

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

<p>STATE OF IDAHO,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>JAMES ROBERT FRANZ II</p> <p style="text-align: right;">Defendant.</p> <hr style="width: 100%;"/>	<p>)</p>	<p>Case No. CRF 2001 12743</p> <p>ORDER DENYING I.C.R. MOTION AND NOTICE OF RIGHT TO APPEAL (LENIENCY), AND ORDER DENYING MOTION FOR CREDIT FOR TIME SERVED</p>
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On May 14, 2003, JAMES ROBERT FRANZ II, was sentenced, to wit:

GRAND THEFT, a felony, Idaho Code § 18-24093(1), committed on March 16-17, 2001 – to the custody of the Idaho State Board of Correction for a fixed term of two (2) years followed by an indeterminate term of four (4) years, for a total term not to exceed six (6) years.

On September 4, 2003, JAMES ROBERT FRANZ II filed the instant *I.C.R. 35* Motion requesting that the Court reconsider the Judgment and Sentence entered May 14, 2003 as a plea for leniency. A hearing was held on October 27, 2003, Mr. Frantz II appeared telephonically, and was represented by his attorney Martin Neils. JAMES ROBERT FRANZ II bases this motion on leniency.

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. ... Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly severe....

* * *

However, if the sentence is not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with his motion. (Citations omitted) *State v. Forde, 113 Idaho 21, 22, 740 P.2d 63 (Ct. App. 1987)*.

The sentence imposed on January 2, 2003, was and is an appropriate sentence given Franz's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of JAMES ROBERT FRANZ II's crimes. I conclude that the sentence

imposed was and is necessary for the protection of society and the deterrence of JAMES ROBERT FRANZ II and others. At the hearing, the Court indicated that this ruling is discretionary with the court, and denied the motion noting that it was actually on the light end of the scale given the seriousness of the crime and past record.

Frantz also made the claim at the hearing that he could not get into the Therapeutic Community because he had four (4) years indeterminate and the Department of Corrections would not allow participation in the Therapeutic Community until such time as the inmate had less than three (3) years (36 months) left on the “top out” (maximum, including all indeterminate) portion of his sentence. The Court indicated that the Court would contact the warden at South Idaho Correctional Institution, (SICI) Ken Bennett, to check on Frantz’ claims.

The Court received the following response via e-mail from Bert L. Schweickart, Program Manager, Parole Release Center, South Idaho Correctional Institution, who can be contacted at: 208-658-2066:

Your honor:

Warden Bennett asked me to respond to your inquiry regarding Mr. Franz and his assertions regarding his eligibility for the therapeutic community program.

You are absolutely correct in your understanding of the entrance criteria and the timing for participation. The TC programs are designed to target individuals that are within 1 year of parole eligibility (when their fixed time is completed). There are occasions when offenders go past this date however that is usually due to logistics, waiting lists, or slow progress within the program. The RSAT grant that funds the program has some stringent guidelines in that an individual cannot be in the program longer than 12 months and must complete 6 months of aftercare. The only way we can ensure compliance to the latter is if they are on parole. Therefore, again you are correct, the indeterminate portion of sentencing is not a factor for participation. If Mr. Franz would like to have this explained to him personally please have him contact Elliott Weiss at SICI (our program screener) and he will be happy to do so. I hope this answers your questions and feel free to contact me for further information.

Frantz’ claims are not supported. The Department of Corrections has clearly indicated that participation in the Therapeutic Community has nothing to do with the amount of indeterminate sentence imposed.

Frantz also filed a Motion for Credit for Time Served on September 4, 2003, and that matter was also heard at the October 27, 2003 hearing. Frantz’ motion stated no basis for the motion, but at

oral argument, Frantz' counsel argued that he should receive credit for time served at least from the time of conviction until sentencing in this matter. The prosecution pointed out that while he was in custody at the time of conviction through the time of sentencing, he was being held on a probation violation in another matter during that time, and thus, credit should only be given after the date of sentencing in this matter. Counsel for Frantz could offer no authority for a different outcome. Accordingly, the Motion for Credit for Time Served must be denied.

IT IS THEREFORE ORDERED that JAMES ROBERT FRANZ II's *I.C.R. 35* Motion be and the same hereby is **DENIED**, and the Motion for Credit for Time Served is **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, JAMES ROBERT FRANZ II, 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 _____ day of November 2003.

JOHN T. MITCHELL, District Judge