

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.)
)
RONALD STANLEY FAVINI)
)
)
Defendant.)
)
_____)

Case No. **CRF 2010 23351**

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

On June 1, 2011, following his finding of guilty at a jury trial, RONALD STANLEY FAVINI was sentenced as follows:

AGGRAVATED BATTERY, (a felony), Idaho Code § I. C. 18-903, 18-907, 19-2514, committed on NOVEMBER 20, 2010 – to the custody of the Idaho State Board of Correction for a fixed term of FIFTEEN (15) years followed by an indeterminate term of THIRTY-FIVE (35) years, for a total term not to exceed FIFTY (50) years. Includes sentencing enhancement for habitual offender.

On June 1, 2011, the Court sent Favini on a period of retained jurisdiction. The Court recommended to the Idaho Department of Correction that Favini needed extensive drug and alcohol treatment as well as mental health treatment. On May 9, 2012, Favini appeared for his retained jurisdictional review hearing. The Idaho Department of Correction issued a report (Addendum to Presentence Investigation) dated April 13, 2012, that recommended the Court relinquish jurisdiction due to Favini’s poor performance while in the custody of the IDOC while on the period of retained jurisdiction. Specifically, Favini

repeatedly was a disciplinary problem. According to the IDOC Addendum to Presentence Investigation:

He repeatedly challenged and threatened other offenders, creating chaos and some anxiety in his housing unit. Mr. Favini either failed or refused to demonstrate behavior that would suggest that he would be able to successfully follow the requirements of probation.

Addendum to Presentence Investigation, p. 5.

On May 9, 2012, this Court at the retained jurisdiction review hearing, relinquished the Court's jurisdiction on Favini, and sent Favini to prison. However, in doing so, the Court modified Favini's sentence to five years fixed followed by forty-five years indeterminate. On the record the court stated that the only reason for the modification was to get Favini into treatment and programming sooner rather than later, and to give Favini incentive to do well in that programming so that he might become parole eligible. In that regard, Favini has already achieved his "leniency" which he now requests in his I.C.R. 35 motion.

On August 9, 2012, Favini filed the instant I.C.R. 35 Motion requesting that the Court "...reconsider the Judgment and Sentence entered herein May 9, 2012." Motion for Reconsideration of Sentence Pursuant to I.C.R. 35. Favini bases this motion on "...a plea for leniency." *Id.* No other reasons were given by Favini as to why he brought this I.C.R. 35 Motion.

Favini requested a hearing, and noticed his motion for October 30, 2012. 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, 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. *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. 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 June 1, 2011, and later modified on May 9, 2012, was and is an appropriate sentence given Favini's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Favini's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Favini and others. The decision to relinquish jurisdiction following Favini's poor performance on a retained jurisdiction was appropriate. A decision allowing Favini probation would deprecate the seriousness of Favini's crime and his poor performance since committing that crime. A decision allowing Favini probation would utterly fail the requirement of protecting society and deterring others from committing similar crimes. The offense of Aggravated Battery, of which Favini was found guilty by a jury, was egregious. Favini pulled a knife on a man at a bar and swung the knife at the man, seriously injuring him. At the time of the November 20, 2011, aggravated battery, Favini was not to be in a bar as he was on probation for a DUI offense that occurred the year before, in June, 2010. Prior to this offense, Favini has a horrible criminal record. Favini has felony convictions in 1987 (burglary), 1998 (taking motor vehicle without owner's permission), 2002 (violation of a domestic violence court order), 2003 violation of a domestic violence court order) 2005 (violation of a domestic violence protection order and 2006 possession of a controlled substance). Favini has misdemeanor convictions in 1990 (liquor violations), 1998 (theft), 1999 (negligent driving), 2000 (4th degree domestic violence/assault), 2001 (violation of domestic violence order), 2001 (domestic violence/assault), 2002 (violation of court order on domestic violence conviction), 2002 (4th degree domestic violence/assault), and a DUI in 2010. liau, and

then, Favini chose to violate the Idaho Department of Corrections' rules while on his retained jurisdiction. Favini has repeatedly shown an inability to comply not only with society's laws, but also an inability to comply with direct court orders regarding numerous prior violent offenses. Subsequent to the offense at issue, Favini, when presented with an opportunity on the retained jurisdiction program, to prove he was a good candidate for probation, chose to violate the Idaho Department of Corrections' rules. Favini is not a good candidate for probation. Sentence had to be imposed.

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

NOTICE OF RIGHT TO APPEAL

YOU, RONALD STANLEY FAVINI, 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 29th day of January, 2013.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of January, 2013 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Christopher D. Schwartz
Prosecuting Attorney -

RONALD STANLEY FAVINI
IDOC # 100495

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy