

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.)

CHRISTOPHER JOHN BLAIR)

Defendant.)

Case No. **CRF 2011 14505**

**ORDER DENYING IN PART AND
 GRANTING IN PART I.C.R. 35
 MOTION AND NOTICE OF
 RIGHT TO APPEAL, (Conversion of
 Imposition of Prison Sentence to a
 Period of Retained Jurisdiction)**

On November 14, 2012, CHRISTOPHER JOHN BLAIR was sentenced as follows:

**SALE OF UNLAWFULLY POSSESSED BIGHORN SHEEP – (a
 felony), Idaho Code § 36-501(b)**, committed on November 7, 2010
 – to the custody of the Idaho State Board of Correction for a fixed
 term of ONE AND ONE HALF (1.5) years followed by an
 indeterminate term of TWO AND ONE HALF (2.5) years, for a
 total term not to exceed FOUR (4) years.

The Court imposed that sentence and sent Blair off to prison to serve that sentence. The reason the Court imposed sentence is the fact that Blair needed drug and alcohol treatment, yet was adamant that he would not take “government imposed treatment”.

On November 26, 2012, Blair timely filed the instant Motion for Reconsideration of Sentence Pursuant to I.C.R. 35 . Blair bases this motion on “...a plea for leniency.” Motion for Reconsideration, p. 1.

Blair requested a hearing. On January 29, 2013, a hearing was held and Blair participated and testified telephonically. It is the defendant’s burden to present any

additional evidence. *State v. Puga*, 114 Idaho 117, 118, 753 P.2d 1263, 1264 (Ct.App. 1987). At that hearing, Blair testified that he was at RDU, and only arrived there a couple of weeks ago. Blair testified he has received no programming at this time. Blair indicated that he was willing to now do “government imposed treatment”

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 November 14, 2012, was and is an appropriate sentence given Blair's social and criminal history and the crime(s) for which sentence was imposed. A lesser sentence would depreciate the seriousness of Blair's crimes. This

Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Blair and others.

However, the Court finds that due to Blair's willingness to enter into "government imposed treatment", protection of the public can best be served by retaining jurisdiction for up to one year from the present date.

IT IS THEREFORE ORDERED that Blair's I.C.R. 35 Motion is **DENIED** as far as a reduction in the overall sentence, but **GRANTED** in that a period of retained jurisdiction is now imposed.

IT IS FURTHER ORDERED that the court shall retain jurisdiction FOR UP TO THREE HUNDRED AND SIXTY FIVE (365) DAYS pursuant to **I.C. § 19-2601, AND THAT PERIOD BEGINS JANUARY 20, 2013.**

THE COURT RECOMMENDS for the defendant the following retained jurisdiction sentencing options: Correctional Alternative Placement Program (CAPP) **[RJCAPP]**; Retained Jurisdiction (Traditional Rider) **[RJTR]** or Therapeutic Community (TC Rider) **[RJTC]**. The multiple recommendation is due to the fact that the Court does not know the true extent of Blair's drug and alcohol problem, and the Court is convinced he need extensive cognitive restructuring.

IT IS FURTHER ORDERED that upon completion of the Retained Jurisdiction Programming, **CHRISTOPHER JOHN BLAIR** shall be transported to the Kootenai County Jail where defendant shall be held without bond pending a hearing to determine whether or not the court should exercise its retained jurisdiction; and the Idaho Department of Correction will alert the District Court of the day of transport. Defendant will have the opportunity to rebut or supplement the recommendation of the jurisdiction review committee, with the state having an opportunity to respond. Thereafter, defendant will be given an additional right of allocution before the court enters its final judgment.

NOTICE OF RIGHT TO APPEAL

YOU, CHRISTOPHER JOHN BLAIR, 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 February, 2013.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Mayli Walsh
Prosecuting Attorney -

CHRISTOPHER JOHN BLAIR
IDOC # 105857

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy