

case, or whether he was being held solely on Montana matters. The various times for which Pelletier now seeks credit will be individually discussed:

February 3-6, 2008; On October 30, 2007, this Court withheld judgment on Pelletier and placed him on probation. From that time on, until May 4, 2009, at which time this Court issued a bench warrant, there is no activity in the file in this Idaho case. Thus, it is impossible for Pelletier to have served time on this case.

February 17-April 4, 2008; Same as above.

October 3-November 17, 2008; Same as above.

March 28, 2009-January 6, 2010; On July 10, 2009, the warrant dated May 4, 2009, was served on Pelletier. While Pelletier could have served some time in Montana prior to July 10, 2009, the Court has no way of knowing that, and Pelletier has failed to prove such. On July 20, 2009, this Court placed Pelletier on a period of retained jurisdiction, and gave Pelletier credit for the eleven days served from July 10, 2009 to July 20, 2009. On January 6, 2010, this Court gave Pelletier an additional credit of 171 days from July 20, 2009 to January 6, 2010. Thus, Pelletier has already been given credit for all time served from July 10, 2009 to January 6, 2010. Pelletier has failed to provide proof of time served from March 28, 2009 to July 9, 2009.

January 30-February 10, 2010; On June 29, 2010, this Court issued a Bench warrant for a probation violation which was filed on June 24, 2010. That warrant was not served on Pelletier until October 10, 2010. Thus, it was impossible for Pelletier to have been held in Montana on this Idaho case, from January 30, 2010 to February 10, 2010.

April 24-October 20, 2010; as just mentioned this Court's warrant was not issued until June 29, 2010 and wasn't served until October 10, 2010. On December 30, 2010, this Court gave Pelletier credit for time served from October 8, 2010 to October 20, 2010 (and

beyond, all the way to December 30, 2010. The report of probation violation dated June 24, 2010, references that Pelletier was cited for Driving with a Suspended Driver's License, Driving Under the Influence of Alcohol Third Offense, and No Proof of Insurance Third Offense on April 24, 2010. Just because those events which occurred in Montana on April 24, 2010, later, on June 24, 2010, became the allegations of the Report of Violation dated June 24, 2010, does not mean Pelletier gets credit for that time served. It is simply an impossibility for Pelletier to have served any of this time on this Idaho case, because the Court had not issued its bench warrant until June 29, 2010, and Pelletier has provided no proof that he was taken into custody on that warrant so as to allow credit for time served from June 29, 2010, to October 10, 2010, the date the file shows the warrant was served.

August 3-September 30, 2011; On August 19, 2011, this Court issued a bench warrant for Pelletier's failure to appear for a Probation Review Hearing on August 15, 2011. That August 19, 2011, warrant shows in the court's file as being served on September 30, 2011. Again, Pelletier has provided no proof that he was taken into custody on that warrant so as to allow credit for time served from August 3, 2011. Again, it is simply an impossibility for Pelletier to have served any of this time on this Idaho case from August 3, 2011, because the Court had not issued its bench warrant until August 19, 2011.

The Court has previously dealt with these concerns raised by Pelletier in its "Order Denying I.C.R. 35 Motion and Notice of Right to Appeal" filed June 18, 2012. That decision reads as follows:

On October 30, 2007, SHANE THOMAS PELLETIER (Pelletier) was given a withheld judgment for the felony crime of Possession of a Controlled Substance, Cocaine, and he was placed on supervised probation for four years. Pelletier received an interstate compact within a couple of months, and his supervision was transferred to the State of Montana. In 2009, Pelletier was arrested for committing new crimes, a DUI

on March 28, 2009, and another the next day, on March 29, 2009. On July 20, 2009, Pelletier admitted he violated his probation by driving under the influence on March 28, 2009, and admitted he was arrested again on that same offense on March 29, 2009 (but denied actually being under the influence on that day). As a result, this Court sentenced Pelletier as follows:

POSSESSION OF A CONTROLLED SUBSTANCE (COCAINE), to the custody of the Idaho Board of Correction for a fixed term of TWO (2) years, followed by an indeterminate term of THREE (3) years for a total term of FIVE (5) years.

The Court revoked Pelletier's probation and sent Pelletier to prison on a period of retained jurisdiction, to receive programming for his addictions.

On January 6, 2010, following a favorable report from prison, this Court again placed Pelletier on supervised probation for four years. Pelletier again received an interstate compact, and within three months, on April 24, 2010, received another driving under the influence charge in Montana, and a new probation violation before this Court. On November 23, 2010, before this Court, Pelletier admitted violating his probation by refusing to submit to a breath test when requested to do so by a law enforcement officer, on April 24, 2010, and by consuming alcohol. The Court again sent Pelletier to prison on a period of retained jurisdiction, this time recommending a CAPP rider to more intensively deal with his addictions. On May 24, 2011, following another favorable report from prison, this Court again placed Pelletier on probation for four and one-half years of supervised probation. Again, Pelletier received an interstate compact to Montana. Just over two months later, Pelletier was alleged to have violated his probation by being arrested on August 1, 2011, for failing to appear for warrants on crimes of driving while suspended, operating a motor vehicle without insurance and reckless driving, for fighting, for losing his job, for failing to submit to random drug and alcohol testing, and for consuming alcohol on several occasions. On October 17, 2011, following Pelletier's admissions to these probation violations, this Court sent Pelletier to prison to serve the remainder of his prison sentence, and specifically recommended Pelletier be given the Therapeutic Community to deal with his addictions. On October 17, 2011, the Court gave Pelletier 442 days credit for time served on his sentence for possession of cocaine here in Idaho back in 2007. As of the June 13, 2012, hearing date, an additional 276 days have passed since October 17, 2011. Thus, as of the June 13, 2012, hearing, Pelletier had served 718 days, which was only twelve days short of the 730 days on the fixed portion of Pelletier's two-year sentence.

