

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.)
)
)
) JEFFREY SCOTT SCHOENGARTH)
) DOB: 10-19-75)
) SSN: 534-23-3840)
) IDOC: 49386)
)
)
) Defendant.)

Case No. **CRF 2009 19126**
CRF 2009 20307

**ORDER GRANTING IN PART AND
DENYING IN PART I.C.R. 35
MOTION AND NOTICE OF
RIGHT TO APPEAL**

On March 23, 2010, Schoengarth, was sentenced and committed to the custody of the Idaho State Board of Correction, as follows:

CRF 2009 19126 - FAILURE TO REGISTER AS A SEX OFFENDER, (a felony), Idaho Code § I. C. 18-8307, 19-2514, committed on November 2008 to August 2009 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) MONTHS followed by an indeterminate term of THREE (3) YEARS AND FOUR (4) MONTHS, for a total term not to exceed FIVE (5) years.

CRF 2009 20307 - BURGLARY, (a felony), Idaho Code § I. C. 18-1401 committed on July 9-12, 2009 – to the custody of the Idaho State Board of Correction for a fixed term of TWENTY (20) MONTHS followed by an indeterminate term of EIGHT YEARS AND FOUR (4) MONTHS, for a total term not to exceed TEN (10) years.

THESE SENTENCES RUN CONCURRENT.

Sentencing Disposition and Notice of Right to Appeal, pp. 1-2. (emphasis in original). This Court's order also added:

IT IS FURTHER ORDERED that **JEFFREY SCOTT SCHOENGARTH** is committed to the custody of the Idaho State Board of Correction on the date of the sentencing hearing, March 23, 2010. **IT IS STRONGLY RECOMMENDED THAT YOU PARTICIPATE IN THE “THERAPEUTIC COMMUNITY” PROGRAM TO ADDRESS YOUR ADDICTION TO CONTROLLED SUBSTANCE, ANY PROGRAMS TO HELP YOU ADDRESS YOUR ENTRENCHED ANTISOCIAL PERSONALITY, AND THAT YOU TAKE WHATEVER COGNITIVE RESTRUCTURING**

PROGRAMS ARE AVAILABLE.

THE STATE OF IDAHO BOARD OF PARDONS AND PAROLE IS STRONGLY ENCOURAGED NOT TO CONSIDER YOU ELIGIBLE FOR PAROLE UNTIL HE HAS SUCCESSFULLY COMPLETED THE “THERAPEUTIC COMMUNITY” PROGRAM.

Id., p. 2. (emphasis in original).

On July 14, 2010, Schoengarth, through appointed counsel, filed a “Rule 35 Motion for Reduction of Sentence.” That motion reads in pertinent part:

3. Since sentencing, the defendant has been transported to the prison system and requested placement in the Therapeutic Community. The defendant has been informed by officials with the Idaho Department of Correction that he will not be laced in the Therapeutic Community because he has completed similar classes to those offered in the Therapeutic Community during previous incarcerations with the Idaho Department of Correction.
4. If the Parole Commission follows this Court’s recommendation that the defendant not be considered for parole until he has completed the Therapeutic Community, the defendant will end up serving the entire indeterminate portion of this Court’s sentence because the Idaho Department of Correction will not allow the defendant to enroll in the Therapeutic Community.

Rule 35 Motion for Reconsideration of Sentence, p. 2.

On July 15, 2010, Schoengarth, *pro se*, filed a “Motion for Correction or Reduction of Sentence” requesting that he be given a retained jurisdiction instead of being sent directly to prison. Motion for Correction or Reduction of Sentence, ICR 35, p. 2. The basis for that motion was “Upon coming to Boise I have found out that due to my prior sex offense and my lack of any drug convictions I do not fit the criteria to do a therapeutic community. The only way that I can get into these programs is if I was given a retained jurisdiction.” *Id.*

A hearing was held on September 28, 2010. At the conclusion of that hearing the Court stated it would call the Director of the State of Idaho Department of Corrections, and see if either a) Schoengarth’s file could be reviewed such that he could get into the Therapeutic Community, and b) if that were not possible, the Court would strike the language making the Court’s recommendation to the Parole Commission (that the Parole

Commission not consider him eligible for parole until he completed the Therapeutic Community).

On October 4, 2010, this Court discussed Schoengarth's situation with Pam Sonnen, Chief, Division of Prisons, Idaho Department of Corrections. Sonnen also said the reasons Schoengarth was not given the Therapeutic Community were: 1) Schoengarth was already given the Therapeutic Community in 1999, when previously in prison in Idaho, 2) his primary need for treatment is as a sex offender and he has never been given sex offender treatment.

According to Sonnen, because of his sex offenses, Schoengarth has been evaluated by IDOC as primarily needing sex offender treatment. Accordingly, his "Pathway" given to him by IDOC is the Sex Offender Treatment Program (SOATP). An offender cannot do the SOATP while in the Therapeutic Community. Sonnen said his addiction will be addressed simultaneously with SOATP through the relapse prevention program.

While this Court will amend its language in its March 23, 2010, Sentencing Disposition and Notice of Right to Appeal, it will not consider granting a retained jurisdiction. The sentence imposed on March 23, 2010, was and is an appropriate sentence given Schoengarth's social and criminal history and the crime(s) for which sentence was imposed. A retained jurisdiction would depreciate the seriousness of Schoengarth's crimes. I conclude that the prison sentences imposed were and are necessary for the protection of society and the deterrence of Schoengarth and others.

IT IS THEREFORE ORDERED that Schoengarth's I.C.R. 35 Motion is granted in that the language in this Court's March 23, 2010, Sentencing Disposition and Notice of Right to Appeal which read:

THE STATE OF IDAHO BOARD OF PARDONS AND PAROLE IS STRONGLY ENCOURAGED NOT TO CONSIDER YOU ELIGIBLE FOR PAROLE UNTIL HE HAS SUCCESSFULLY COMPLETED THE "THERAPEUTIC COMMUNITY" PROGRAM.

be and the same hereby is STRICKEN; and the following language is inserted instead:

THE STATE OF IDAHO COMMISSION OF PARDONS AND PAROLE IS STRONGLY ENCOURAGED NOT TO CONSIDER YOU ELIGIBLE FOR PAROLE UNTIL HE HAS SUCCESSFULLY COMPLETED THE SEX OFFENDER TREATMENT PROGRAM AND RELAPSE PREVENTION.

To that extent only, Schoengarth's I.C.R. 35 motion is GRANTED.

IT IS FURTHER ORDERED that Schoengarth's request for a retained jurisdiction is DENIED.

NOTICE OF RIGHT TO APPEAL

YOU, Schoengarth, 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 October, 2010.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney – Lynn Nelson
Prosecuting Attorney – Art Verharen

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

JEFFREY SCOTT SCHOENGARTH
IDOC # 49386
ISCI P. O. Box 14
Boise, ID 83702

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy