

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.)
)
KASSAUNDR A RAYANN LAGESON)
DOB: 09/16/1989)
SSN: XXX-XX-0749)
IDOC: 124349)
)
Defendant.)

Case No. **CRF 2017 3877**

**ORDER DENYING DEFENDANT'S
I.C.R. 35 MOTION, COURT'S ORDER
CORRECTING ILLEGAL SENTENCE
AND NOTICE OF RIGHT TO APPEAL**

I. PROCEDURAL HISTORY.

On August 2, 2017, KASSAUNDR A RAYANN LAGESON was sentenced as follows:

TRAFFICKING IN HEROIN 2-7 GRAMS, (a felony, I.C. § 37-2732B(a)(6)(A), committed on March 10, 2017 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of FOUR (4) years, for a total term not to exceed SEVEN (7) years.

That sentence was imposed, as required by statute (neither probation nor a retained jurisdiction can be utilized by the Court), on August 2, 2017.

On November 20, 2017, Lageson *pro se* filed the instant Motion for Correction or Reduction of Sentence, ICR 35, requesting that her sentence be reduced because:

[T]his is my first felony conviction and I do think it is a little harsh. In the last eight months that I have been incarcerated [sic] I have not acted out or gotten in any trouble at all.

Motion for Correction or Reduction of Sentence, ICR 35 2, ¶ 3. Lageson asks the Court

to impose a fixed sentence of one and one half years and an indeterminate sentence of two years. *Id.* 3. No specific basis is given for this motion by Lageson, but in context, this Court view the basis as being a request for leniency based upon institutional performance.

II. ANALYSIS.

As a preliminary matter, the Court notes that Lageson's attorney, Jay Logsdon, has not withdrawn from this case. However, since Lageson's attorney has filed no I.C.R. 35 Motion, and since Lageson's motion is timely, the Court considers the merits of Lageson's *pro se* motion.

Lageson has not 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. Copenhaver*, 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). The Court has reviewed the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, the Court minutes and the pre-sentence report. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel and the Court's time.

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. *Strand*, 137 Idaho at 463, 50 P.3d at 478. *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, 64 (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 Court lacks discretion, indeed lacks jurisdiction or any ability whatsoever to impose less than the three year mandatory minimum (and potential maximum life sentence) set forth in I.C. § 37-2732B(a)(6)(A), for Trafficking in Heroin in an amount of greater than two grams and less than seven grams. To do as Lageson requests, would result in an illegal sentence which would only be overturned by Idaho’s appellate courts.

This is a matter that has been left to the Idaho Legislature, and that branch of the government has determined that when one possesses an amount of Heroin between two and seven grams, such as Lageson pled guilty to, the sentencing court must sentence such person to at least three years mandatory minimum fixed term, and that sentence must be imposed.

The Court has the ability to reduce Lageson's indeterminate sentence, but chooses to exercise its discretion to do so by not altering her four year indeterminate sentence. The Court does so for two reasons. First, the Court made it quite clear to Lageson at her August 2, 2017, hearing, that the reason it was imposing a four year indeterminate sentence was to give the State of Idaho Parole Commission up to four years to watch her on parole, should she make parole. If Lageson continues to behave in prison as she has stated in her I.C.R. 35 Motion, she should be able to make parole at the end of her fixed three-year term. Second, on May 30, 2017, Lageson signed a pre-trial settlement offer notifying her that the State of Idaho would be recommending at sentencing a seven year indeterminate sentence, following the mandatory minimum three-year fixed sentence. This Court exercised its discretion at sentencing on August 2, 2017, and impose a four-year indeterminate sentence, less than the seven year indeterminate sentence the State of Idaho limited itself to in the May 30, 2017, pre-trial settlement offer, and less than the seven year indeterminate sentence that the deputy prosecuting attorney requested at the August 2, 2017, sentencing hearing.

The sentence imposed on August 2, 2017, was and is an appropriate sentence given Lageson's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Lageson's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of

society and the deterrence of Lageson and others.

Finally, in reviewing the file in this case in order to decide Lageson's I.C.R. 35 Motion, the Court became aware of the fact that on August 2, 2017, the Court did not impose any fine. Idaho Code § 37-2732B(a)(6)(A) requires the imposition of a mandatory minimum fine of \$10,000.00, and up to \$100,000.00 maximum fine. This Court's failure to impose the mandatory minimum fine results in an illegal sentence. Under I.C.R. 35(a), the Court maintains the ability to correct an illegal sentence at any time. Thus, the Court imposes the statutory mandatory minimum fine of \$10,000.00 for the offense of Trafficking in Heroin in an amount of more than two grams and less than seven grams, I.C. § 37-2732B(a)(6)(A).

III. ORDER.

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

IT IS FURTHER ORDERED that the Court on its own motion in order to correct an illegal sentence, **MODIFIES** Lageson's sentence by **IMPOSING a FINE IN THE MANDATORY MINIMUM AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00)**.

NOTICE OF RIGHT TO APPEAL

YOU, KASSAUNDRA RAYANN LAGESON, 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 28th day of November, 2017.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Jay Logsdon
Prosecuting Attorney -
KOOTENAI COUNTY AUDITOR
KASSAUNDRA RAYANN LAGESON
IDOC # 124349
P.O. Box 51
Boise, ID 83707

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy