give any indication of any relevant

facts which would support his claims, her Rule 35 Motion must be denied due to that failure alone. Neither Hopkins' desire to have another period of retained jurisdiction imposed, or, a reduction in her sentence, is not supported by any relevant, admissible, new evidence.

Without presenting any new explanation as to why this Court was incorrect in relinquishing its jurisdiction over Hopkins on June 7, 2023, and without any presenting any new evidence, this Court has absolutely nothing upon which to base any I.C.R. 35(b) relief, let alone the specific relief of a subsequent retained jurisdiction or a reduction in her sentence.

Several 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). 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. Just as in *Campbell and Huffman*, Hopkins' request for a subsequent retained jurisdiction or reduction in her sentence is not based on any "new" evidence. Most importantly, the argument or request for concurrent sentences is not related to any of the *Toohill* factors. Essentially, Hopkins is simply arguing the Court to reconsider its decision, without any new evidence or even new argument.

Another case discussing whether the evidence must be "new" is *State v. Smith*, 161 Idaho 162, 384 P.3d 409 (Ct. App. 2016), in which 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. (bold added). This Court specifically finds that Hopkins' I.C.R. 35(b) motion presents no new information, and no new relevant information. Accordingly, under *Smith*, Hopkins' I.C.R. 35(b) motion is frivolous. This Court finds that no reasonable person with adequate means would bring such an I.C.R. 35(b) motion before the district court at his or her own expense. Hopkins' doing so is not reasonable.

The Idaho Court of Appeals concluded in *Smith*:

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. Hopkins has presented this Court with no new evidence. That failure alone is reason for this Court to deny Hopkins' I.C.R. 35(b) Motion without holding a hearing.

Hopkins' I.C.R. 35 Motion does provide this Court with at least some inkling of a claim, but providing no evidence...that she is "now on mental health medication that is now properly working and that she would currently be able to successfully complete programming on a period of retained jurisdiction based on that medication." I.C.R. 35(b) Motion 2. That is simply a claim being made by Hopkins' attorney. There is no affidavit of Hopkins as to what medication she is taking, when it started, or how it might be benefitting her. There are no medical records from Idaho Department of Correction showing what medications are being provided, and when those medications started.

But even if there were an affidavit of Hopkins or medical records from IDOC, there would be evidence before this Court, but no **relevant** evidence. This Court has presided over a Mental Health Court in Kootenai County for over 19 years. This Court knows of no medication that would suddenly stop a person from manipulating an acquaintance to come to prison in an effort to smuggle her narcotics. Such a drug does not exist. This was a planned and calculated which occurred over a period of time. There was nothing spontaneous about this event. This was a calculated effort by Hopkins, involving another individual (and likely costing that individual his freedom), orchestrated by Hopkins. No pill

can fix that. There is no medication for pure stupidity.

As set forth above, Hopkins other “basis” is: “Further, the direct negative impact an imposed sentence of the current nature places upon the defendant and her to access programming is another basis for the argument to grant this plea for leniency.” *Id.* Again, this is only a “claim” by Hopkins attorney. It is not any evidence, it is simply argument, a baseless one at that. Such argument is nothing more than a throw away sentence which tells this Court absolutely nothing. The sentence has become *de rigueur* in the local legal defense community, especially the Kootenai County Public Defender’s Office and with conflict public defenders. As pointed out by this Court on July 11, 2023, in *State v. Mitch Michael Curtis, Jr.*, Kootenai County Case No. CRF 2014 18896, where the defendant Curtis in that case was represented by Jonathan Williams, the same deputy public defender representing Hopkins (referring back to a case decided on June 26, 2023, in *State v. Alyssa Duncan*, Kootenai County Case No. CR28-23-3250, where the defendant Duncan was represented by yet a different deputy public defender):

Duncan’s counsel [a different public defender than Jonathan Williams] writes, “The basis for such argument consist of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his [her] future.’ I.C.R. 35(b) Mot. 2. That phrase tells the Court not one thing. Such phrase is not any new evidence at all. It is really a throw away line that is currently being used in most I.C.R. 35(b) Motions, whether from the Kootenai County Public Defender’s Office or from other counsel. As an example, this Court in *State v. Brandon Louis Rice*, CR28-21-13988, in this Court’s Memorandum Decision and Order Denying I.C.R. 35 Motion and Notice of Right to Appeal, filed in that case on June 12, 2023, this Court noted that defense counsel in that case gave the argument, “The basis for this Motion consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future.” Mem. Decision and Order 3. The attorney quoted in that decision who wrote essentially verbatim sentence, was not from the Kootenai County Public Defender’s Office.

Duncan, Mem. Decision and Order 2-4. The “direct and collateral negative impact” argument has been a worn out phrase used in nearly every I.C.R. 35(b) motion filed

before this Court for quite some time. While not only thread-bare, the argument comprises no new evidence, which is what is needed by Hopkins at this I.C.R. 35 juncture. Hopkins has provided no new evidence.

B. HOPKINS' I.C.R. 35 MOTION MUST BE DENIED ON THE MERITS (OR LACK THEREOF).

At Hopkins' sentencing on March 27, 2023, this Court utilized a presentence investigation report (PSI) filed on March 20, 2023. Hopkins was given an opportunity to make corrections on that document, and made no corrections. The PSI shows Hopkins and another, on two occasions, sold methamphetamine to a confidential information working for the North Idaho Violent Crimes Task Force. PSI 1. Hopkins was evaluated as being a "high" risk to reoffend, being assessed at a 37 through the Level of Service Inventory. *Id.* at 2. Hopkins drug of choice is Fentanyl. *Id.* at 5. She has been using Fentanyl for about five years, and just before going into custody on this Court's bench warrant in December 2022, was using about 30 Fentanyl tablets per day. *Id.* The presentence investigator concludes with: "The defendant's situation is unstable with no foundation to rehabilitate from. Her family and significant other relationships appear to be problematic and unsupportive." *Id.* at 10. Still this Court gave Hopkins the opportunity of a retained jurisdiction. Within a few weeks, Hopkins squandered that opportunity in a more spectacular way than this Court has ever witnessed any other individual squander their rehabilitative opportunity in the past nearly twenty-two years.

Hopkins made the choice to become addicted to a deadly drug, Fentanyl. Hopkins made the choice to sell methamphetamine on at least two occasions, while in the company of her significant other. More recently, Hopkins made the choice and was able to persuade another male acquaintance, to come all the way to South Boise Women's Correctional Center, to provide her with drugs. The Court is left with no rehabilitative

hope for Hopkins.

Finally, Hopkins transgressions while at South Boise Women's Correctional Center are so extreme, her decisions and actions must be looked at from the institutions' perspective. The fundamental purpose of a period of jurisdictional review is to rehabilitate in a safe setting where the inmate has the opportunity to focus on themselves and learn essential skills for their own recovery. Best case, Hopkins was going to use all these drugs smuggled to her for her own personal use, and not share, barter or sell any of the drugs. In that best case, Hopkins cannot begin to rehabilitate when she is actively using. Worst case, Hopkins fully intended to share, barter or sell some of these drugs to other inmates, ruining their opportunity at rehabilitation. Given the fact that the underlying crime is selling drugs on two occasions to a confidential informant, there is no reason for this Court to believe that the worst case scenario was averted by some alert observations and good decisions made by IDOC personnel.

The Court exercises its discretion and decides Hopkins' I.C.R. 35(b) motion without a hearing. This Court finds absolutely no new evidence and no relevant evidence has been presented by counsel for Hopkins in support of her I.C.R. 35(b) Motion.

Hopkins' request for this Court to essentially reconsider its earlier decision without any new evidence or argument is unavailing. The Idaho Court of Appeals found a similar argument unavailing. In *State v. Anderson*, 111 Idaho 121, 721 P.2d 221 (Ct. App. 1986), Anderson filed an I.C.R. 35(b) motion in which he did not argue the severity of the sentence when imposed, but rather argued prison presented a "lack of rehabilitation programs, overcrowding and violence and his severe pain and discomfort due to the lack of proper medical treatment in prison as reasons to reduce his sentence." 111 Idaho at 123, 721 P.2d at 223. In affirming the district court's denial of Anderson's I.C.R. 35(b) Motion without a hearing, the Idaho Court of Appeals held:

The record shows that the district court considered the information. Even if we assume that the statements, concerning Anderson's health difficulties, good conduct and prison overcrowding and violence, contained in the motion are true, we cannot say that the district judge abused his discretion in determining that they were insufficient to overcome the original reasons for the sentence imposed. Those reasons included the nature of the crime, "a history of criminal activity," with convictions for "lots of prior felonies and prior offenses." When he sentenced Anderson, the district judge made it clear that he had little expectation Anderson would ever be rehabilitated. The judge was guided more by Anderson's "past conduct" than by "promises of future behavior." Although rehabilitation and health difficulties may be factors to weigh in considering a motion for reduction of sentence, they are not necessarily controlling. See *State v. Rundle*, 107 Idaho 936, 694 P.2d 400 (Ct.App.1984). Other factors include deterrence and protection of society. *State v. Toohill*, supra.

Having reviewed all the information available, we conclude that the district court did not abuse its discretion in failing to exercise leniency based upon information contained in the motion without conducting a hearing. Accordingly, the order denying the Rule 35 motion is affirmed.

Id. This Court specifically finds that either a subsequent period of retained jurisdiction or reducing Hopkins' sentence, 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). In *Toohill*, the Idaho Court of Appeals set forth the factors a Court should consider in imposing a sentence: "(1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment."

Id. There is nothing about Hopkins' decisions over the past several years, **and most importantly her decisions made while in prison**, that would cause the Court to think for one second that either a subsequent period of retained jurisdiction or reducing Hopkins' sentence is warranted. Either requested relief would be anathema with this Court's paramount duty to protect the public.

III. ORDER.

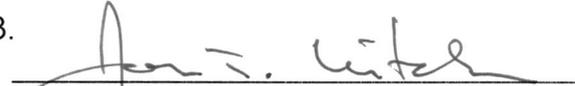
IT IS HEREBY ORDERED that defendant **AUTUMN MARIE HOPKINS'** I.C.R. 35(b) motion is **DENIED** for the reasons set forth above: Hopkins has submitted no new evidence, Hopkins' motion is devoid of any merit and it is frivolous.

NOTICE OF RIGHT TO APPEAL

YOU, AUTUMN MARIE HOPKINS, 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 18th day of September, 2023.


John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of September, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

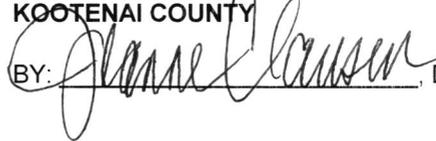
Prosecuting Attorney – Stan Mortensen *rep. icourts.ecg.gov* Idaho Department of Correction

Defense Attorney – Jonathan Williams *pa fax ecg.gov* Records Division (certified copy)

Fax: ~~(208) 327-7445~~ *centralrecords@idoc.idaho.gov*

AUTUMN MARIE HOPKINS
IDOC # 145755

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy