

FILED 8/7/19
AT 1:50 o'clock P.M.
CLERK, DISTRICT COURT
Handwritten 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.)
)
JASON MICHAEL BOLDT)
DOB: 06/29/1988)
SSN: XXX-XX-4631)
IDOC: 105600)
Defendant.)

Case No. **CRF 2018 2170**
CR28-19-1552

**ORDER DENYING I.C.R. 35 MOTION,
ORDER GRANTING MOTION FOR
CREDIT FOR TIME SERVED FILED
ON JUNE 6, 2019, AND ORDER
DENYING ALL OTHER MOTIONS,
AND NOTICE OF RIGHT TO APPEAL**

I. PROCEDURAL BACKGROUND.

On March 26, 2019, Jason Michael Boldt appeared for a probation violation hearing in Kootenai County Case No. CRF 2018 2170, and for arraignment in Kootenai County Case No. CR28-19-1552. Boldt pled guilty to the new charge in CR28-19-1552 and admitted violating his probation in CRF 2018 2170. On April 2, 2019, Bolt appeared for sentencing in CR28-19-1552 and probation violation disposition in CRF 2018 2170. Sentencing in CR28-19-1552 was pursuant to an I.C.R. 11(f) agreement for two years fixed and concurrent with the probation violation disposition. This Court agreed to sentence Boldt according to that I.C.R. 11 agreement. At the April 2, 2019, hearing, this Court revoked Boldt's probation and imposed Boldt's sentence in CRF 2018 2170 as follows:

POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) , (a felony), Idaho Code § 37-2732(c), committed on February 6, 2018 – 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.

THIS SENTENCE RUNS CONSECUTIVE TO THE SENTENCE PREVIOUSLY IMPOSED IN BENEWAH CO. CASE NO. CRF 2017 788.

Judgment and Sentence and Notice of Right to Appeal, 2. That was the exact sentence this Court initially imposed on March 21, 2018, when this Court initially sent Boldt on a period of retained jurisdiction. On November 13, 2018, this Court placed Boldt on supervised probation following his period of retained jurisdiction. Just over one month later, on December 27, 2018, Boldt violated his probation by being arrested for Possession of a Controlled Substance (Methamphetamine), and a month after that, on January 26, 2019, Boldt violated his probation by being arrested on January 26, 2019, for Possession of a Controlled Substance (Methamphetamine) with Intent to Deliver, Trafficking Heroin, two counts of Felony Injury to a Child, misdemeanor resisting or obstructing.

At the April 2, 2019, hearing, this Court sentenced Boldt in CR28-19-1552 as follows:

POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) WITH THE INTENT TO DELIVER , (a felony), Idaho Code § 37-2732(a)(2), committed on January 26, 2019 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of EIGHT (8) years, for a total term not to exceed TEN (10) years.

THIS SENTENCE RUNS CONCURRENT TO THE SENTENCE PREVIOUSLY IMPOSED IN CRF 2018 2170.

Judgment and Sentence and Notice of Right to Appeal, 2. At that hearing, this Court imposed that sentence and sent Boldt to prison.

At the March 26, 2019, hearing, and at the April 2, 2019, hearing, Boldt was represented by court appointed attorney, Dan Cooper. Dan Cooper has not withdrawn from this case. Dan Cooper has filed nothing in this case since the April 2, 2019, hearing where Boldt had his sentences imposed.

On May 16, 2019, Boldt, *pro se*, filed an affidavit which claimed he was entitled to credit for time served. On May 20, 2019, this Court entered an Order Denying Motion for Credit for Time Served.

On June 3, 2019, Boldt, *pro se*, filed a Motion for Correction or Reduction of Sentence, ICR 35, requesting “The Court should reconsider its earlier sentence and reduce the same on the following grounds”, following which Boldt reiterated the community service and military service Boldt had performed in the past. Motion for Reduction of Sentence, 2. At the end of his motion, Boldt writes, “I just ask the courts to change my sentence from consecutive to concurrent with case #CR2017-788 from Benewah County.” *Id.* 2. [On January 12, 2018, Judge Wayman sentenced Boldt to eighteen months fixed, eighteen months indeterminate, total of three years, for Possession of a Controlled Substance (Methamphetamine)]. Also on June 3, 2019, Boldt filed a Motion for Hearing, a Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner), and a Motion and Affidavit in Support for Appointment of Counsel. On June 6, 2019, Boldt, *pro se*, filed another affidavit, again requesting credit for time served, and a Motion for Credit for Time Served. On July 22, 2019, Boldt filed a letter with the Clerk of Court, inquiring about the status of his Rule 35 Motion. Before addressing Boldt’s I.C.R. 35 Motion, the Court will address Boldt’s other filings.

II. ANALYSIS.

Boldt’s Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner) does not require a decision because no motion Boldt has filed require payment of a filing fee.

Boldt’s Motion and Affidavit in Support for Appointment of Counsel is denied because Boldt has always had an attorney representing him, Dan Cooper, and that attorney still represents Boldt.

Boldt’s June 6, 2019, Motion for Credit for Time Served based upon his affidavit filed that same date is granted. Boldt is correct that this Court erred in crediting 16 days time served from February 14, 2019, to April 2, 2019. The correct number of days should

have been 47 days time served for that period, leaving Boldt short 31 days only in CRF 2018 2170. Thus, the correct number of days credit for time served in CRF 2018 2170 as of April 2, 2019, is 328 days.

Regarding his I.C.R. 35 Motion, Boldt requested a hearing. *Id.* 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). The Court has reviewed the Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, and Boldt’s entire file. 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. Boldt’s motion for a hearing is denied.

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, Boldt has not set forth any evidence that could be adduced at a hearing, other than his past military service and past community service, both of which the Court was aware of at sentencing. The Court cannot be required to guess at what evidence Boldt might present in support of his Rule 35 Motion. Because Boldt 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 alone.

Additionally, Boldt's I.C.R. 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). This requires the court to 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 April 2, 2019, was a reasonable decision. Because of Boldt’s lengthy criminal history, his history of drug related offenses despite being given prior addiction treatment. This Court strongly felt the only way to keep the community safe was to initially have Boldt treat his addiction on a period of retained jurisdiction. Following that period of retained jurisdiction, Boldt was caught not only using drugs one month later, but selling and trafficking in drugs two months later. Boldt is not just a danger to himself. Boldt impacts the lives of others negatively and dangerously by selling and trafficking. Boldt made the decision to return to drugs and to return to selling drugs. Boldt made the decision to no longer avail himself of what he learned in treatment.

In the past, Boldt, through his military service, has proven that he can follow directions and orders. Present day, Boldt has proven that he can choose otherwise and has chosen repeatedly not to follow this Court's order or to follow the laws of the State of Idaho. Given the fact that Boldt will not abide by this Court's orders, even when his addiction has been treated, the Court simply cannot have Boldt on probation 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). Boldt wishes this Court to reconsider its decision on March 21, 2018, in CRF 2018 2170, running that sentence consecutive to the sentence previously imposed by Judge Wayman in Benewah County Case No. CRF 2017 788. Rather, Boldt would prefer those sentences run concurrent. This Court concludes that imposition of Boldt's sentence in CRF 2018 2170 consecutive to the sentence previously imposed by Judge Wayman in Benewah County Case No. CRF 2017 788 was at that time, and is at the present time, necessary for the protection of society and the deterrence of Boldt and others.

III. ORDER.

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

IT IS FURTHER ORDERED that Boldt's Motion for Hearing on his I.C.R. 35 Motion is **DENIED**.

IT IS FURTHER ORDERED that Boldt's Motion for Credit for Time Served filed on June 6, 2019, is **GRANTED**. Boldt is entitled to 328 days credit for time served in CRF 2018 2170 as of April 2, 2019.

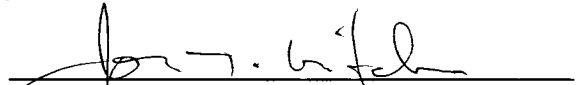
IT IS FURTHER ORDERED that Boldt's Motion and Affidavit in Support for Appointment of Counsel is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, JASON MICHAEL BOLDT, 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 7th day of August, 2019.


John T. Mitchell, District Judge

7th CERTIFICATE OF MAILING

I hereby certify that on the 7th day of August, 2019 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

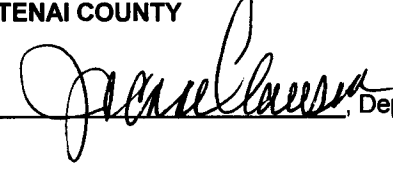
Defense Attorney - Dan Cooper *dcooper@lawfrontier.com*
Prosecuting Attorney - *Ke Paiconas et al. gov. us*

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Hon. Scott Wayman *I.v.*

Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445 *centralrecords@idoc.idaho.gov*

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy