STATE OF IDAHO)
County of KOOTENAI) ss
FILED 3/13/2023
AT 5:00 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.
TRE COLTON GROENE
DOB: 07/29/2002
SSN: XXX-XX-1256
IDOC: 140088
Defendant.

Case No. **CR28-21-0591**
CR28-22-19744

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTIONS FOR MODIFICATION OF SENTENCE PURSUANT TO I.C.R. 35(b), AND NOTICE OF RIGHT TO APPEAL

On February 15, 2023, in Kootenai County Case CR28-21-0491, before the Honorable John T. Mitchell, District Judge, TRE COLTON GROENE (Groene), appeared for a probation violation admit/deny hearing and for arraignment in CR28-22-19744. Also appearing was Tristan Poorman, Deputy Prosecuting Attorney for Kootenai County, Idaho and Groene's lawyer, Jonathan Williams. At that hearing, in CR28-21-0591, Groene admitted violating his probation as alleged in the Report of Violation – Probation dated November 29, 2022, filed on December 12, 2022, as amended by counsel for plaintiff at that February 15, 2023, hearing (to allege that Groene committed new misdemeanor crimes of stalking and assault). In CR28-22-19744, Groene pled guilty to the misdemeanor crimes of stalking and assault. At the conclusion of that hearing, in CR28-21-0591, this Court imposed Groene's sentence as follows:

> **CR28-21-0591 - COUNT III - AGGRAVATED ASSAULT, (a felony), I. C. 18-905, committed on January 10, 2021** – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of THREE (3) years, for a total term not to exceed FIVE (5) years.

CR28-21-0591 Probation Violation Disposition 1. The Court imposed that sentence and did not retain jurisdiction. *Id.* at 1-2. [That sentence was initially imposed on June 23, 2021, at which time this Court sent Groene on a period of retained jurisdiction. Following that period of retained jurisdiction, this Court placed Groene on probation on February 17, 2022.] In CR28-22-19744, the Court imposed 90 days local jail time for the misdemeanor

crime of assault, imposed 365 days local jail time for the misdemeanor crime of stalking, ran both sentences consecutive, gave credit for time served of 82 days on each of those two sentences, leaving Groene to serve 291 days local jail time, and that remaining 291 days was imposed consecutive to his prison sentence in CR28-21-0591.

On February 3, 2023, Groene, 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. That motion also contained briefing or a memorandum on behalf of Groene. In that motion, counsel for Groene stated his "motion is made as a plea for leniency." Mot. for Modification of Sentence 1. Counsel for Groene wrote under the heading "Additional Evidence for Consideration & Request for Hearing" :

> Mr. Groene has prepared the following statement in support of this request:
> Your Honor,
> I would like to ask you for a rule 35 and either give me a rider or cut down some of my county sentence to half time or at least run my county time concurrent with my prison sentence. I am asking this because I have a child being born in July and I would love to make it home to my child as soon as possible. I recognize I have made some terrible decisions but if I could have a rider and then get my mental health under control I feel like that would be the most beneficial thing for me so I don't end up reoffending. If you aren't willing to give me the rule 35 your Honor and restructure my sentence, will you consider granting me work release? I have a full time job at Air Tech Mechanical. I would like to get to work so I can still pay bills while I'm serving county time and so I can also support my child financially while I am here. Because of the prison sentence, I'm not even allowed to be an inmate worker.
> Thank you for your time.

Id. at 3. While the above passage is under the heading "Additional Evidence for Consideration & Request for Hearing", such is not evidence. The above passage is nothing more than Groene stating the relief he is requesting. The basis for relief, according to Groene's attorney, is 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." *Id.* at 2. That sentence, likewise is not evidence. The only "evidence" would be a job waiting for Groene and a child on the way. A review of the minutes of the February 15, 2023, probation violation hearing, shows the fact of a child on the way was mentioned by both Groene and his attorney, Jonathan Williams. While the minutes do not indicate a potential job was discussed, Jonathan Williams made the claim that Groene was instead going back to school at North Idaho College. Whether Groene has a job waiting for him, or is going back to school, or both, none of that would have

been at all relevant to the Court's decision to impose Groene's sentence, and is not relevant to this Court's decision on Groene's I.C.R. 35 motion. The requests to be an inmate worker or have work release are impossible outcomes given the imposition of Groene's sentence.

Thus, counsel for Groene has not stated any new evidence that would be presented to support Groene's I.C.R. 35 motion.

Finally, in Groene's I.C.R. 35 Motions, counsel for Groene requested a hearing on Groene's I.C.R. 35 Motions. Mot. for Modification of Sentence 3. On March 9, 2023, Groene's attorney filed a Notice of Hearing, scheduling oral argument on Groene's I.C.R. 35 Motion for April 4, 2023.

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). 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 Groene's I.C.R. 35 motion. The Court has also re-reviewed the minutes of the entire February 15, 2023, probation violation hearing. The court has re-reviewed the pre-sentence report dated and filed in this case on June 16, 2021. The court has re-reviewed the Addendum to Presentence Report filed on January 31, 2022, regarding Groene's retained jurisdiction, which was imposed at sentencing. That report shows eleven disciplinary issues. Groene has proven 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 Groene consistently commits crimes which have devastating effect on his victims and that Groene poses an incredible risk to his victims and to the public. The crime of Aggravated Assault which Groene

committed on January 10, 2021, is a violent crime. The new crimes Groene committed on November 27, 2022, while on felony probation, are violent crimes. Groene has demonstrated he cannot keep from exercising physical control over others and an aura of superiority over others, especially females.

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, Groene has not set forth any relevant evidence that could be adduced at hearing on his I.C.R. 35 motion. The Court cannot be required to guess at what relevant evidence Groene might present at a hearing in support of his Rule 35 Motion. Because Groene has completely failed to give any indication of any relevant facts which would support his claims in his Rule 35 Motion, that motion must be denied due to that failure alone.

There is an additional reason to deny Groene's Rule 35 Motion without a hearing...the relief he seeks. As set forth above, counsel for Groene includes a "statement" from Groene, wherein he requests: "either give me a rider or cut down some

of my county sentence to half time or at least run my county time concurrent with my prison sentence", and "will you consider granting me work release?"

Mot. for Modification of Sentence 3. This Court will address each of Groene's requests.

Groene seeks a reduction in his "county sentence" or to run that "concurrent", without even making the claim that the sentences imposed were in any way unreasonable. *Id.* Additionally, Groene fails to mention what Groene feels a more appropriate sentence might be. Neither stating how much of a reduction he desires, nor why the sentence imposed was unreasonable, Groene is simply asking this court to guess. This Court specifically finds that reducing any of Groene'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). Groene's past crime, his present crimes, his performance on felony probation, all set forth above, are testament to that incontrovertible fact.

Groene also seeks a "rider" or a retained jurisdiction. Mot. for Modification of Sentence 3. This also flies in the face of this Court's paramount obligation to protect the public via its sentencing decisions. For Groene to commit new additional crimes of violence while on felony probation for a very violent crime in CR28-21-0591, after having previously completed a retained jurisdiction in CR28-21-0591 (and performing poorly on that period of retained jurisdiction), utilizing yet another retained jurisdiction defies logic. Groene has proven he cannot adhere his conduct to societies laws while on probation, or even while in prison on his retained jurisdiction. This Court finds that a second period of retained jurisdiction would not only be antithetical to this Court's duty to protect the public, it would severely depreciate the seriousness of Groene's old felony violent offense and his new misdemeanor violent offenses. Another period of retained jurisdiction would not deter Groene or others similarly situated from committing similar crimes in the future. Another period of retained jurisdiction would not in any way sufficiently punish Groene for these offenses. Groene has proven to this Court his undeniable inability to be rehabilitated. None of the *Toohill* factors ("(1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment") would be met by such a preposterous outcome of probation. 103 Idaho at 568, 650 P.2d at 710.

The felony sentence imposed by this Court on Groene on June 23, 2021, the decision to impose that sentence on February 15, 2023, and the misdemeanor sentences

imposed by this Court on Groene on February 15, 2023, were appropriate sentences and appropriate decisions given Groene' social and criminal history, and the fact that many of his crimes all of the instant offenses involve violence and human victims. Any lesser sentence or different decision would depreciate the seriousness of Groene's instant crimes. This Court concludes that the sentences imposed were and are necessary for the protection of society, the protection of the public from Groene, and the deterrence of Groene and others. Groene's criminality is getting worse, not better. There was really nothing for this Court to do but impose Groene's reasonable felony prison sentence on February 15, 2023, and impose that sentence consecutive to the local jail time on his two misdemeanor sentences in the newer case. Nothing at all has been presented by Groene in his I.C.R. 35 motion to change that fact.

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

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

IT IS FURTHER ORDERED the hearing scheduled for April 4, 2023, is **VACATED.**

NOTICE OF RIGHT TO APPEAL

YOU, TRE COLTON GROENE, 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 13th day of March, 2023.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of March, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:
Defense Attorney – Jay Logsdon/Jonathan Williams
Kootenai Co. Pros. Attorney
TRE COLTON GROENE
IDOC NO. 140088
centralrecords@idoc.idaho.gov

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: Jeanne Clausen, Deputy