

THESE SENTENCES RUN CONCURRENT.

Sent. Dispo. and Not. of Rt. to App., 1-2. The Court retained jurisdiction for up to one year pursuant to Idaho Code § 19-2601. On August 29, 2014, Sanchez, through his attorney, Douglas A. Pierce, timely filed an I.C.R. 35 Motion. That I.C.R. 35 Motion requested “1. To allow the rider that the RDU assigned him to; and 2. To reduce the indeterminate and determinate time.” At a hearing held on November 10, 2014, this Court denied Sanchez’ I.C.R. 35 Motion in all aspects. First, the Court noted it had no jurisdiction to order the Idaho Department of Corrections as to which facility or what rider in which the IDOC determined to place Sanchez. Second, defendant put on no proof as to why any reduction would be appropriate.

Following completion of his retained jurisdiction, at a hearing on June 24, 2015, this Court placed Sanchez on a four year period of probation. On December 21, 2016, a Report of Probation Violation was issued and was filed on December 22, 2016. Based on that Report of Violation, this Court issued a bench warrant on December 26, 2016. On December 27, 2016, that warrant was served. On January 25, 2017, Sanchez entered denials of the allegations contained in the December 21, 2016, Report of Violation. An evidentiary hearing was scheduled for February 28, 2017. At the February 28, 2017, Sanchez admitted violating his probation by using heroin on July 20, 2016, admitted smoking marijuana on December 20, 2016, and by failing to complete his community service. An evidentiary hearing was held, at the conclusion of which the Court found the State of Idaho had proven by a preponderance of the evidence that Sanchez had willfully violated his probation by: being arrested on December 20, 2016, in Bonners Ferry, Idaho, for Possession of a Controlled Substance, Methamphetamine; being in possession of a high powered air pistol on December 20, 2016; being in possession of Methamphetamine

on December 20, 2016; and failing to obtain and maintain employment. At the conclusion of the February 28, 2017, hearing, the Court imposed Sanchez' sentences noted above.

On March 13, 2017, Sanchez, through his attorney, Douglas A. Pierce, filed another I.C.R. 35 Motion. In that motion, Sanchez requests "that the court amend said disposition by allowing him to return to probation with some sort of inpatient treatment or intensive outpatient treatment component, and (or in the alternative) reduce his underlying sentence." In that motion, counsel for Sanchez notes that he had previously filed an earlier I.C.R. 35 motion.

Idaho Criminal Rule 35(b) concludes with this proviso: "provided, however that no defendant may file more than one motion seeking a reduction of sentence under this rule." In *State v. Heyrend*, 129 Idaho 568, 929 P.2d 744 (Ct. App. 1996) the Idaho Court of Appeals found a successive I.C.R. 35 Motion was improper, and found the district court properly denied such. Specifically, the Idaho Court of Appeals held:

Rule 35 provides that "no defendant may file more than one motion seeking a reduction of sentence under this Rule." See *State v. Wersland*, 125 Idaho 499, 504-05, 873 P.2d 144, 149-50 (1994). The rule clearly prohibits the filing of more than one motion for a reduction of sentence. *Id.*, 125 Idaho at 505, 873 P.2d at 150. Because Heyrend's Rule 35 motion made at the second probation revocation hearing was a successive Rule 35 motion, the district court properly denied it. Therefore, Heyrend's challenge to the denial of his second Rule 35 motion must also be rejected under *Wersland*.

129 Idaho at 571, 929 P.2d at 747.

Thus, even if Sanchez' motion had merit (this Court finds it does not), this Court lacks the ability to consider the motion because it is Sanchez' second I.C.R. 35 Motion.

IT IS THEREFORE ORDERED that Sanchez' I.C.R. 35 motion is **DENIED** and the same hereby is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED because the Court has no jurisdiction to hear the I.C.R. 35 motion, the hearing scheduled for May 22, 2017, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, MICHAEL ANTHONY SANCHEZ, 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 22nd day of May, 2017.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of May, 2017 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Douglas A. Pierce
Prosecuting Attorney -

MICHAEL ANTHONY SANCHEZ
IDOC # 111699

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy