

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'clock \_\_\_\_\_ M  
CLERK OF THE 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. )  
)  
RANDY JAMES KRIEG )  
DOB: 1-18-55 )  
SSN: \*\*\*-\*\*-7433 )  
IDOC: 82978 )  
)  
Defendant. )

Case No. **CRF 2006 2118**  
**CRF 2006 4189**

**ORDER DENYING SUCCESSIVE I.C.R. 35  
MOTIONS AND NOTICE OF RIGHT TO  
APPEAL, and ORDER REQUIRING ALL  
FUTURE FILINGS BE MADE THROUGH  
COURT APPOINTED COUNSEL**

On September 21, 2006, RANDY JAMES KRIEG (Krieg), was sentenced, to wit:

CRF 2006 2118 - INJURING JAILS, To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of THREE (3) years for a total unified sentence of FIVE (5) years.

CRF 2006 4189 – GRAND THEFT BY UNAUTHORIZED CONTROL, To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of EIGHT (8) years for a total unified sentence of TEN (10) years.

On June 27, 2012, following periods of probation which were followed by probation violations and periods of retained jurisdiction, the Court imposed those sentences as a result of a January 24, 2012, Report of Probation Violation. As of June 27, 2012, Krieg was given 657 days credit for time served on both sentences.

On July 9, 2012, Krieg, through court appointed counsel (Kootenai County Public Defender), filed a Motion for Reconsideration of Sentence Pursuant to I.C.R. 35. Hearing on that motion was scheduled and rescheduled, and eventually occurred on June 4, 2013. Krieg appeared telephonically, and Krieg was represented by court appointed counsel. At that hearing, Krieg

claimed that he was given absolutely no credit for time served, which is not true. Krieg claimed that any time he was on probation or parole (Krieg was never on parole) should be counted as credit for time served on his sentence. At the conclusion of that hearing, the Court denied Krieg's I.C.R. 35 Motion, stating its reasons on the record, informed Krieg he does not get credit for time served while on probation, and ordered Krieg's counsel to prepare and submit a proposed order denying. On June 5, 2013, the Court signed the Order on Rule 35 Motion.

The Court's ability to grant "credit" for time served is found in Idaho Code § 18-309. That statute provides as follows:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

The statute clearly demonstrates Krieg's lack of entitlement to credit for time released on probation. The statute speaks in terms of incarceration. Krieg was not incarcerated during the time that he was released on probation. Further, the final sentence of this statute clearly excludes from application of Idaho Code § 18-309 the time that a defendant is lawfully released. Accordingly, there is no basis for granting Krieg additional credit for time served.

On June 17, 2013, Krieg, *pro se*, filed a Motion for Register of Action. The Court printed out the Register of Action in Krieg's cases and mailed them to him at his prison address as it appeared on Krieg's *pro se* motion.

On July 5, 2013, Krieg, *pro se*, filed a "Motion for Credit for Time Served While on Probation and Awaiting Trial and Hearings," and a "Motion for Discovery". These motions were not sent up to the Court for action at that time.

On July 25, 2013, attorney Lynn Nelson, Chief Deputy Public Defender, filed a

Notice of Attorney Assignment Change, notifying that he was assuming Krieg's representation. To the present date, Krieg's court appointed attorney remains Krieg's attorney of record, Mr. Nelson has not withdrawn from this case.

On January 13, 2014, Krieg, *pro se*, filed a "Motion for Summary Judgement [sic]" and "Amend to Include Rule 35a & 35c on Motion for Credit for Time Served." It was these filings that caused Krieg's two files to be sent up to the Court.

Krieg's *pro se* "Motion for Credit for Time Served While on Probation and Awaiting Trial and Hearings," filed on July 5, 2013, is denied as it is a successive I.C.R. 35 Motion, which is prohibited. *State v. Heyrend*, 129 Idaho 568, 929 P.2d 744 (Ct.App. 1996)

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. ... Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly sever....

\* \* \*

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. (Citations omitted).

*State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63 (Ct. App. 1987).

Krieg's *pro se* "Motion for Summary Judgement [sic]" and "Amend to Include Rule 35a & 35c on Motion for Credit for Time Served" filed on January 13, 2014, are similarly denied as they are successive I.C.R. 35 Motions, which, as discussed above, are prohibited.

Krieg's *pro se* "Motion for Discovery" filed on July 5, 2013, is denied as there is no legal basis, either by statute, rule or case law, for such motion.

**IT IS THEREFORE ORDERED** that RANDY JAMES KRIEG's *pro se* "Motion for Summary Judgement [sic]", "Amend to Include Rule 35a & 35c on Motion for Credit for Time Served" and "Motion for Discovery" are and the same hereby are **DENIED**.

**IT IS FURTHER ORDERED** because Krieg has an attorney, that all future filings with the Court must be made through Krieg's court appointed counsel, Lynn Nelson. Future *pro se*

filings from Krieg will not be considered by this Court as being filed, and no action will be taken by the Court on such filings.

**NOTICE OF RIGHT TO APPEAL**

**YOU, RANDY JAMES KRIEG, 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 15<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
JOHN T. MITCHELL, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of January, 2014 a true and correct copy of the foregoing Order was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Idaho Department of Correction  
Records Division (certified copy)  
[certified copy Faxed to (208) 327-7445]

Defense Counsel – Lynn Nelson  
Prosecuting Attorney

RANDY JAMES KRIEG  
IDOC: 82978  
SICI M.D. 4-03  
P. O. Box 8509  
Boise, ID 83707

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY: \_\_\_\_\_, Deputy