

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**

STATE OF IDAHO,)
)
) Plaintiff,)
)
 vs.)
)
) **BRIAN CHARLES BREMNER**)
) DOB: 06/20/1972)
) SSN: 519-82-5553)
) IDOC: 63009)
)
) Defendant.)
)

Case No. **CRF 2009 25216**
CRF 2010 758

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

On June 22, 2010, Bremner was sentenced as follows:

CRF 2009 25216 - MALICIOUS INJURY TO PROPERTY, (a felony), Idaho Code § I. C. 18-7001, committed on DECEMBER 14, 2009 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of THREE (3) years, for a total term not to exceed FIVE (5) years.

CRF 2010 758 - POSSESSION OF A CONTROLLED SUBSTANCE (Methamphetamine), (a felony), Idaho Code § I. C. 37-2732(c) committed on OCTOBER 4, 2009 – to the custody of the Idaho State Board of Correction for a fixed term of TWO (2) years followed by an indeterminate term of FIVE (5) years, for a total term not to exceed SEVEN (7) years.

These sentences were ordered to be served *consecutively*, meaning Bremner would serve four years fixed, and then be eligible for parole. However, if Bremner were not able to rehabilitate in prison and could not convince the State of Idaho Parole Commission to grant him parole after those four years, Bremner could face an additional eight years in prison, for a total of twelve years. Bremner was given a period of retained jurisdiction pursuant to I.C. § 19-2601 for up to three hundred and sixty five (365) days, with a recommendation for

the Therapeutic Community (TC) rider.

On June 24, 2010, in both of his cases, Bremner filed the instant I.C.R. 35 Motion requesting that his sentence be reconsidered. Bremner bases this motion on "...a plea for leniency." Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1. No other reasons were given (such as inability to program, inability to qualify for TC Rider etc.)

In his motions in each case, Bremner requested a hearing, and such is scheduled for August 5, 2010. A motion to modify a sentence "shall be considered and determined by the court without the admission of addition 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. Given the fact that the *only* reason listed in Bremner's I.C.R. 35 motion is "a plea for leniency", 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.

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. *Id, Strand; 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 (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. Toolhill*, 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 facts of these two cases are quite remarkable, especially when viewed from the standpoint of protection of the public interest, the paramount consideration. *Toolhill*, 103 Idaho 565, 568, 650 P.2d 707, 710.

In Kootenai County Case No. CRF 2010 758, Bremner, at 2 a.m. on October 4, 2009, was reported by a citizen to appear to be on drugs, driving a black truck on a busy street in Post Falls, and who had come to a stop near a residence. The arresting officer noticed track marks on Bremner’s arms, fresh blood flakes near the tracks. Bremner stared distantly, spoke quickly and incoherently, admitted using meth for the last 40 days,

admitted being high and admitted having thoughts of bad “sexual things” happening at a nearby house. Bremner was arrested for driving under the influence. Bremner’s passenger in the truck was his eighteen year old daughter. She told police her father’s behavior was “scary” and that he was a “drug user.” Pre-sentence Report, p. 2.

While his charges on the October 4, 2009, incident were pending, Bremner did the following. At about 6:44 p.m., a Sheriff deputy was dispatched to a rural portion of Kootenai County, as a result of a suspicious vehicle parked near an ATV trailhead. The reporting citizen had contacted the person in the vehicle, Bremner, who replied with “nonsensical/incoherent remarks, one of which involved death.” *Id.*, p. 3. That citizen let Bremner pass across the citizen’s property, and Bremner proceeded to cause about \$3,000 in damage hitting a tree, landscaping and a Kootenai Electric electrical transformer box. The citizen gave the Sheriff deputy a good description of Bremner’s vehicle. About an hour later, the same Sheriff deputy was dispatched to a “fence-damage/vehicle slide off” accident near Rimrock and Ohio Match road. The deputy arrived with Bremner behind the wheel, the motor still running. When asked what happened, Bremner “...replied with the odd commentary that included ‘bodies in the gravel pit’ and ‘God is watching us.’” *Id.* Hypodermic needles were found on the passenger seat. Bremner admitted to paramedics he had been using methamphetamine. *Id.* Bremner told the deputy he had been “up for two days”, admitted his use of meth and displayed fresh needle marks. He was arrested for driving under the influence.

