

FILED 11/3/19

AT 12:45 o'clock P.M

CLERK, DISTRICT COURT

Janet Clausen
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.)
)
)
) **BRANDON MICHAEL THOMPSON,**)
)
) DOB: 03/09/1995)
) SSN: XXX-XX-8790)
) IDOC: 125526)
))
) *Defendant.*)

Case No. **CRF 2017 6466**

**ORDER DENYING "MOTION TO
RECONSIDER DENIAL OF RULE 35"**

On December 4, 2018, this Court entered and filed its Memorandum Decision and Order Denying I.C.R. 36 Motion and Notice of Right to Appeal. On December 18, 2018, counsel for defendant Brandon Michael Thompson (Thompson) filed a "Motion to Reconsider Denial of Rule 35 Under Seal." The basis for that motion is:

This motion is made on the grounds that the Defendant was ordered to obtain a non-deceptive polygraph report for his Jurisdictional Review Hearing on September 27, 2018. The Defendant complied with the Court by filing a copy of the non-deceptive polygraph report under seal on September 27, 2018 which showed that he was honest with the polygrapher. *Please see attached the non-deceptive polygraph report dated 9/25/18. Also, please see attached Coeur d'Alene School District records to assist in understanding Mr. Thompson's communication difficulties. Counsel anticipates receiving additional school records.*

Motion to Reconsider Denial of Rule 35 Under Seal, 1--2. Thompson's Motion to Reconsider Denial of Rule 35 Under Seal must be denied for three reasons.

The first reason is a procedural reason. As this Court has previously held in *State v. Hollis*, Kootenai Co. Case No. CRF 2017 13474, CRF 2017 21259, December 18, 2018,

Memorandum Decision and Order Denying Reconsideration of this Court's Memorandum Decision and Order Denying I.C.R. 35 Motion and Notice of Appeal, 3, there has been no rule basis cited by Thompson's attorney in the Motion to Reconsider Denial of Rule 35. This Court specifically finds that there is no Idaho Rule of Criminal Procedure which would allow for such a Motion to Reconsider of a denial of a Motion to Reconsider Pursuant to I.C.R. 35. There is no Idaho Criminal Rule which is a corollary to Idaho Rule of Civil Procedure 59 or 60. There is no "Motion to Reconsider" in the Idaho Criminal Rules other than a motion to reconsider pursuant to I.C.R. 35. Thus, even if this were a Motion to Reconsider under I.C.R. 35, it would be a successive I.C.R. 35 Motion, which is prohibited. *State v. Heyrend*, 129 Idaho 568, 929 P.2d744 (Ct. App. 1996). Thus, this Court finds there is no legal basis, no procedural basis, for this Motion to Reconsider.

Second, the polygraph report filed on September 27, 2018, was considered by this Court when this Court denied Thompson's I.C.R. 35 Motion. This Court held:

At that [September 27, 2018, jurisdictional review] hearing, a polygraph report was presented to the Court. The Court made it clear that none of the three questions asked Thompson in the polygraph pertained to the issue of the victim's mother granting him permission to have sex with her fourteen-year-old daughter.

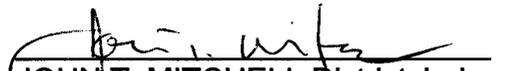
Mem. Decision and Order Den. I.C.R. 36 Mot. and Notice of Right to Appeal, 2. Thus, this Court has already considered on reconsideration what counsel for Thompson now wishes this court to consider on Thompson's motion to reconsider of denial of his motion to reconsider. The polygraph Thompson submitted at the September 27, 2018, hearing is the same as is attached to Thompson's Motion to Reconsider Denial of Rule 35. That polygraph does not in any way address the issues this Court told Thompson he would need to address if he ever wanted this Court to place him on probation.

Third, the fact that Thompson may have had communication difficulties would have

had no bearing on this Court's decision to send Thompson to prison following his period of retained jurisdiction and would have had no bearing on this Court's decision to deny Thompson's I.C.R. 35 motion. Any communication difficulty by Thompson was simply not relevant to either decision by this Court.

IT IS HEREBY ORDERED that BRANDON MICHAEL THOMPSON's Motion to Reconsider Denial of Rule 35 is DENIED.

DATED this 3rd day of January, 2019.

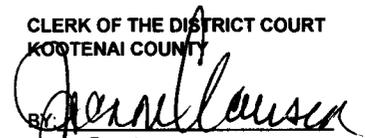

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of January, 2019 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Prosecuting Attorney – Barry McHugh *pd@icourts*
Defense Attorney – Anne C Taylor *@icgov.us*
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centralrecords@idoc.idaho.gov

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

Deputy