

FILED \_\_\_\_\_

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

\_\_\_\_\_  
Deputy

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

<b>STATE OF IDAHO,</b>	)	
	)	Case No. <b>CRF 2004 17967</b>
Plaintiff,	)	
vs.	)	<b>ORDER DENYING I.C.R. 35</b>
	)	<b>MOTION AND NOTICE OF</b>
<b>WILLIAM DEAN ARTHUR</b>	)	<b>RIGHT TO APPEAL</b>
DOB: 11-04-56	)	
SSN: 536-66-3346	)	
IDOC: 76067	)	
	)	
Defendant.	)	
_____	)	

On December 16, 2004, Arthur was sentenced as follows in the above matter:

Grand Theft, (a felony), Idaho Code § I.C. 18-2403, 18-2407, committed on August 17, 2004 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of LIFE, for a total term not to exceed LIFE.

This Court included the following language:

**IT IS STRONGLY RECOMMENDED THAT YOU PARTICIPATE IN THE THERAPEUTIC COMMUNITY TO ADDRESS YOUR ADDICTION TO ALCOHOL (AND POSSIBLY OTHER SUBSTANCES) AND TO ADDRESS YOUR CRIMINAL THINKING, PRIOR TO THE PAROLE COMMISSION CONSIDERING YOU FOR PAROLE.**

Arthur appealed that decision. On April 14, 2005, Arthur filed an I.C.R. 35 Motion seeking a reduction or modification of the sentence. On May 24, 2009, this Court granted Arthur's I.C.R. 35 Motion, and modified Arthur's sentence as follows:

Grand Theft, (a felony), Idaho Code § 18-2403, 18-2407, committed on August 17,

2004 – to the custody of the Idaho State Board of Correction for a fixed term of ONE (1) YEAR AND TEN (10) MONTHS followed by an indeterminate term of LIFE, for a total term not to exceed LIFE.

The recommendation for the Therapeutic Community remains. The reason for granting the I.C.R. 35 motion is to get him into the Therapeutic Community immediately.

On June 28, 2005, Arthur appealed that decision to the Idaho Supreme Court. The Idaho Court of Appeals affirmed this Court on both decisions, and on January 28, 2008, the Idaho Supreme Court affirmed this Court. Arthur filed a post-conviction relief case, Kootenai County Case No. CV 2009 104. This Court granted Arthur’s post-conviction relief, and resentenced him on September 1, 2009, as follows:

Grand Theft, (a felony), Idaho Code § I.C. 18-2403, 18-2407, committed on August 17, 2004 – to the custody of the Idaho State Board of Correction for a fixed term of ONE (1) year and TEN (10) months followed by an indeterminate term of SEVEN (7) years and TWO (2) months, for a total term not to NINE (9) YEARS. This includes the habitual enhancement sentence pursuant to I.C. § 19-2514.

The Court included the following language:

IT IS FURTHER ORDERED that WILLIAM DEAN ARTHUR is committed to the custody of the Idaho State Board of Correction on the date of the sentencing hearing, December 16, 2004. IT IS STRONGLY RECOMMENDED THAT YOU PARTICIPATE IN THE SEX OFFENDER TREATMENT PROGRAM TO ADDRESS YOUR ADDICTION TO ALCOHOL (AND POSSIBLY OTHER SUBSTANCES) AND TO ADDRESS YOUR CRIMINAL THINKING, PRIOR TO THE PAROLE COMMISSION CONSIDERING YOU FOR PAROLE.

On December 24, 2009, Arthur filed a “Motion for Rule 35 Relief (Hearing Requested)”. Even though a hearing was requested, the 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, 887 P.2d 67 (Ct.App. 1994). This Court concludes a hearing is not necessary and would be a waste of time.

The basis of Arthur’s second I.C.R. 35 Motion is as follows:

This Motion is based upon the fact that the practices and procedures by the Idaho Department of Corrections will thwart the Judge’s sentencing intent. Specifically, the Court had expressed a desire to have a sufficient indeterminate time

to motivate the Defendant. However, it has become clear that no matter what actions are taken by the Defendant, the prison will not release him nor provide alcohol programming until Defendant is about 6 months short of his release.

Thus, the length of the indeterminate sentence is above and beyond the purpose intended by the sentence in court. Furthermore, the recommendation for any particular programming should be stricken from the wording of the judgment.

Motion for Rule 35 Relief, pp. 1-2. As shown by the wording above, it is obvious this Court disagrees that “the recommendation for any particular programming should be stricken from the wording of the judgment”. Arthur has already had his indeterminate sentence reduced from life to seven years and two months. Finally, this is a successive I.C.R. 35 motion, which is prohibited.

*State v. Heyrend*, 129 Idaho 568, 929 P.2d 744 (Ct.App. 1996)

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 information presented by Arthur with the motion is not sufficient to persuade this court to further modify the sentence.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, the sentence previously imposed on September 1, 2009, at resentencing, remains. Arthur’s I.C.R. 35 Motion is without merit, successive and frivolous, and accordingly, is DENIED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Arthur’s Motion for Appointment of Counsel is DENIED as the I.C.R. 35 Motion is without merit, successive and frivolous.

#### **NOTICE OF RIGHT TO APPEAL**

**YOU, WILLIAM DEAN ARTHUR, 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 31<sup>st</sup> day of December, 2009.

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John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of January, 2010 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Prosecuting Attorney

WILLIAM DEAN ARTHUR  
IDOC: 76067  
OCC Imot G  
P. O. Box 70010  
Boise ID 83707

Idaho Department of Correction  
[certified copy Faxed to  
(208) 327-7445]

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

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