

FILED 8/19
AT 5:00 O'clock P.M
CLERK, DISTRICT COURT
[Signature]
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.)

BRADY LAWSON COKER)

DOB: 07/09/1994)

SSN: XXX-XX-3835)

IDOC: 111981)

Defendant.)

Case No.

**CRF 2014 2867
CRF 2014 7240
CRF 2014 11700
CR28-18-10607**

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

I. PROCEDURAL BACKGROUND.

On January 17, 2019, as a result of a probation violation in CRF 2014 2867, CRF 2014 7240 and CRF 2014 11700, for committing new crimes (the new crimes were set forth in CR28-19-10607, to which a pleas of guilty were entered September 6, 2018), this Court revoked Brady Lawson Coker's (Coker) probation and imposed Coker's prison sentences as follows:

**CR28-18-10607 - COUNT II
- WITNESS INTIMIDATION,
Idaho Code § 18-2604, (a
felony), committed on July
5, 2018 through August 5,
2018 -**

to the custody of the Idaho State Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of ZERO (0) years, for a total term not to exceed FIVE (5) years.
THIS SENTENCE RUNS CONSECUTIVE TO ALL OTHER SENTENCES PREVIOUSLY IMPOSED.

**CRF 2014 2867 - COUNT I -
CRIMINAL POSSESSION
OF A FINANCIAL
TRANSACTION CARD**

To the custody of the State of Idaho Board of Correction for a fixed sentence of ONE (1) year followed by an indeterminate term of TWO (2) years for a total unified sentence of THREE (3) years.

**CRF 2014 7240 - COUNT I
- BRIBERY OF MUNICIPAL
OR COUNTY OFFICIALS**

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 FIVE (5) years for a total unified sentence of TEN (10) years.
THESE TWO SENTENCES RUN CONSECUTIVE

**CRF 2014 11700 –
DESTRUCTION
ALTERATION OR
CONCEALMENT OF
EVIDENCE**

To the custody of the State of Idaho Board of Correction for a fixed sentence of TWO (2) years followed by an indeterminate term of TWO (2) years for a total unified sentence of FOUR (4) years. **THIS SENTENCE RUNS CONCURRENT WITH THE SENTENCES PREVIOUSLY IMPOSED IN CRF 2014 7240 AND CRF 2014 2867.**

Judgment and Sentence and Notice of Right to Appeal, 2. At that January 17, 2019, hearing, this Court sent Coker on a period of retained jurisdiction pursuant to Idaho Code § 19-2601, to see if Coker could exhibit conduct that would indicate he could be successful on probation. At that January 17, 2019, hearing, this Court made it clear to Coker on the record, and in its order, that this Court would not consider Coker eligible for probation unless he 1) had an excellent report at the end of his period of retained jurisdiction, and 2) had been accepted by either the Kootenai County Mental Health Court or the Good Samaritan Rehabilitation program

On July 17, 2019, Coker returned from Idaho Department of Correction (IDOC) custody, at the end of his period of retained jurisdiction, and appeared before this Court. At that hearing, Coker assured the Court that he was stable on his mental health medications. As with all inmates returning from a period of retained jurisdiction, the IDOC prepares a written report to the Court. In Coker's case, the IDOC report dated June 28, 2019, recommended probation. However, at the July 17, 2019, hearing, this Court did not follow that recommendation and instead imposed Coker's sentences as set forth above. The primary reason for that decision was Coker had made no arrangements for either participation in the Kootenai County Mental Health Court or the Good Samaritan Rehabilitation program. The secondary reason for that decision was Coker violated IDOC rules sixteen times while on his six-month period of retained jurisdiction. That, in spite of the fact that Coker told the Court that he was stable on his mental health medications.

Thus, the only explanation the sixteen rule violations was Coker's decisions to violation the IDOC's rules. Coker's mental health condition was not the reason for his violating rules; rather the only explanation was his defiance of this Court's order and the IDOC's rules. Additionally, most of Coker's rule violations occurred toward the end of his six-month program. In the month of June 2019, Coker committed six rule violations. All these undisputable facts convinced this Court that Coker was not a reasonable risk to be placed on probation, and that Coker presented too great a risk to public safety were he to be placed on traditional probation, that is, probation without the structure environment that Mental Health Court or Good Samaritan program could provide.

On July 29, 2019, Coker, in each case, through counsel, timely filed the instant "Rule 35 Motion", requesting the Court "to reconsider and modify its Judgment entered on the 17th day of July, 2019." Rule 35 Motion, 1. The reason stated for the motion was "This motion is made for the reason and upon the grounds that Defendant is seeking a more lenient sentence." *Id.* No other reasons or basis were given for bringing the motion. Counsel for Coker requested a hearing. *Id.* Most importantly, Coker breathed not a word about being accepted into either Mental Health Court or the Good Samaritan program.

