

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.)
)
TRAVIS WILLIAM PETERSON)
DOB: 09-21-68)
SSN: ***-**-9263)
IDOC: 29585)
)
Defendant.)
_____)

Case No. **CRF 2011 1799**

**ORDER GRANTING I.C.R. 35
MOTION AND MODIFYING
SENTENCE AND NOTICE OF
RIGHT TO APPEAL**

On June 9, 2011, Peterson was sentenced in the above matters. The Court utilized a retained jurisdiction, specifically the CAPP option to attempt to address Peterson's addiction to controlled substances. Peterson received from the Idaho Department of Correction a recommendation for probation following that retained jurisdiction, and on September 29, 2011, this Court placed Peterson on probation. On March 6, 2012, Peterson violated his probation by using Spice, using Methamphetamine, and failing to complete his inpatient treatment at 24/7. On June 19, 2012, this Court retained jurisdiction, specifically recommending the Therapeutic Community, but the Idaho Department of Correction gave him the CAPP option again as Peterson had already gone through the Therapeutic Community while serving his prison sentence on a prior felony offense. Following that second retained jurisdiction, the Idaho Department of Correction again gave Peterson a

recommendation for probation. On December 5, 2012, this Court again placed Peterson on probation. On June 6, 2013, Peterson violated his probation by driving without privileges, possessing Methamphetamine and on a different day using Methamphetamine. On July 24, 2013, this Court a third time retained jurisdiction. During that third retained jurisdiction, he received a recommendation from Idaho Department of Correction that this Court relinquish jurisdiction. On December 5, 2013, this Court followed that recommendation and relinquished jurisdiction, imposing and not modifying Peterson's five year fixed sentence. At that hearing, and in the Court's Order of the same date, the Court indicated it would consider an I.C.R. 35 Motion if Peterson were to be accepted into Mental Health Court. On March 19, 2014, Peterson timely filed his "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35". Hearing on that motion was held on June 10, 2014. Peterson participated telephonically from prison. At that hearing it was apparent that Peterson had not been accepted into Mental Health Court. Peterson testified at length about his better attitude in prison, as compared to his last period of retained jurisdiction. That institutional performance evidence was un rebutted, thus, the Court has no reason to disbelieve Peterson's testimony at the June 10, 2014, hearing.

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).

The information presented by Peterson with the motion is sufficient to persuade this court to modify the sentence, primarily to give Peterson incentive to take the Therapeutic

Community at the end of the fixed portion of his sentence, and to give the Idaho Commission of Pardons and Parole some time to monitor Peterson's performance out in the community while on parole.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, the sentence previously imposed and suspended on June 9, 2011, as follows:

ELUDING A PEACE OFFICER	To the custody of the State of Idaho Board of Correction for a fixed sentence of FIVE (5) years followed by an indeterminate term of ZERO (0) years for a total unified sentence of FIVE (5) years.
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be and the same hereby is modified pursuant to I.C.R. 35 and imposed as follows, to-wit:

ELUDING A PEACE OFFICER	To the custody of the State of Idaho Board of Correction for a fixed sentence of THREE AND ONE HALF (3.5) years followed by an indeterminate term of ONE AND ONE HALF (1.5) years for a total unified sentence of FIVE (5) years.
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The State of Idaho Department of Correction is encouraged to provide Peterson with the Therapeutic Community prior to the expiration of the fixed portion of his sentence.

The State of Idaho Commission of Pardons and Parole is strongly encouraged not to consider Peterson eligible for parole until he has successfully completed the Therapeutic Community.

NOTICE OF RIGHT TO APPEAL

YOU, TRAVIS WILLIAM PETERSON, 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 10th day of June, 2014.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of June, 2014 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Lynn Nelson
Prosecuting Attorney -

TRAVIS WILLIAM PETERSON
IDOC: 29585

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

Probation & Parole

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy