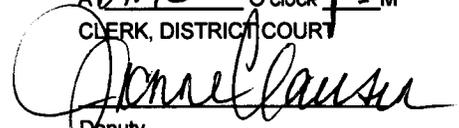


FILED 4/22/2021
AT 2:15 O'clock P-M
CLERK, DISTRICT COURT


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.)
)
 ROBERT SHAWN BECK)
)
 DOB: 02/09/1968)
)
 SSN: XXX-XX-3017)
)
 IDOC: 129752)
)
 Defendant.)
)
)

Case No. **CR28-18-10612**
**MEMORANDUM DECISION
AND ORDER DENYING
DEFENDANT'S SECOND I.C.R.
35 MOTION AND DENYING
MOTION FOR MODIFICATION
OF SENTENCE**

On August 8, 2018, before the Honorable John T. Mitchell, District Judge, Robert Shawn Beck (Beck), appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for Kootenai County, Idaho and your lawyer at that time, Anne Taylor. At that hearing, the Court imposed the following sentence for the felony crime of driving under the influence, a violation of Idaho Code §§ 18-8004, 18-8005(6):

To the custody of the State of Idaho Board of Correction for a fixed sentence of SIX (6) years followed by an indeterminate term of FOUR (4) years for a total unified sentence of TEN (10) years.

The Court retained jurisdiction. Sentencing Disposition 1. On April 11, 2019, due to a favorable report from the Idaho Department of Correction while on the retained jurisdiction, the Court placed Beck on probation, but due to the severity of the crime and Beck's prior record, the Court placed Beck on ten years of supervised probation. Retained Jurisdiction Disposition 1. The Court also suspended Beck's license for an absolute period of five years. *Id.* at 2. On August 6, 2020, an Interstate Compact Report of Violation was filed, and on November 4, 2020, Beck admitted violating his probation as alleged in Allegation No. 6, that he had absconded probation. On November 4, 2020, the Court revoked Beck's probation and imposed his prison sentence, again retaining jurisdiction. Probation Violation Disposition 1, 2. On January 4, 2021, Beck, through current counsel Lisa Chesebro, filed a Motion for Modification of Sentence Pursuant to I.C.R. 35 On January 11, 2021, this Court filed its

Memorandum Decision and Order Denying Rule 35 Motion and Denying Motion for Modification of Sentence. On April 7, 2021, an addendum to the presentence report was filed, which is an April 7, 2021, letter from Idaho Department of Corrections, North Idaho Correctional Institution, Diana Remacle, Correctional Case Manager, indicating Beck's repeated failures to be honest with IDOC staff. That report concludes, "Lying by commission to avoid negative consequences, especially regarding something so minor, is a coping strategy that is diametrically opposed to the terms of supervision that he has previously agreed to. His behavior at NICI is a strong indicator that he will not be willing to follow significant sections of his Agreement of Supervision." April 7, 2021, report, 1. The Court reviewed such on April 8, 2021, and after reviewing such, filed a Retained Jurisdiction Disposition in which the Court relinquished jurisdiction. Retained Jurisdiction Disposition 1, 2. The result of this action is that Beck's sentence was imposed by this Court. *Id.* Beck will serve the remaining portion of his fixed six-year sentence and then take his case to the State of Idaho Parole Commission regarding service of the remaining four indeterminate years.

On April 19, 2021, counsel for defendant filed *another* Motion for Modification of Sentence Rule 35 and Memorandum in Support. In that motion, Beck requests, "This pleading supports a request to modify Mr. Beck's sentence to allow him to return to a retained jurisdiction and/or to reduce the fixed portion of his sentence." Mot. for Modification of Sentence Rule 35 and Mem. in Supp. 2. As to the latter part of that relief requested, this is an action which cannot be taken on behalf of Beck. Successive motions are specifically prohibited by I.C.R. 35. Idaho Criminal Rule 35(b) ends with the phrase, "A defendant may only file one motion seeking a reduction of sentence." Idaho appellate case law also prohibits such. *State v. Heyrend*, 129 Idaho 568, 929 P.2d 744 (Ct. App. 1996), *State v. Wolfe*, 158 Idaho 55, 343 P. 3d 497 (2015).

As to the first portion of the relief requested, that the Court "allow him to return to a retained jurisdiction", the Court denies such for the following reasons.

