

on the planet, Brady would know that a retained jurisdiction is the likely outcome for absconding from probation. Brady, and her attorney, made it quite clear to the Court that Brady did not want that outcome. Brady had made a calculation of how much time she had remaining on her sentence, and wished that to be imposed. In her I.C.R. 35 Motion, Brady does not seek to have a retained jurisdiction utilized again.

Second, is the futility of the relief Brady seeks. Brady seeks a reduction in the fixed portion of her sentence at a time where she has already served over three years of her sentence. Were the Court to grant a reduction in the fixed portion of her sentence, the Court typically adds that portion subtracted on to the indeterminate portion of her sentence.

Third, is the reason for the imposition of her sentence. Brady absconded from probation in 2020. December 10, 2020, Report of Violation 1-3. ¶¶ 1-2. Four months passed before the warrant was served. Brady absconded from probation in 2018. November 26, 2018, Report of Violation 1-2, ¶¶ 1-6. Five months passed before that warrant was served. Brady absconded in 2017. August 15, 2017, Report of Violation, 1-4. ¶¶ 1-4, 6. Brady was terminated from the Mental Health Court program twice for noncompliance (though not absconding). Brady absconded from probation in 2013. April 18, 2013, Report of Violation, 2-3, ¶¶ 4-6. The judicial response for a person who consistently refuses to do probation is not to reduce their sentence, it would be to impose the then-existing prison sentence.

Fourth, no new evidence has been presented by Brady. As mentioned above, Brady requested a hearing. 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 Brady’s I.C.R. 35 motion, the Court has re-reviewed her entire file, the minutes of the April 6, 2021, hearing, and has re-reviewed the pre-sentence report and all

other materials Judge Gibler 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 Brady states, "additional evidence will likely include testimony from the defendant and possible other individuals, and potentially documentation in support of the defendant's request", but she fails to state what that testimony might be other than her letter to the Court, referenced above. Mot. for Modification of Sentence Pursuant to I.C.R. 35(b) and Mem. in Supp. 2. Thus, Brady gives this Court no idea of what her evidence relevant evidence at a Rule 35 hearing would be. On April 6, 2021, Brady made the informed and calculated decision, with her counsel being present and her counsel's concurrence, to have the Court impose her prison sentence. Nothing has changed since that time. No new evidence has been presented by Brady.

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, Brady has not set forth any new evidence that could be

adduced at hearing on an I.C.R. 35 motion. Because Brady has completely failed to give any indication of any facts which would support his claim, her Rule 35 Motion must be denied due to that failure alone.

The sentence imposed by Judge Gibler, on April 22, 2013 (following the revocation of her withheld judgment as a result of her probation violation), was an appropriate sentence given Brady's crime for which sentences were imposed. Any lesser sentence would depreciate the seriousness of Brady's crime. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Brady and others.

IT IS THEREFORE ORDERED that Brady's Motion for Modification of Sentence Pursuant to I.C.R. 35(b) is hereby **DENIED**.

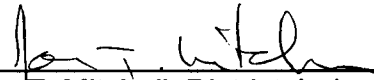
IT IS FURTHER ORDERED that the hearing scheduled for May 26, 2021, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, LEONNA LOUISE BRADY, 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

CERTIFICATE OF MAILING

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 – Lisa Chesebro *patex@hegpr.us*
Kootenai Co. Dep. Pros. Attorney *kepar@idoc.us*
LEONNA LOUISE BRADY
IDOC NO. 137310

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY:  Deputy