

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.)
)
)
STEVEN DOUGLAS ROCHE)
)
DOB: 06/10/1985)
)
SSN: XXX-XX-3805)
)
IDOC: 124132)
)
)
Defendant.)

Case No. **CRF 2014 21989**
CRF 2017 5581

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

On July 18, 2017, STEVEN DOUGLAS ROCHE was sentenced as follows:

COUNT I - BURGLARY, (a felony), I. C. 18-1401, committed on July 18, 2014 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of SEVEN (7) years, for a total term not to exceed TEN (10) years.

COUNT II - GRAND THEFT, (a felony), I. C. 18-2407(1)(b)(1) committed on July 7, 2014 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of ELEVEN (11) years, for a total term not to exceed FOURTEEN (14) years.

THESE SENTENCES RUN CONSECUTIVE.

Sentence Disposition and Notice of Right to Appeal, 1-2. At the July 18, 2017, hearing, the Court imposed those prison sentences (*Id.* at 2), specifically finding that Roche could not be rehabilitated. The Court found Roche to be an addict, and the Court found that Roche has committed twelve prior felonies, all for theft crimes. The Court found Roche is a danger to the public.

On November 13, 2017, Roche filed the instant “Motion for Reconsideration of

Sentence Pursuant to I.C.R. 35” (I.C.R. 35 Motion) requesting that “the Court to reconsider the Judgment and Sentence entered herein July 18, 2017.”. Roche bases this motion on “a plea for leniency.” No further request for relief nor further basis was stated in the I.C.R. 35 Motion. A hearing was scheduled for December 21, 2017, but had to be continued as Roche was unavailable to participate telephonically in that hearing from prison. A hearing was held on January 23, 2018. At that hearing, Roche specifically stated that “Programming is not available to me because my total unified sentence is too long.” He claimed that he “Would be eligible for programming and a work program if it was ten years or less.” Roche was asked by his attorney when his parole eligibility date is, and he indicated it was “Five years from now.” Then Roche stated, “It is my indeterminate time that is making me ineligible for programming.” At the conclusion of that hearing, this Court stated that if the Court received something in writing, notarized (in affidavit form) by an Idaho Department of Correction employee, that the Idaho Department of Correction will not consider programming if there is more than ten years of unified (fixed and indeterminate) sentence imposed, that it might consider a reduction.

On February 1, 2018, counsel for Roche filed a “Notice of Filing: IDOC Placement Policy Materials.” In those materials it appeared to the Court that Roche would be eligible for programming and the work center if he had a Tentative Parole Date (TPD) or Full Term Release Date (FTRD) of less than Five years or has a Parole Hearing Date (PHD) or a Parole Eligibility Date (PED) within five years and has a Full Term Release Date within 20 years. Roche testified he is parole eligible in 2022, so he meets the TPD criteria of within five years and he meets the PED criteria of within five years, but not the FTRD within 20 years. A reduction of four years on the indeterminate end of Count II would allow Roche to have a FTRD within 20 years, and would still give the Parole Commission 14 years, potentially, to watch Roche if he makes parole at the earliest possible moment,

and if he does not make parole, it would give the Idaho Department of Corrections an additional 14 years, potentially, to keep him in custody.

The matter is now at issue.

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 sentence imposed on July 18, 2017, was and is an appropriate sentence given Roche's social and criminal history and the crimes for which sentence was imposed. However, the Court finds that a four-year reduction on Count II would not

depreciate the seriousness of Roche's crimes. This Court concludes that such a reduction would not impede the protection of society and the deterrence of Roche and others. To the contrary, if Roche is allowed to program, he may be less likely to commit new crimes when he is released. While the Court is not at all concerned about the fact that Roche cannot get into a work center with his current sentence, if Roche is allowed to earn some funds as a prisoner, it likely reduces the chances of Roche's returning to theft crimes upon his release.

IT IS THEREFORE ORDERED that Roche's I.C.R. 35 Motion is **GRANTED**.

IT IS FURTHER ORDERED that Roche's sentence on Count II, which currently is:

COUNT II - GRAND THEFT, (a felony), I. C. 18-2407(1)(b)(1) committed on July 7, 2014 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of ELEVEN (11) years, for a total term not to exceed FOURTEEN (14) years.

Is now **MODIFIED** as follows:

COUNT II - GRAND THEFT, (a felony), I. C. 18-2407(1)(b)(1) committed on July 7, 2014 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of SEVEN (7) years, for a total term not to exceed TEN (10) years.

IT IS FURTHER ORDERED that Roche's sentences for Count I and Count II as modified, still run **CONSECUTIVE**.

NOTICE OF RIGHT TO APPEAL

YOU, STEVEN DOUGLAS ROCHE, 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 18TH day of April, 2018.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of April, 2018 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Linda Payne
Prosecuting Attorney – Ken Brooks

STEVEN DOUGLAS ROCHE
IDOC # 124132

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy