

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 7/21/10

AT 5:00 O'clock P. M

CLERK, DISTRICT COURT

[Signature]
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.)
)
) QUINN STERLING WOLF)
)
)
)
)
)
) Defendant.)

Case No. **CRF 2009 17407**

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

(Leniency)

On February 9, 2010, Wolf, was sentenced as follows:

CONSPIRACY TO COMMIT POSSESSION OF A CONTROLLED
SUBSTANCE (MARIJUANA) WITH THE INTENT TO DELIVER, (a felony),
Idaho Code § 37-2732(a)(1)(B), 18-1701, committed on August 14, 2009 –
to the custody of the Idaho State Board of Correction for a fixed term of
ONE (1) year followed by an indeterminate term of FOUR (4) years, for a
total term not to exceed FIVE (5) years.
CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE
(MARIJUANA), (a felony), Idaho Code § 37-2732(a)(1)(B), 18-1701
committed on August 14, 2009 – to the custody of the Idaho State Board of
Correction for a fixed term of ONE (1) year followed by an indeterminate
term of FOUR (4) years, for a total term not to exceed FIVE (5) years.
THESE SENTENCES RUN CONCURRENT.

Wolf was sentenced to prison, a Community Work Center was recommended and "...as
much cognitive restructuring as possible.

On April 26, 2010, Wolf's attorney filed a Notice of Withdrawal. On July 20, 2010,
Wolf, pro se, filed a "Motion for Correction or Reduction of Sentence, ICR 35." Wolf
request is "I was hoping for 2 ½ years of my sentence your honor..." Motion for

Reduction or Correction of Sentence, ICR 35, p. 2. Presumably, Wolf requests a reduction in his sentence of that amount of time. Wolf bases this motion on: "This is my first felony, and feeling the sentence was steep." *Id.*

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, 2370 (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 no hearing was requested by Wolf, "[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 the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, the Court minutes and the pre-sentence report. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel and the Court's time.

A motion to reduce sentence is a motion for leniency. *State v. Strand*, 137 Idaho 457, 463, 50 P.3d 472, 478 (2002); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The decision to grant or deny leniency is left to the sound discretion of the court. *Id., Strand*; *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct.App. 1989)

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. *State v. Arambula*, 97 Idaho 627, 550 P.2d 130 (1976). Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly severe.

State v. Lopez, 106 Idaho 447, 680 P.2d 869 (Ct.App. 1984).

* * *

However, if the sentence is not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with his motion.

State v. Forde, 113 Idaho 21, 22, 740 P.2d 63 (Ct. App. 1987). See also *State v. Adams*, 137 Idaho 275, 278, 47 P.3d 778, 781 (Ct.App. 2002).

For a sentence to be considered "reasonable" at the time of sentencing the court must consider the objectives of sentencing: whether confinement is necessary to accomplish the objective of protection of society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to the case. *State v. Toolhill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct.App. 1982). This requires the court focus on "...the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct.App. 1982).

The sentence imposed on February 9, 2010, was and is an appropriate sentence given Wolf's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Wolf's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Wolf and others.

IT IS THEREFORE ORDERED that Wolf's I.C.R. 35 Motion is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, Wolf, 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, if any.

DATED this 21st day of July, 2010.


John T. Mitchell, District Judge

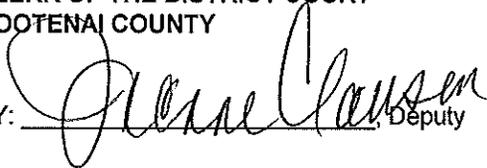
CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of July, 2010 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Rick Baughman via fax ✓
Prosecuting Attorney - Yule - #641

Idaho Department of Correction
Records Division (certified copy) ✓
Fax: (208) 327-7445 ✓

QUINN STERLING WOLF
IDOC # 95845
ISCI Unit 15B 62A
P. O. Box 161
Boise, ID 83707 ✓

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**
BY:  Deputy