

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.)
)
)
PATRICK AUGERLAVOIE)
)
DOB: 05/01/1976)
)
SSN: XXX-XX-9554)
)
IDOC: 95055)
)
)
Defendant.)

Case No. **CRF 2015 5995**
CRF 2015 11240

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

On February 9, 2016, PATRICK AUGERLAVOIE was sentenced as follows:

**CRF 2015 5995 - COUNT I - DELIVERY OF A CONTROLLED
SUBSTANCE(HEROIN), (a felony), Idaho Code § I. C. 37-2732(a)(1), 18-
204**, committed during the month of September 2014 – to the custody of the
Idaho State Board of Correction for a fixed term of THREE AND ONE HALF
(3.5) years followed by an indeterminate term of FIFTEEN (15) years, for a
total term not to exceed EIGHTEEN AND ONE HALF (18.5) years.

**CRF 2015 5995 - COUNT II - CRIMINAL CONSPIRACY TO DELIVER A
FOREIGN SUBSTANCE, (a felony), Idaho Code § I. C. 18-1701**
committed during the month of January 2015 – to the custody of the Idaho
State Board of Correction for a fixed term of THREE AND ONE HALF (3.5)
years followed by an indeterminate term of FIFTEEN (15) years, for a total
term not to exceed EIGHTEEN AND ONE HALF (18.5) years.

**CRF 2015 5995 – COUNT III – DELIVERY OF A CONTROLLED
SUBSTANCE (HEROIN), (a felony), Idaho Code § I. C. 37-2732(a)(1), 18-
204**, committed during the month of February 2015 – to the custody of the
Idaho State Board of Correction for a fixed term of THREE AND ONE HALF
(3.5) years followed by an indeterminate term of FIFTEEN (15) years, for a
total term not to exceed EIGHTEEN AND ONE HALF (18.5) years.

**CRF 2015 11240 – CRIMINAL CONSPIRACY - Idaho Code § I. C. 18-
1701** committed on June 10, 2015 to June 15, 2015 – to the custody of the
Idaho State Board of Correction for a fixed term of THREE AND ONE HALF
(3.5) years followed by an indeterminate term of FIFTEEN (15) years, for a
total term not to exceed EIGHTEEN AND ONE HALF (18.5) years.

THESE SENTENCES RUN CONCURRENT.

Those sentences were imposed. On April 22, 2016, Patrick Augerlavoie filed the instant “Motion for Reconsideration of Sentence Pursuant to I.C.R. 35” requesting that the Court “...reconsider the Judgment and Sentence entered herein February 9, 2016. Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1. Patrick Augerlavoie bases this motion “...as a plea for leniency.” *Id.*

Patrick Augerlavoie requested a hearing. 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). A hearing was held on June 1, 2016. At that hearing, Patrick Augerlavoie testified telephonically from prison.

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 February 9, 2016, was and is an appropriate sentence given Augerlavoie's social and criminal history and the crimes for which sentence was imposed. At the June 1, 2016, hearing, it was evident Patrick Augerlavoie was requesting a reduction in the fixed portion of his sentences.

The primary reason given by Patrick Augerlavoie at that hearing was so that he could get out of prison sooner to be with his wife and daughter, who were co-defendants in this case. The Court understands that reason, but is not persuaded by that reason.

Another reason given at that hearing was so that he could begin programming sooner, as the State of Idaho Department of Corrections will usually not offer programming until the prisoner has reached the last year of the fixed portion of his or her sentence. While that is a legitimate reason, the Court finds it to not be outweighed by the interests of protection of the public, deterrence, punishment, and to some extent,

rehabilitation.

Additionally, the Court notes that the three and one half years fixed is exactly what Patrick Augerlavoie, personally and through counsel, along with the deputy prosecuting attorney, agreed upon and asked for in sentencing via a binding I.C.R. 11(f) agreement. While at first blush it may appear odd that a defendant who had entered into a binding Rule 11 agreement would later seek to reduce that which he had willingly, knowingly, voluntarily with the advice of counsel entered into contractually, *State v. Lampien*, 148 Idaho 367 (2009) indicates that this happens. The Court certainly is not offended by Patrick Augerlavoie's Rule 35 Motion following a Rule 11 plea agreement because at the February 9, 2016, sentencing hearing, the Court indicated that it was not willing to be bound by the agreement, wishing to impose more indeterminate time than had been agreed upon by the parties.

Finally, the Court finds that a lesser sentence would depreciate the seriousness of Augerlavoie's crimes. This Court concludes that the sentences imposed were and are necessary for the protection of society, punishment, rehabilitation and the deterrence of Augerlavoie and others.

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

NOTICE OF RIGHT TO APPEAL

YOU, PATRICK AUGERLAVOIE, 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 1st day of June, 2016.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of June, 2016 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Lisa M. Chesebro
Prosecuting Attorney -

PATRICK AUGERLAVOIE
IDOC # 95055

Probation & Parole

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy