



On April 3, 2023, Braunschweig, through his attorney, Steve Frampton, in both cases, timely filed a Motion for Modification to Reduce Sentence Pursuant to I.C.R. 35. In that motion, counsel for Braunschweig's attorney stated his "motion is made on the grounds that the sentence(s) imposed is unreasonably harsh in light of the sentencing factors set forth in I.C. § 19-2521 and the objectives of sentencing: To protect society, deterrence, rehabilitation and retribution." Mot. to Reduce Sentence 1. No analysis is given to support this conclusory statement of counsel. Counsel for Braunschweig then wrote, "Mr. Baunschweig [sic] had a plausible probation plan and a bed date available but the Good Samaritan Rehabilitation representative had a family emergency on the disposition date and was not able to attend the hearing." *Id.* At the March 23, 2023, hearing, counsel for Braunschweig made no motion to continue the hearing. Counsel for Braunschweig told the Court that his client had a bed date available at Good Samaritan. As a result, what counsel for Braunschweig sets forth in his I.C.R. Motion is not only not evidence, more importantly, it is not **new evidence**, as it is simply regurgitation of the same argument made to the Court on March 23, 2023. Counsel for Braunschweig then writes: "Mr. Braunschweig requests to have his LSI reviewed by probation to determine if he qualifies for Drug Court, as his prior LSI score was too low. (LSI 12)." *Id.* at 2. This also is not evidence, and it is not new evidence. It is a request be defense counsel to go out and try to create evidence. Finally, counsel for Braunschweig writes: "A Memorandum of Points and Authorities is forthcoming." *Id.* That is the entirety of Braunschweig's I.C.R. 35 Motion. None of this is evidence. Nor does counsel for Braunschweig ever clearly state what relief he is requesting. Counsel for Braunschweig requests "an Order to Reduce Sentence" (*Id.* at 1), but makes no suggestion as to what an appropriate sentence might be, and his claim for "a bed date with Good Samaritan" (*Id.* at 1-2) would not support a request to reduce sentences, but instead would only be used to support a request for probation rather than imposition of sentences. Counsel for Braunschweig makes no such request for relief of probation in his I.C.R. 35 Motion.

Thus, counsel for Braunschweig has not stated what relief his client seeks in the I.C.R. Motion, and he has not set forth any new evidence that would be presented to support that I.C.R. 35 motion.

Finally, in Braunschweig's I.C.R. 35 Motions, counsel for Braunschweig does not request a hearing on that I.C.R. 35 Motions. There is no magic, no saving of this motion

by counsel's adding the tag line: "A Memorandum of Points and Authorities is forthcoming." *Id.* at 2.

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) (*citing State v. Findeisen*, 119 Idaho 903, 811 P.2d 513 (Ct. App. 1991)). The Court has reviewed Braunschweig's I.C.R. 35 motion. The Court has also re-reviewed the minutes of the entire March 23, 2023, probation violation hearing. Two probation officers testified about the lack of compliance, deception and defiant behavior which Braunschweig demonstrated in the four months he was on probation, the time between completing his retained jurisdiction, and the time an agent's warrant was used based on those probation violations. His entrenched drug use was impacting others (Alecia Holt, whom defendant was prohibited from having contact, and Alecia's daughter), and posed a danger to the community. Both probation officers testified Braunschweig was not a good candidate for probation and recommended imposition of his prison sentences. The Court has re-reviewed the Addendum to Presentence Report filed on September 2, 2022. Braunschweig did a decent retained jurisdiction, immediately following which, he proved he was not interested in following the rules of probation. Braunschweig 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 Braunschweig 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, Braunschweig 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 Braunschweig might present at a hearing in support of his Rule 35 Motion. Because Braunschweig 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 Braunschweig’s Rule 35 Motion without a hearing...the relief he seeks. As set forth above, counsel for Braunschweig does not make clear what relief his client seeks. This Court cannot be made to guess on that matter. Either a reduction in sentence or probation are not supported by the evidence that existed at the March 23, 2023, disposition hearing, and absolutely no new evidence has been presented by counsel for Braunschweig in his I.C.R. 35 Motion.

Braunschweig fails to give any reason why the sentences imposed were in any way unreasonable. Additionally, Braunschweig fails to mention what he feels a more appropriate sentence might be. Neither stating how much of a reduction he desires, nor

why the sentence imposed was unreasonable, Braunschweig is simply asking this court to guess. This Court specifically finds that reducing either of Braunschweig'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). Braunschweig's past crime, his present crimes, his performance on felony probation, all set forth above, are testament to that incontrovertible fact.

Braunschweig may also be seeking probation. This also flies in the face of this Court's paramount obligation to protect the public via its sentencing decisions. For Braunschweig to perform so horribly on probation following his period of retained jurisdiction, and for him to adversely impact others while on probation, Braunschweig has proven he cannot adhere his conduct to our laws while on probation. Another chance at probation would not only be antithetical to this Court's duty to protect the public, it would severely depreciate the seriousness of his crimes. Another period of probation would not deter Braunschweig or others similarly situated from committing similar crimes or acts in violation of probation in the future. Another period of probation would not in any way sufficiently punish Braunschweig for the decisions he made while on probation. Braunschweig 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 an additional period of probation. 103 Idaho at 568, 650 P.2d at 710.

The felony sentences imposed by this Court on Braunschweig on February 14, 2022, and the decision to impose those sentences on March 23, 2023, were appropriate sentencing decisions and appropriate disposition decisions given Braunschweig's social and criminal history, and the fact that one of his crimes and all the decisions he made on probation adversely impact other people. Any lesser sentence or different decision would depreciate the seriousness of Braunschweig'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 Braunschweig, and the deterrence of Braunschweig and others. There was really nothing for this Court to do but impose Braunschweig's reasonable felony prison sentences on March 23, 2023. Absolutely no evidence has been presented by Braunschweig in support of his I.C.R. 35 motion, which would change that fact.

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

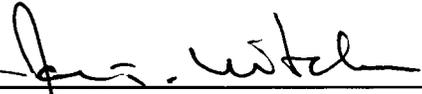
**IT IS THEREFORE ORDERED** that Braunschweig's I.C.R. 35 Motion in each of these two cases is hereby **DENIED**.

**NOTICE OF RIGHT TO APPEAL**

**YOU, JACOB ARTHUR BRAUNSCHWEIG, 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 6<sup>th</sup> day of April, 2023.

  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the 7<sup>th</sup> day of April, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

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CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY  
  
BY: Jeanne Clausen, Deputy