

sentence and significantly reduce the overall sentence, but specifically the fixed portion.” Mem. in Supp. of Mot. Recons., 2. Specifically, Supp requests, “a reduction in his sentence to five years fixed followed by fifteen years indeterminate.” *Id.* at 5. The reasons given in that memorandum for Supp’s requested reduction in sentence are as follows: a) Supp was found to be a “low risk” to re-offend, the court was not convinced about the low risk, and Idaho Code § 20-223(1) reads in part, “it is the intent of the legislature to focus prison space on those who commit the most serious offenses or who have the highest likelihood of offending in the future” (*Id.* at 3); b) Idaho Code § 18-1508, describes various ways one can commit lewd conduct with a minor, and since Supp did not commit genital to genital contact on his victim, and (somehow) oral to genital contact is less egregious and “[m]anual-genital contact is less severe than the other two and should be sentenced accordingly” (*Id.* at 4); c) for community protection concerns, if Supp were placed on parole, he would move to Louisiana away from his victim and his family (*Id.*); and d) since the mandatory minimum sentence for first degree murder is ten years to life (I.C. § 18-4004), a manual-genital lewd conduct case should not merit five more years than a first-degree murder conviction.” *Id.* at 5. Each of these will be addressed in that order.

A. Supp is assessed at a low-risk to reoffend.

It is true Supp is assessed as being a low-risk to reoffend. The Court took that into account at sentencing. The Court told Supp that, “I am convinced that because of the repetitive nature of your actions, from a punishment standpoint, but primarily a deterrent standpoint, you need this fixed prison sentence.” Sentencing, August 29, 2018, Tr. p. 26, ll. 14--16. Even though Supp was a low risk to reoffend

and even if he moved away from his victim, the Court made it clear part of the sentencing decision was protection and peace of mind of Supp's victim and her family:

[A]nd 15 years fixed will leave your victim not only at the age of majority at age 18, but totally independent at age 21. If she wants to when she's 21, and if your son and daughter-in-law want to when they're 15 years older than they are now, they can go to the parole commission and lobby for you to stay in prison or to get out. It's up to them. But I don't think your granddaughter should be burdened over the next 15 years trying to keep you in prison and trying to convince the parole commission to keep you in prison. I don't think your son and daughter-in-law should be burdened trying to convince the parole commission to keep you in prison to keep their granddaughter safe and keep others safe.

Id. p. 26, l. 20 -- p. 27, l. 8. Deterrence is both general and specific. Supp needs to be deterred, even though he is at low risk to reoffend. Supp was not assessed at "no-risk," nor could he be. But those similarly situated to Supp need to be deterred. Those who can somehow rationalize this type of conduct which is repetitive, painful to the victim (physically and emotionally), abuses the trust of the victim, grooming, predatory and aberrant, need to be deterred. A fifteen year fixed to life sentence is more likely to deter that than a retained jurisdiction with the possibility of probation, which is what Supp argued at sentencing. *Id.* p. 20, ll. 20--21. A period of retained jurisdiction would not even last as long as the period Supp sexually abused his granddaughter. Why would any other person such as Supp, simply make a cost-benefit analysis and try to get away with such conduct, knowing the consequences even if caught, were as slight as suggested by Supp?

B. Manual-genital contact is less egregious than oral-genital contact which is less egregious than genital-genital contact.

Counsel for Supp argues:

Next, Idaho Code § 18-1508 contains a range of conduct that constitutes lewd conduct. It lists genital-genital contact, oral-genital

contact, anal-genital contact and manual-genital contact etc. There is no question that there is a spectrum of egregiousness among these behaviors. It seems self-evident that a case involving genital-genital contact would be significantly worse than a case involving oral-genital contact. Genital-genital contact comes with the risk of pregnancy and sexually transmitted diseases where oral-genital contact would not. Manual-genital contact is less severe than the other two and should be sentenced accordingly.

Mem. in Supp. of Mot. Recons. 4.

The argument that different types of lewd conduct are better or worse than others is entirely lost on this Court, especially given the fact that Supp did this to his five to six year old victim granddaughter, Supp's contact with his granddaughter included by his own admission oral-genital contact, and the fact that Supp's conduct occurred many times over the course of an entire year. The argument regarding a risk of pregnancy is callous and completely inapt given the age of Supp's granddaughter. Counsel for Supp is simply wrong that oral-genital contact would not create a risk of sexually transmitted disease. Supp's argument also ignores the facts.

For purposes of this I.C.R. 35 Motion, Supp has retained different counsel. On October 5, 2018, this Court signed and entered an order releasing Supp's presentence report to new counsel. This Court is not certain new counsel has actually read Supp's presentence report. While Supp pled guilty to manual-genital contact of his victim granddaughter who was five to six years old (Information, 1), Supp himself confessed to oral-genital contact of that same victim who was five to six years old when this occurred. In his presentence report, Supp told the presentence investigator:

When asked how many times he believes he touched his granddaughter for sexual gratification, Mr. Supp said it was *too many times to count*. He said the touching involved manual and oral clitoral stimulation. He said he had her masturbate him on one occasion, but

she did not seem to like it. He said she kissed his penis a couple of times, but did not seem to like that either.

Presentence Report, 12 (*italic in original*). Supp also confessed that:

Regarding his sexual interaction with the victim, Ms. Supp reported he was sometimes responsible for caring for **** when she was an infant and toddler - to include diaper changing duties, baths, and showers. He said he *cleaned her vagina as a baby, but did not masturbate her*. He recalled when she was a bit older he once stood her on the countertop in the bathroom naked and gave her a *raspberry kiss* on her belly and on her *vagina*. As things progressed, Mr. Supp said he felt he opened up Pandora's box and could not seem to stop touching her; he said he was in denial as to *how addictive his lust for her had become*.

Id. (*italics in original*). For Supp to now argue that his sentence should be reduced because he only had manual to genital sexual contact with his six year old granddaughter is not supported by the facts. This case did not simply involve only manual-genital contact; Supp admits it involved oral-genital contact, as well. For Supp to argue a differentiation in genital to genital contact which did not occur, compared to manual to manual sexual contact for which he pled guilty and oral to genital contact for which he admitted, is simply incredulous. The charged manual-genital contact occurred on multiple occasions over the course of a year, but, what Supp admitted to in fact shows manual-genital and oral-genital contact occurring over a far longer period of time, since the time his victim was an infant. It is preposterous to argue that that the type of lewd conduct Supp engaged in (oral-genital and manual-genital) will not have just as devastating long-term consequences for his victim and her family were it genital to genital contact.

C. Paroling to Louisiana.

This Court has never been of the mind that moving a person who has created harm in this community to another community is a factor to be taken into account in sentencing. A short fixed sentence with parole to Louisiana does not

meet the criteria of punishment, deterrence or protection of the public.

D. Supp's sentence is more than the minimum sentence for first degree murder.

While Supp has not taken a life, he has rendered the life of his grandchild significantly compromised for the entire duration of her life. Supp has forever changed the lives of his son and daughter-in-law, the parents of the victim. Supp was infatuated with his victim granddaughter, and certainly seemed to remain so even at sentencing. This Court cannot envision a healthy relationship ever occurring between the victim and her grandfather. The Court recognized the far-reaching effects of Supp's actions upon his victim and her family when the Court stated at sentencing:

I hope that your and son [and] daughter-in-law and your victim can heal. And I think that anything less than 15 years fixed would hinder that healing rather than foster it. So, that's a big reason why it's 15 years fixed.

Tr. p. 29, ll. 14-17. There is no translation between repetitively sexually abusing your own granddaughter, and first degree murder. Equating one crime with another and achieving parity are not factors enumerated by the Idaho Supreme Court in *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (1982). The paramount factor in *Toohill* is "the good order and protection of society." There is no "good order" if the general public and Supp are not deterred. There is no "good order" if the victim and her family know that the person who caused so much harm to them and changed their lives so drastically, is out in the public. This is a punishment oriented sentencing decision. The Court made Supp and all present aware of that fact. Tr. p. 27, ll. 9-12. Punishment is one of the three other secondary factors enumerated by the Idaho Supreme Court in *Toohill*. 103 Idaho at 568, 650 P.2d at 710.

In his Motion to Reconsider Sentence, Supp requested a hearing. 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). Even though a hearing was requested, “[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. *Strand*, 137 Idaho at 463, 50 P.3d at 478. *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, 64 (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. Toohill*, 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 August 29, 2018, was and is an appropriate sentence given Supp's social history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Supp's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Supp and others.

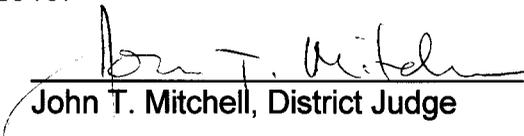
IT IS THEREFORE ORDERED that Supp's I.C.R. 35 Motion (Motion to Reconsider Sentence) is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, JEFFREY SAMUEL SUPP, 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 3rd day of January, 2019.


John T. Mitchell, District Judge

3rd **CERTIFICATE OF MAILING**

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

Defense Attorney – Charles C. Crafts
charles@boiseattorney.com ✓

Prosecuting Attorney – Jed Whitaker

JEFFREY SAMUEL SUPP
IDOC # 129052

*Kcpajcovase
Kc.gov.us*

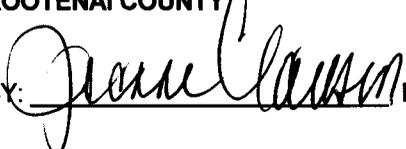
Idaho Department of Correction
Records Division

Fax: (208) 327-7445

~~(certified copy)~~

centralrecords@idoc.idaho.gov

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy