

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
vs. Plaintiff,) Case No. **CR28-20-5263**
BRANDON ALLEN WOOD)
DOB: 05/22/1995)
SSN: XXX-XX-8353)
IDOC: 136471)
Defendant.)

**MEMORANDUM DECISION
AND ORDER DENYING
I.C.R. 35 MOTION**

On July 14, 2020, before the Honorable John T. Mitchell, District Judge, you, BRANDON ALLEN WOOD (Wood), via Zoom appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Christopher Schwartz. At that hearing, the Court imposed the following sentences:

GRAND THEFT, (a felony), I. C. 18-2403(1), 18-2407(1)(B)(1), committed on January 2, 2020 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of THREE (3) years, for a total term not to exceed FIVE (5) years.

Sentencing Disposition and Notice of Right to Appeal 1. The Court committed Wood to the custody of the Idaho State Board of Correction with the Court retaining jurisdiction for up to one year pursuant to I.C. §19-2601. *Id.* at 2.

Thirty four days later, on August 17, 2020, Wood timely filed the instant Motion for Modification of Sentence Pursuant to I.C.R. 35(b). Wood bases this motion on a “plea for leniency.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 1. More detail was provided:

Mr. Wood plans on presenting new information in the form of testimony that he believes that he could be successful on probation. Further he intends to testify regarding the support system that he has in place once he has completed his sentence.

Id. at 2. The relief Wood requests is to have “this Court consider reducing his sentence in a manner it deems appropriate.” *Id.* Wood requested a hearing in his motion. *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. 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 Wood’s I.C.R. 35 motion, the Court has re-reviewed the minutes of the July 14, 2020, sentencing hearing, and has re-reviewed the pre-sentence report and all other materials reviewed at sentencing. 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.

While Wood states he, “plans on presenting new information in the form of testimony that he believes that he could be successful on probation” (Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) 2), Wood fails to tell this Court what that evidence would be. No actual evidence was provided by Wood, nor was there any indication as to what that evidence might be.

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.2nd 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, Wood has not set forth any evidence that could be adduced at hearing on an I.C.R. 35 motion. The Court cannot be required to guess at what evidence Wood might present in support of his Rule 35 Motion. Because Wood has completely failed to give any indication of any facts which would support his claim, his Rule 35 Motion must be denied due to that failure alone.

There are additional reasons to deny Wood’s Rule 35 Motion without a hearing. First, Wood is ambiguous on what relief he seeks, stating at one point that he “requests that this Court consider reducing his sentence” and that “he believes that he could be successful on probation.” This Court is not inclined to provide either relief, but if this Court cannot be required to guess at what evidence Wood might present in support of his Rule 35 Motion, the Court certainly cannot be required to guess at which relief Wood requests.

The primary reason the Court denies Wood’s Rule 35 Motion without a hearing is that the Court gave Wood the sentencing result he requested, a retained jurisdiction. At his July 21, 2020, sentencing hearing, Wood’s attorney stated, “He’s looking forward to a retained. Agree with [the State’s] recommendations.” July 21, 2020, Court minutes 1. In this Court’s nearly nineteen years on the bench, it has happened that a defendant files a Rule 35 motion even though the Court decided exactly as the defendant requested, but it is extremely rare. Wood told his presentence investigator that he would benefit from a retained jurisdiction. The presentence report notes “Throughout the course of the presentence interview, the defendant stated that he would benefit from a ‘rider,’” July 2, 2020, Presentence Report 17. At his July 14, 2020, sentencing hearing, Wood was given the opportunity to correct that and any other error he saw in the presentence report, and made no correction to this part of the presentence report.

Finally, Wood’s Rule 35 Motion must be denied on the merits. As mentioned above, Wood seems to request either a reduction in his sentence or to be placed on

probation at the present time. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b)

2. Nothing has changed since the July 14, 2020, hearing. There is no evidence presented that the sentence imposed is too great given the offense for which Wood was sentenced and his prior record which consists of several theft-related offenses. There is no evidence presented that somehow in the past 33 days Wood is now an acceptable risk to be placed on probation. Wood poses an unacceptable risk to the public. There is no possible way to protect the public by either 1) shortening the sentences and 2) reducing the amount of rehabilitative programming, let alone both.

The sentence imposed on July 14, 2020, was and is an appropriate sentence given Wood's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Wood's crime. The decision to retain jurisdiction was appropriate. This Court concludes that the sentences imposed were and are necessary for the protection of society and the deterrence of Wood and others.

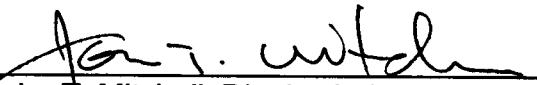
IT IS THEREFORE ORDERED that Wood's I.C.R. 35 Motion filed in each case be and the same hereby are **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, Wood, 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 25th day of August, 2020.

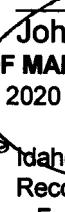

John T. Mitchell, District Judge

I hereby certify that on the 25 th day of August, 2020 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Lisa Chesebro ~~postage prepaid~~
~~Kootenai Co. Prosecuting Attorney - Kepailour~~

~~Bonner Co. Prosecuting Attorney~~

~~Schwarzlawservice@gmail.com~~
BRANDON ALLEN WOOD
IDOC #

 Idaho Department of Correction

Records Division (certified copy)

Fax: (208) 327-7446 Central Records eKegar.us.

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____ Deputy