

determining that the imposed sentence is an illegal sentence. 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 Ricks could have filed an I.C.R. 35 motion in this action was 120 days after July 1, 2009. 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).

In his motion, Ricks states: “The reason this request has not been filed in a more timely manner is because of Ineffective Assistance of Counsel.” However, Ricks does not identify what that ineffective assistance of counsel was, what acts/omissions of counsel support such claim and what harm came from such acts/omissions. There are different remedies for Rick and his allegation of ineffective assistance of counsel.

In his motion, Ricks “humbly requests 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. Copenhagen*, 129 Idaho 494, 496, 927, P.2d 884, 886 (1996); *State v. James*, 112 Idaho 239, 242, 731 P.2d 234, 2370 (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 for Reconsideration of Sentence Pursuant to I.C.R. 35, the Court

minutes and the pre-sentence report. 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.

IT IS THEREFORE ORDERED that Ricks's I.C.R. 35 motion is **DENIED** and the same hereby is dismissed for lack of jurisdiction. Since the Court has no jurisdiction to hear the I.C.R. 35 motion, the Motion for Appointment of Counsel is **DENIED** as well.

NOTICE OF RIGHT TO APPEAL

YOU, Ricks, 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 14th day of June, 2010.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney (since withdrawn) - Rick
Baughman
Prosecuting Attorney -

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

GEORGE QUINN RICKS
IDOC # 93404

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

13825 Lauren Loop
Rathdrum, ID 83858

BY: _____, Deputy

Probation & Parole

