

STATE OF IDAHO)
 County of KOOTENAI)
 FILED *4/23/2021*)
 AT *4:50* O'clock - 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.)
)
 TRAVIS WILLIAM PETERSON)
)
 DOB: 09/21/1968)
)
 SSN: xxx-xx-9263)
)
 IDOC: 29585)
)
 Defendant.)

Case No. **CR28-20-6946**

**MEMORANDUM DECISION
 AND ORDER DENYING
 I.C.R. 35 MOTION AND
 DENYING MOTION FOR
 MODIFICATION OF
 SENTENCE**

On February 10, 2021, before the Honorable John T. Mitchell, District Judge, you, TRAVIS WILLIAM PETERSON (Peterson), via Zoom appeared for sentencing. Also appearing were a representative of the Prosecuting Attorney for KOOTENAI County, Idaho and your lawyer, Adrien Fox. At that hearing, the Court imposed the following sentence for possession of a controlled substance (methamphetamine): three years fixed, four years indeterminate for a total unified sentence of seven years. The Court placed Peterson on a period of three years. Because Peterson was not in custody at the time of the hearing, the Court ordered Peterson to turn himself in to the Kootenai County Jail by 5:00 p.m. that day. Peterson did not comply with that order of the Court and the Court issued a bench warrant on February 16, 2021. That warrant has yet to be served.

On March 11, 2021, Peterson, through counsel, filed a Notice of Appeal.

On March 17, 2021, Peterson, through counsel, filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. In that document, Peterson requests this Court, "to modify Travis William Peterson's sentence to a fixed period of one (1) year, to be followed by an indeterminate period of one (1) year or place Mr. Peterson on a period of probation." Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 2. This is pretty brazen considering: 1) that Peterson has yet to report to have his period of retained jurisdiction begin, and 2) that this Court can relinquish jurisdiction at any time, without a hearing, and without notice. Were that to occur, when this Court's bench warrant is served, Peterson would simply serve his three year fixed sentence and then work with the Parole Commission for the remaining four.

Peterson has notice up that motion for a hearing on May 4, 2021. 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 Peterson’s I.C.R. 35 motion, the Court has re-reviewed the minutes of the February 10, 2021, 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.

Peterson bases this motion on a “plea for leniency.” Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 1. More detail was provided: “The basis for such argument consists of the direct and collateral negative impact a sentence of the current nature places upon the defendant and his future.” *Id.* at 2. That really is no basis. As mentioned above, Peterson requests probation rather than a retained jurisdiction. *Id.* Why would the Court think that Peterson is now, on April 28, 2021, suddenly and miraculously a good candidate for probation, when he has actively avoided this Court’s order by being on the run for the last 77 days? Counsel for Peterson claims, “Additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant’s request.” *Id.* at 3. Peterson, through counsel, claims, “In addition to the above, Mr. Peterson would specifically testify about his current ongoing medical treatment and mental health medications which is new and additional information since sentencing. Mr. Peterson would likewise testify that he still desires to be able to participate in Spokane’s Mental Health Court should this Court place him on probation.” *Id.* That is no different evidence than was presented by Peterson at his February

10, 2021, sentencing hearing. Also, it ignores the fact that Peterson has not been on probation and has not been on a period of retained jurisdiction for the past 77 days as a result of his decision to remain on the run.

At this point, Peterson has given this Court no idea of what his new evidence would be at a hearing. 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, Peterson has not set forth any new evidence that could be adduced at hearing on an I.C.R. 35 motion. The Court cannot be required to guess at what evidence Peterson might present in support of his Rule 35 Motion. Because Peterson 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 Peterson's Rule 35 Motion without a hearing. First, is the relief he seeks, being placed on probation rather than a period of retained jurisdiction. There is no evidence provided that Peterson is any better risk to be placed on probation now as compared to his February 10, 2021, sentencing hearing. The only

additional evidence is that Peterson will not comply with Court orders. That only reinforces the Court's decision to place Peterson on a retained and completely justifies relinquishment of jurisdiction at any time. Thus, there is no evidence that has been presented that could allow this Court to reconsider its earlier decision to utilize a retained jurisdiction.

The sentence imposed on February 10, 2021, was an appropriate sentence given Peterson's social and criminal history and the crime for which sentence were imposed. Any lesser sentences would depreciate the seriousness of Peterson's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Peterson and others. The decision to utilize a retained jurisdiction was likewise appropriate.

IT IS HEREBY ORDERED that Peterson's I.C.R. 35 Motion is hereby **DENIED**.

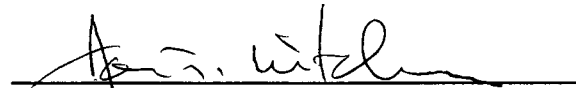
IT IS FURTHER ORDERED that the hearing scheduled for May 4, 2021, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, TRAVIS WILLIAM PETERSON, 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 28th day of April, 2021.


John T. Mitchell, District Judge

I hereby certify that on the 28th day of April, 2021 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:
Defense Attorney – Adrien Fox pdfax@kcgov.us
Kootenai Co. Dep. Pros. Attorney – Tristan Poorman
and Destry Randles kcpaiccourts@kcgov.
TRAVIS WILLIAM PETERSON
IDOC NO. 137310

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy