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AT \_\_\_\_\_ O'clock \_\_\_ M  
CLERK, DISTRICT COURT

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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. )  
)  
RYAN DAVID HIPPENSTIEL )  
)  
Defendant. )  
)  
)  
)  
)  
\_\_\_\_\_ )

Case No. **CRF 2004 2524**  
**CRF 2004 2661**  
**CRF 2004 15195**

**ORDER DENYING I.C.R. 35  
MOTION AND NOTICE OF  
RIGHT TO APPEAL**

On August 23, 2004, Ryan David Hippenstiel, was sentenced, to wit:

CRF 2004 2524 - COUNT I - Grand Theft -, (a felony), Idaho Code § I.C. 18-2403, 18-2407, committed on February 2004 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) months followed by an indeterminate term of TWELVE (12) years, for a total term not to exceed THIRTEEN (13) years and EIGHT (8) months. This sentence runs CONCURRENT with the other sentences imposed in CRF 2004 2524, CRF 2004 2661 and CRF 2004 15195.

CRF 2004 2524 - COUNT II - Possession of a Controlled Substance (Methamphetamine), (a felony), Idaho Code § I.C. 37-2732(c) committed on February 9, 2004 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) months followed by an indeterminate term of FIVE (5) years, for a total term not to exceed SIX (6) years and EIGHT (8) months. This sentence runs CONCURRENT with the other sentences imposed in CRF 2004 2524, CRF 2004 2661 and CRF 2004 15195.

CRF 2004 2661 - COUNT I - Aggravated Assault (Part II - committed with use of a deadly weapon) (a felony), Idaho Code § 18-901, 18-905(a and/or b) and Idaho Code § 19-2520 committed on December 19, 2003 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) months followed by an indeterminate term of EIGHTEEN (18) years, for a total term not to exceed NINETEEN (19) years and EIGHT (8) months. This sentence runs CONCURRENT with the other sentences imposed in CRF 2004 2524 and CRF 2004 15195.

Sentence Disposition and Notice of Right to Appeal, pp. 2-3. These sentences were imposed and Hippenstiel was sent to prison to serve those sentences.

On January 11, 2013, Hippenstiel filed a “Motion for Reduction or Correction of Sentence, ICR 35” and a “Motion for Hearing” in each of the three cases. As to Hippenstiel’s “Motion for Hearing” in each of the three cases, the Court has determined that oral argument is not necessary for resolution of the issue presented by the motion. 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).

Idaho Criminal Rule 35 provides in part that

The court may correct an illegal sentence at any time and may correct a sentence that has been imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. The court may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation.

The sentence imposed on August 23, 2004, is within the range of lawful sentences

for the crimes for which sentences were imposed. Hippenstiel has failed to even suggest any basis for determining that any of the imposed sentences were an illegal sentence. “For the purpose of Rule 35, an illegal sentence is one in excess of a statutory provision or otherwise contrary to applicable law.” *State v. Lee*, 116 Idaho 515, 516, 777 P.2d 737, 738 (Ct.App. 1989). The unified sentences described above are all within the maximum provided by law for those various crimes. Actions of the parole commission are simply irrelevant to the legality of this sentence. Indeed, it would be an unlawful act for this Court to modify its sentence in response to the parole commission’s decision to deny parole. See *State v. Heyrend*, 129 Idaho 568, 929 P.2d 744 (Ct.App. 1996) (the district court “usurped the constitutional duties of the executive branch of government” when it removed the defendant from custody because the parole commission had denied parole). Since it is a legal sentence, under I.C.R. 35, the 120 time period applies.

Under the facts of this case, the last day Hippenstiel could have filed an I.C.R. 35 motion in this action was 120 days after the Sentence Disposition and Notice of Right to Appeal was filed on August 23, 2004. That deadline would have run approximately December 21, 2004. Thus, Hippenstiel is more than nine years too late. This court is without jurisdiction to grant leniency under I.C.R. 35. See *State v. Sutton*, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1988).

Hippenstiel also complains in his I.C.R. 35 motions that the restitution amount imposed by the Court was inappropriate. Because the Court has no jurisdiction to hear Hippenstiel’s I.C.R. 35 Motion, it also lacks jurisdiction to alter any restitution amounts previously imposed.

**IT IS THEREFORE ORDERED** that Hippenstiel’s I.C.R. 35 motions in each of these three cases are **DENIED** and the same hereby are dismissed for lack of jurisdiction. Since the Court has no jurisdiction to hear the I.C.R. 35 motion, the Motion for Hearing

filed in all three cases are **DENIED** as well.

**NOTICE OF RIGHT TO APPEAL**

**YOU, Hippenstiel, 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, if any.

DATED this 11<sup>th</sup> day of February, 2013.

\_\_\_\_\_  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of February, 2013 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Prosecuting Attorney -

RYAN DAVID HIPPENSTIEL  
IDOC # 74878  
I.C.C.

P. O. Box 70010  
Boise, ID 83707

Idaho Department of Correction  
Records Division (certified copy)  
Fax: (208) 327-7445

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY: \_\_\_\_\_, Deputy