In this second I.C.R. 35 motion, Beck requests a hearing. Mot. for Modification of Sentence Rule 35 and Mem. in Supp. 2. 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 Beck's second I.C.R. 35 motion, the Court has re-reviewed the file and finds 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 Beck states in this second I.C.R. 35 motion, "additional evidence is attached in the form of a letter authored by Mr. Beck. Further evidence will likely include testimony from Mr. Beck and possible other individuals, and potentially documentation in support of the defendant's request.", (Mot. for Modification of Sentence Rule 35 and Mem. in Supp. 2), Beck fails to state what that testimony might be. *Id.* Thus, Beck gives this Court no idea of what his relevant admissible evidence at a Rule 35 hearing would 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.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, Beck has not set forth any new evidence that could be adduced at hearing on an I.C.R. 35 motion. Beck's attached letter provides no evidence. It simply explains that he was mad while on his retained jurisdiction, which explains nothing about why Beck cannot be honest. Mot. for Modification of Sentence Rule 35 and Mem. in Supp. 5-9. Because Beck 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 other reasons to deny Beck's motion without a hearing. The first is the relief he seeks: being placed back on a period of retained jurisdiction. There is no evidence provided that Beck is any more likely to perform appropriately on an additional period of retained jurisdiction at this time, as compared to when he started his second period of retained jurisdiction. In fact, the evidence is just the opposite. This Court is certainly cognizant that it has the discretion to request the IDOC keep Beck and give him additional programming up until November 4, 2021, an additional seven months. The Court must keep in mind the fact that on April 7, 2021, Beck had just completed his second period of retained jurisdiction. His Addendum to Presentence Investigation (APSI) dated March 19, 2021, from his second period of retained jurisdiction, does recommend probation, but the report is not at all a good indicator of Beck being able to be successful on probation. Beck's APSI reads, "Mr. Beck has received a surging number of corrective actions. Typically, participants in AP [Advanced Placement] do not receive this level of corrective action just prior to release." March 19, 2021, APSI 2. The use of the word "surging" is appropriate, as Beck's disciplinary problems increased toward the end of his period of retained jurisdiction. In a prison-based program where Beck in a controlled environment can focus on his myriad problems, Beck chooses to behave worse as time goes on. The APSI concludes, "It is an indicator that his level of willingness is not conducive to abiding by his terms of supervision." *Id.* Keep in mind that after such a tepid report, IDOC then issued its April 7, 2021, report, which came at the very end of Beck's period of retained jurisdiction. That being the case, this Court concludes its only option is for this Court to impose Beck's prison sentence. At his initial sentencing, due to

the severity of his crime and his lengthy criminal record, this Court could not justify the risk to the public of placing Beck on probation. Thus, the Court utilized its first period of retained jurisdiction with Beck. He performed well enough to convince this Court he was an acceptable risk to be placed on probation. However, that was proven wrong when Beck then absconded probation. The Court, giving Beck every benefit of the doubt and exercising its patience and rehabilitative focus, placed Beck on a second period of retained jurisdiction. During that second period of retained jurisdiction Beck made many choices that prove that he is not a good candidate for probation and that he is not an acceptable risk to the public to be placed on probation.

The sentence imposed on November 18, 2020, was an appropriate sentence given Beck's social and criminal history and the crime for which the sentence was imposed. Any lesser sentence would depreciate the seriousness of Beck's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Beck and others. The decisions to utilize a retained jurisdiction and subsequently to relinquish jurisdiction were likewise appropriate.

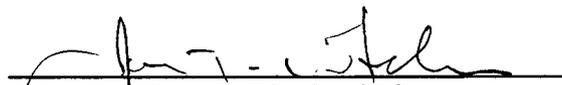
IT IS THEREFORE ORDERED that Beck's Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support filed on April 19, 2021, is hereby **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, ROBERT SHAWN BECK, 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 22nd day of April, 2021.

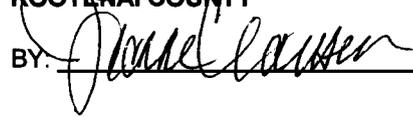

John T. Mitchell, District Judge

I hereby certify that on the 22nd day of April, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Lisa Chesebro *palax@kegov.us*
Kootenai Co. Dep. Pros. Attorney *klpaico@kts*
ROBERT SHAWN BECK
IDOC NO. 137310

*Central records
idoc.idaho.gov.*

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:  Deputy