Bremner shows no inclination to abstain from driving during intensive intravenous use methamphetamine. Bremner placed his own daughter in danger by driving under the influence of methamphetamine. While those charges were pending, Bremner continued to drive under the influence of methamphetamine, cause \$3,000 in property damage,

continue to drive and drive off the road injuring himself.

Additionally, Bremner has an extensive history demonstrating his long-standing inability to conform himself to the laws of society. Bremner has 43 separate arrests. *Id.*, pp. 4-10. In the interest of brevity, only those resulting in a conviction are listed:

- 1989 Procuring Alcohol Under Age
- 1989 Grand Theft (felony – juvenile)
- 1989 Malicious Injury to Property (felony – juvenile)
- 1990 Unlawful Alcohol Possession by a Minor
- 1991 Driving Under the Influence
- 1991 Driving Without Privileges
- 1991 Driving Without Privileges
- 1993 4th Degree Assault (Washington) (misdemeanor)
- 1994 Violation of Protection Order/Assault – Domestic Violence (felony)
- 1995 Driving Without Privileges
- 1997 Driving Without Privileges (charged as a felony, reduced to misdemeanor)
- 1997 Battery (charged felony Agg. Battery w/weapon reduced to misdemeanor)
- 1997 Probation Violation
- 1997 Driving Without Privileges
- 1999 Domestic Battery
- 1999 Probation Violation
- 1999 Disturbing the Peace
- 2000 Possession of a Controlled Substance (felony)
- 2000 Driving Without Privileges
- 2004 Failure to Provide Proof of Insurance
- 2008 Aggravated Assault (charged as felony Agg. Assault, reduced to misd)

Id., pp. 4-10. Many of these convictions are for conduct that is similar to the two offenses for which Bremner has now been sentenced to prison...driving intoxicated, driving illegally, drug use, and a repeated ability to comply with the law when on probation (just as Bremner was unable to comply with the law when facing the first of his two felony charges here). These convictions also show long standing alcohol misuse, abuse, and crimes of violence.

All other factors of *Toolhill* are met by this sentence. *Toolhill*, 103 Idaho 565, 568, 650 P.2d 707, 710. “Deterrence” is met, and, given Bremner’s persistence in violating laws in a dangerous manner, deterrence is *only* met by imposition of prison sentences.

“Rehabilitation” is met by imposition of prison sentences. Bremner’s substance abuse evaluation recommends “residential treatment”, *not* treatment in the community. Pre-sentence Report attachment p. 37. That substance abuse evaluation then recommends that *following* that residential treatment, Bremner engage in at least Level II intensive outpatient treatment. *Id.* With the year-long retained jurisdiction program, Bremner will have the opportunity to obtain a year of intensive inpatient drug and alcohol treatment, and then, have an opportunity to convince this Court he is a changed man, to the point he can be placed on a long period of probation where he can receive additional treatment while in a supervised setting in the community. Finally, obviously, the “retribution” factor of *Toolhill* is satisfied with prison sentences.

The sentences imposed on June 22, 2010, were and are appropriate sentences given Bremner's social and criminal history and the crimes for which sentence was imposed. A lesser sentence would depreciate the seriousness of Bremner's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Bremner and others.

IT IS THEREFORE ORDERED that Bremner's I.C.R. 35 Motions are **DENIED**.

NOTICE OF RIGHT TO APPEAL

YOU, Bremner, 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 4th day of August, 2010.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Martin Neils
Prosecuting Attorney -

BRIAN CHARLES BREMNER
IDOC # 63009

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy