

FILED _____

AT _____ O'clock ____ 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.)
)
 CHADLEN DEWAYNE SMITH,)
)
)
 Defendant.)
)
 _____)

Case No. **CRF 2009 24152**

Amended
**MEMORANDUM DECISION AND
ORDER ON PRO SE MOTIONS**

On September 1, 2010, this Court sentenced Chadlen Dewayne Smith (Smith) on the felony crime Injury to Child, I.C. § 18-1508, to a sentence of seven years fixed (determinate) followed by three years indeterminate, for a total unified sentence of ten years. On January 19, 2011, following Smith’s unsatisfactory performance on a retained jurisdiction, this Court imposed sentence upon Smith, modifying the sentence to three years fixed followed by seven years indeterminate, and relinquished its jurisdiction. As of that date, Smith was given credit for 355 days of time served on his sentence. Smith will serve the remainder of his three years fixed in prison, following which Smith will be parole eligible during the indeterminate seven years. At all times in these proceedings, Smith was represented by attorney Scott R. Staab.

On July 18, 2011, Smith, *pro se*, filed the following documents with the following

captions: 1) Motion for Correction or Reduction of Sentence, ICR 35; 2) Motion and Affidavit in Support for Appointment of Counsel; Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner); and 4) Motion for Hearing (on ICR 35 Motion). All these documents are on forms available in prison, and were filled out by Smith. While Smith certifies a copy of these documents was sent by Smith to the Kootenai County Prosecuting Attorney, no copy is shown by Smith being sent to his attorney Scott R. Staab.

The problem with these motions is that Scott R. Staab has not withdrawn from representing Smith. I.C.R. 44.1. Nor has Smith made any request that Staab be discharged from representing Smith. Smith has a right to counsel and he has counsel of record. If Smith wishes to waive that right to counsel and represent himself, he needs to make that clear to this Court. *State v. Peck*, 130 Idaho 711, 946 P.2d 1351 (Ct. App.,1997). Smith has failed to do so.

Accordingly, none of Smith's documents filed with the Court are considered "filed" by this Court. This Court determines there are no issues presently before this Court as a result of these documents. If Smith's counsel of record wishes to file pleadings, or wishes to adopt what Smith has filed, at that time there would be an issue before the Court. If Smith makes clear his desire to waive his right to counsel, then at that time there would be an issue before the Court.

Additionally, Smith requested partial payment of fees for his I.C.R. 35 Motion. The preprinted prison form Smith used is more commonly used for appeals. There is no fee involved in filing an I.C.R. 35 Motion.

However, Smith faces a larger problem than using the wrong form and not having to pay filing fees. Idaho Criminal Rule 35 requires any motion for reduction of sentence to be

filed "within 120 days after the court releases retained jurisdiction." I.C.R. 35. This Court relinquished jurisdiction on January 19, 2011. The last day for Smith to file his I.C.R. 35 motion would have been May 19, 2011. Smith filed his I.C.R. 35 Motion *pro se* on July 18, 2011, two months after the last date he could have filed such motion.

IT IS HEREBY ORDERED THAT Smith's *pro se* documents filed July 18, 2011, are of no legal effect and no issue is under advisement based on those filings.

DATED this 20th day of July, 2011

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Scott R. Staab
Prosecuting Attorney -

Chadlen Dewayne Smith
IDOC No. 97703
ICC
P. O. Box 70010
Boise, ID 83707

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____
Deputy