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 Rule 35 Motion, and Coker’s various files. There is nothing that could be presented at a hearing that would be of benefit to the Court. A hearing would only waste counsel’s time and the Court’s time.

II. ANALYSIS.

A. COKER HAS NOT SET FORTH A VALID BASIS FOR HIS MOTION, NOR HAS COKER SET FORTH ANY EVIDENCE TO SUPPORT HIS MOTION.

Where a sentence as originally imposed is not illegal, the defendant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). “To establish that the sentence imposed was improper, the defendant must show that in light of the governing criteria, [the] sentence was excessive under any reasonable view of the facts.” *Id.* (quoting *State v. Broadhead*, 120 Idaho 141, 143-45, 814 P.2d 401, 403-05 (1991) (citations omitted)). When a defendant does not identify what evidence he or she might have produced at a hearing that could not have been produced through affidavits, the district court does not abuse its discretion in refusing to hold a hearing on his or her Rule 35 motion. *State v. Ramirez*, 122 Idaho 830, 836, 839 P.2d 1244, 1250 (Ct. App.1992). Specifically, the Idaho Court of Appeals held:

This Court has previously held that while a defendant is entitled to be present at sentencing and at resentencing when a prior invalid sentence is corrected, no such right exists on a motion to reduce a sentence. *State v. James*, 112 Idaho 239, 242, 731 P.2d 234, 237 (Ct. App.1986). “Indeed, the decision whether even to conduct a hearing on a Rule 35 motion has always been discretionary with the district court.” *Id.* A trial court abuses its discretion on whether to hold a hearing on a Rule 35 motion when it unduly limits information considered in deciding the motion. *James*, 112 Idaho at 242, 731 P.2d at 237. Ramirez has failed to show that the district court

unduly limited the available information in this case. Ramirez does not even identify what evidence he might have produced at a hearing that he was unable to produce through the affidavits which were submitted.

Id. (footnote omitted). Here, Coker has not only not set forth any evidence that could be adduced, Coker has failed to state the basis for the Rule 35 Motion, other than the fact that he did not like the outcome of being sent to prison for his probation violation. The Court cannot be required to guess at what evidence Coker might present in support of his Rule 35 Motion. Because Coker has failed to set forth the basis for his Motion, and because he has completely failed to give any indication of any fact which would support his claim, his Rule 35 Motion must be denied due to those failures.

B. COKER'S MOTION HAS NO MERIT.

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). The court must 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 finds the sentences originally imposed were reasonable. The Court finds the imposition of those sentences on July 17, 2019, was a reasonable decision. Because of Coker’s lengthy criminal history and the nature of his crimes, despite being given prior addiction treatment, this Court strongly felt the only way to keep the community safe while having Coker continue to treat his addiction and mental health condition was to be in a program such as Mental Health Court where he is seen in court every week, where he sees his probation officer every week and where he is tested for drugs and alcohol about three times a week on a random basis. Alternatively, the Court was willing to accept the Good Samaritan program. Coker chose to no longer avail himself of either option that would have provided treatment, structure and supervision. Given the fact that Coker will not abide by this Court’s orders, even when he had everything to gain by doing so, and even when his mental health issues are optimally treated, the Court simply cannot have Coker on a regular probation protocol and keep the public safe. The Court’s primary responsibility is to protect the public. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (1982). Coker wishes this Court to reconsider its decision on July 17, 2019, imposing his prison sentences. This Court concludes that imposition of Coker’s sentences was necessary for the protection of society and the deterrence of Coker and others.

III. ORDER.

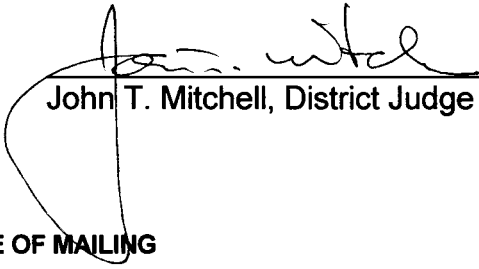
IT IS THEREFORE ORDERED that Coker’s Motion for Reconsideration of Sentence Pursuant to I.C.R. 35 is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, BRADY LAWSON COKER, 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 6th day of August, 2019.


John T. Mitchell, District Judge

8th **CERTIFICATE OF MAILING**

I hereby certify that on the 8th day of August, 2019 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Sean Walsh/Monica Rector *jessica@lawgroupida.com*
Prosecuting Attorney - Rebecca Perez *kepac@idoc.idaho.gov*

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

BRADY LAWSON COKER
IDOC # 111981
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CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: , Deputy