

STATE OF IDAHO )  
County of KOOTENAI ) ss

FILED 12/4/18

AT 9:30 o'clock A M  
CLERK, DISTRICT COURT

*John Lawson*  
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. )  
)  
BRANDON MICHAEL THOMPSON )  
DOB: 12/05/1964 )  
SSN: XX-XX-8790 )  
IDOC: 125526 )  
Defendant. )

Case No. **CRF 2017 6466**

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

On November 2, 2017, this Court sentenced Brandon Michael Thompson  
(Thompson) as follows:

- COUNT I – INJURY TO CHILD, (a felony), I.C. 18-1501(1), committed on February 15, 2017 - to the custody of the Idaho State Board of Correction for a fixed term of FOUR (4) years followed by an indeterminate term of SIX years, for a total term not to exceed TEN (10) years.
  - COUNT II – INJURY TO CHILD, (a felony), I.C. 18-1501(1), committed on February 15, 2017 - to the custody of the Idaho State Board of Correction for a fixed term of FOUR (4) years followed by an indeterminate term of SIX years, for a total term not to exceed TEN (10) years.
- THESE SENTENCES RUN CONSECUTIVELY.**

Sentencing Disposition and Notice of Right to Appeal, 2. On November 2, 2017, the Court imposed those sentences, but the Court retained jurisdiction of Thompson so that he could get programming and treatment in prison for up to one year. At that hearing, the Court told Thompson that the Court did not believe his story that the victim’s mother had given him permission to have sex with the victim, her daughter, who was fourteen at the time of the February 15, 2017, events. At sentencing, the victim testified and told of the grooming behavior by Thompson before the sex (that his ex-girlfriend had died and was

caring), the lies Thompson told to her to get her to have sex with him on four occasions (that he was using protection), and the lies and manipulation he told her once he was being investigated so that he might avoid being charged with a crime (telling her to lie to the police that they had only held hands, telling her he would marry her, and telling her he was contemplating committing suicide). Thompson told police had asked for nude photographs from the victim, and that she sent those to him, another thing the victim knew Thompson had to try to control her. The Court told Thompson that the Court believed his victim and did not believe him regarding his story that the victim's mother consented to his having sex with his fourteen-year-old daughter. The Court told Thompson that Thompson had maintained his lie through the sentencing hearing. The Court told Thompson he was manipulative and frightening. The Court told Thompson that unless he could come to grips with his lies at his jurisdictional review hearing, the Court would not consider probation. At his sentencing hearing, the Court told Thompson stated it would require at his jurisdictional review hearing, a non-deceptive polygraph on this issue of the victim's mother granting consent, if Thompson wanted the Court to consider probation.

On August 7, 2018, this Court held a jurisdictional review hearing. At that hearing, the Court stated that it had no polygraph on the issue of the victim's mother giving permission. Counsel for Thompson requested a continuance, which was granted. On September 27, 2018, another jurisdictional review hearing was held. At that hearing, a polygraph report was presented to the Court. The Court made it clear that none of the three questions asked Thompson in the polygraph pertained to the issue of the victim's mother granting him permission to have sex with her fourteen-year-old daughter. The Court also stated on the record why the polygraph required by the Court did not implicate *State v. Komen [Vankomen]*, 160 Idaho 534, 376 P.3d 738 (2016), an issue raised in

Thompson's counsel's "Notice of Objection" filed August 10, 2018.

Thompson's Notice of Objection also claimed that lying to the presentence investigator is an aggravating factor at sentencing, citing *State v. Monroe*, 128 Idaho 676, 917 P.2d 1316 (Ct. App. 1996). Notice of Obj. 1. That argument deserves comment by the Court, as that issue did not come up in Thompson's jurisdictional review hearing. A review of *Monroe* shows that Monroe did not lie on his presentence report, but lied in a letter to the sentencing judge about his prior offenses. The actual record of his prior offenses were contained in his presentence investigation. 128 Idaho at 681, 917 P.2d at 1321. The Idaho Court of Appeals held, "Prior to sentencing in the present case, Monroe had written to the district court, lying about his prior offenses, which led the court to conclude that Monroe refused to face up to his problems and was a high risk to reoffend. The district court concluded that Monroe should not be free in society." *Id.* This Court has the same concerns of Thompson, given his lies to the Court, to the police, to his victim and his victim's family. Additionally, this is not a situation where Thompson could have committed perjury. Thompson's lies to law enforcement were not under oath. Thompson's lies to his presentence investigator were not under oath. Thompson's lies to the Court were not under oath. On July 13, 2017, Thompson waived his right to a preliminary hearing, so he did not testify under oath at that time. In the state of Idaho, perjury requires a false statement after a person has taken an oath that they will testify, declare, depose, or certify truthfully. Idaho Code § 18-5401.

Whether it be *Monroe*, *Vankomen*, or Thompson's general claims of unfairness, there were several reasons for this Court's request for Vankomen to be honest about his false claim that he had the victim's mother's permission to have sex with her underage daughter, and for this Court's request that Thompson verify he had finally been honest. First, this Court believes that in a sex offense case, treatment cannot begin until there has

been full disclosure. Obviously, the district judge in *Monroe* was of that belief. Because Thompson has chosen not to be honest on this issue, then the likelihood of successful treatment in the community is diminished, and the likelihood of another victim in the future is increased. Second, because Thompson told police that the victim's mother authorized sex with her underage daughter, there was a Health and Welfare investigation into the victim's parents. The victim's parents, whose reputations are tarnished by Thompson's lie, are entitled to an admission by Thompson that he had lied, thus clearing their reputation, and providing closure on that issue. Due to Thompson's decision not to be honest, none of that will occur. Third, the victim needs to know from the perpetrator of the crime that her mother in fact gave no such authorization. All family members need closure. The purpose of the non-deceptive polygraph was not to convince the Court. The Court at all times has been convinced that Thompson's story that his victim's mother gave him permission to have sex with his daughter was a blatant lie and only made to try to prevent or reduce criminal charges that he knew were coming.

On October 9, 2018, counsel for Thompson timely filed a "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35." On November 13, 2018, counsel for Thompson filed a Notice of Hearing, scheduling the I.C.R. 35 Motion for hearing on December 5, 2018. On December 3, 2018, counsel for Thompson filed a different Notice of Hearing, rescheduling the I.C.R. 35 Motion for hearing on January 8, 2019.

Thompson bases his motion on "a plea for leniency." Mot. for Recons. of Sentence Pursuant to I.C.R. 35, 1. No additional basis was given. In his Rule 35 Motion, counsel for Thompson requested a hearing. *Id.*

## **II. ANALYSIS.**

This Court has determined that Thompson's Rule 35 Motion must be denied. The Court also determines that a hearing is not necessary.

**A. THOMPSON HAS NOT SET FORTH A VALID BASIS FOR HIS MOTION, NOR HAS THOMPSON SET FORTH ANY EVIDENCE TO SUPPORT HIS MOTION.**

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 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 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, counsel for Thompson has failed to set forth evidence that could be adduced at present. Essentially, Thompson has chosen to file an I.C.R. 35 motion without ever stating what facts or any evidence he might have to support his motion. There are no facts which support Thompson’s I.C.R. 35 Motion.

As mentioned above, Thompson bases his motion on “a plea for leniency.” Mot. for Recons. of Sentence Pursuant to I.C.R. 35, 1. A motion to reduce sentence is a motion for leniency. *State v. Strand*, 137 Idaho 457, 463, 50 P.3d 472, 478 (2002); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The decision to grant or deny leniency is left to the sound discretion of the court. *Strand*, 137 Idaho at 463, 50 P.3d at 478. *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989).

A motion to reduce an otherwise lawful sentence is addressed to the sound discretion of the sentencing court. *State v. Arambula*, 97 Idaho 627, 550 P.2d 130 (1976). Such a motion is essentially a plea for leniency, which may be granted if the sentence originally imposed was unduly severe. *State v. Lopez*. 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984). . . .

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.

*State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *see also State v. Adams*, 137 Idaho 275, 278, 47 P.3d 778, 781 (Ct. App. 2002).

For a sentence to be considered “reasonable” at the time of sentencing the court must consider the objectives of sentencing: whether confinement is necessary to accomplish the objective of protection of society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to the case. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). This requires the court focus on “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982).

The Court finds Thompson’s sentences imposed on November 2, 2017, were reasonable. On the date of sentencing, the Court explained to Thompson how dishonest Thompson was being, and unless he could confront what he had done and be honest about the lies he had told about the victim’s mother giving him permission, there was really no way the Court could consider probation. All of that was reiterated by the Court at

the August 7, 2018, hearing. Now, at the time of his I.C.R. 35 Motion, there is still no evidence that Thompson has changed his mind about being honest.

The sentences imposed on April 18, 2016, were and are appropriate sentences given Thompson's social history, his criminal history, and the facts of the crimes for which sentences were imposed on November 2, 2017. A lesser sentence would depreciate the seriousness of Thompson's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society, protection of Thompson's victim and the victim's family, protection of other potential victims and the deterrence of Thompson and others.

### **C. NO HEARING IS NEEDED.**

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 the Motion Pursuant to I.C.R. 35, the Court has re-reviewed the minutes of the November 2, 2017, sentencing hearing, the minutes of the August 7, 2018, jurisdictional review hearing, and the September 17, 2018,

jurisdictional review 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.

**III. ORDER.**

**IT IS THEREFORE ORDERED** that Thompson's I.C.R. 35 Motion is **DENIED**.

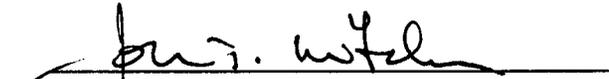
**IT IS FURTHER ORDERED** the hearing scheduled for January 8, 2019, is **VACATED**.

**NOTICE OF RIGHT TO APPEAL**

**YOU, BRANDON MICHAEL THOMPSON, 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 4<sup>th</sup> day of December, 2018.

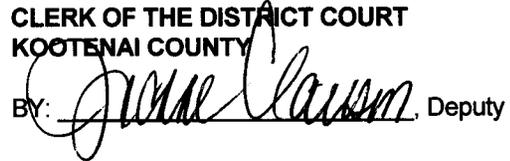
  
John T. Mitchell, District Judge

I hereby certify that on the 4<sup>th</sup> **CERTIFICATE OF MAILING** day of December, 2018 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Anne C. Taylor *pd.fax@kegov.us*  
Prosecuting Attorney – Barry McHugh *ke.paulowats@kegov.us*

**BRANDON MICHAEL THOMPSON**  
IDOC No. 125526

Idaho Department of Correction  
Records Division (certified copy)  
Fax: (208) 327-7445 *centralrecords@idoc.idaho.gov*

**CLERK OF THE DISTRICT COURT**  
**KOOTENAI COUNTY**  
BY:  Deputy