

in Methamphetamine by Manufacturing, I.C. § 37-2732B(a)(4)(C), for a crime committed on August 21, 1999. That crime has a mandatory minimum fine of \$25,000.00. On April 21, 2000, Judge Judd signed an Order Staying Execution of Judgment and Sentence while the matter was appealed, and Anderson posted a \$30,000.00 bond. Anderson would have been better off serving his prison sentence, because on January 9, 2001, he committed the same exact offense: Trafficking in Methamphetamine by Manufacturing, and Kootenai County Case No. CRF 2001 768 was filed. On June 26, 2001, Anderson was sentenced in that case by Judge Judd to a five year fixed followed by two year indeterminate sentence, with the specific language: "This sentence to be served concurrently with the sentence imposed in CRF 1999 6950." Judgment and Sentence, p. 2. As required by statute, Judge Judd imposed the mandatory fine of \$25,000.00. The Judgment and Sentence in the new case was silent as to whether that fine was to run "concurrent" with the fine in CRF 1999 6950. *Id.*

These cases have never been consolidated. While the prison sentence in the second case was specified to run "concurrent" with the sentence imposed in the first case, no such specificity was set forth regarding the mandatory fine of \$25,000.00 in the second case. Since Judge Judd was silent on the fine, and the fines imposed in both cases were required by statute, this Court is not inclined to exercise its discretion (if it has discretion to do so under I.C. § 18-308) to modify the fine and a term which was not there in the first instance. Anderson has long since waived his right to challenge Judge Judd's decision. *Almada v. State*, 108 Idaho 221, 697 P.2d 1235 (Ct. App. 1985). It may well be that the Court lacks discretion to modify the fine as is being asked by the State and Anderson, as Idaho Code § 18-308 only applies when a person is convicted of two or more crimes before a sentence has been imposed on either. That is not the case here.

These are two separate crimes. The second being committed well after Anderson was sentenced on the first. The fine imposed in each case was required by statute. To do as requested by Anderson and the State would undermine the legislature's intent in mandating such fine.

ORDER

IT IS ORDERED that the Stipulation to Correct Concurrent Sentencing is **DENIED**.

DATED this 7th day of July, 2006.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of July, 2006 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

James R. Reiersen

R.D. Watson

By _____
Merri Thome, Secretary