On October 26, 2011, through counsel, Pelletier filed a "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35". On May 22, 2012, counsel for Pelletier filed a Notice of Hearing, scheduling Pelletier's I.C.R. 35 motion for hearing on June 13, 2012. In the interim, on May 4, 2012, Pelletier, pro se, filed two pleadings: a "Supplemental Petition to Rule 35 for Credit Time Served Pursuant to I.C. 18-309" and "Motion to Amend Superseding Grand Jury Indictment to Rule 35 in Case Number CRF 07-14646." The Court forwarded those documents to Pelletier's counsel and to

the Kootenai County Prosecuting Attorney, but the Court refused to treat these as filed documents as Pelletier at all times had a court appointed attorney.

Pelletier bases his I.C.R. 35 Motion as "...a plea for leniency." Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1. Pelletier appeared telephonically for his June 13, 2012, hearing. Counsel for Pelletier and the State examined Pelletier.

At his June 13, 2012, hearing, Pelletier testified that the Court told him on October 17, 2011, that the Court would give him credit for time served while in Montana if Pelletier could produce a time sheet. Counsel for Pelletier also produced a spread sheet purporting to demonstrate that Pelletier is entitled to credit for 331 days of time served while in the State of Montana.

The Court has had the Court's Court Reporter produce a transcript of the October 17, 2011, hearing. This Court did not make any statement or claim of any kind to Pelletier to the effect that "...the Court would give him credit for time served while in Montana if Pelletier could produce a time sheet." The only reference in that hearing to credit for time served was when the court told Pelletier his credit for time served was "a lot". There is no mention in that hearing about the State of Montana, only that Pelletier wanted to "sever all ties with the State of Idaho."

Pelletier has produced limited records of time served in Montana, but has furnished absolutely no proof that he spent even a single day in custody in Montana due to his Idaho possession of cocaine charge.

Pelletier also testified that at his first parole eligibility hearing he was denied parole in April 2012, that "the parole board flopped me because they said I had an inadequate parole plan." Pelletier testified that he did his parole plan while in custody in Shoshone County, awaiting transport to prison, and that thus, he had no access to counselors who could have helped him formulate his parole plan. Pelletier testified that he is on the "Pathway 4B" plan for programming, but that he cannot start such programming until January 13, 2013, four months before his next parole eligibility hearing. While this Court has no reason not to believe such testimony, if that is the way the Parole Commission works, that is a matter between Pelletier and the Parole Commission. This Court will not intervene due to Parole Commission rules and procedures. To do so would involve separation of powers issues. As of the writing of this decision, Pelletier has served essentially all of the fixed portion of his sentence. It is really up to the State of Idaho Commission of Pardons and Parole to address Pelletier's performance on the indeterminate portion of his sentence.

Pelletier testified that what he wants is to be released from all of his time in Idaho prison, and to return to Montana to pursue treatment for his drinking "on his own." However, Pelletier did not testify as to what treatment was available in Montana, or how such undisclosed treatment would be paid.

Pelletier has failed to curb his drinking and driving *while on felony probation* following two prison based treatment programs. Even with that sort of incentive, Pelletier has been unable to not drink and drive. Why would there be any reason to believe Pelletier would actually enter into treatment "on his

own”, with all the incentives of felony probation removed? It is pointless to gauge Pelletier’s sincerity in his desire to get treatment “on his own.” Suffice it to say, given Pelletier’s record while on felony probation with this Court, even if Pelletier’s intention is sincere, the likelihood of Pelletier actually following through with treatment “on his own” is very remote. And if the likelihood of Pelletier’s obtaining treatment “on his own” is small, let alone his actually succeeding in that treatment, then the likelihood of Pelletier’s drinking and driving remains high. This Court is convinced the decision advocated by Pelletier that this Court simply let Pelletier out of prison would completely abdicate this Court’s responsibility to protect the public.

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 Pelletier on July 20, 2009, for his July 1, 2007, possession of cocaine offense, was and is an appropriate sentence given Pelletier's social and criminal history, the crime for which sentence was imposed, and Pelletier’s abject failure to address his addictions after committing that offense on July 1, 2007. A lesser sentence would depreciate the seriousness of Pelletier's crime and his course of conduct while on probation with this Court. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Pelletier and others.

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

June 18, 2012, Order Denying I.C.R. 35 Motion and Notice of Right to Appeal, pp. 1-6. Because Pelletier has failed to provide any proof to support his “Motion for Credit for Time Served Incarcerated” filed by Pelletier on October 21, 2013, (and indeed most of the credit for time served Pelletier now seeks was physically impossible to have been served under this Idaho case as during those times sought there was no outstanding bench warrant), Pelletier’s motion must be denied.

IT IS THEREFORE ORDERED that Pelletier’s “Motion for Credit for Time Served Incarcerated” filed by Pelletier on October 21, 2013, is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, SHANE THOMAS PELLETIER, 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 31ST day of OCTOBER, 2013.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Prosecuting Attorney -

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**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy

