

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.)
)
ERIC CHRISTOPHER PARKER)
DOB: 01-30-1978)
SSN: 539-80-1605)
IDOC: 99502)
)
Defendant.)

Case No. **CRF 2009 2859**

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

On March 16, 2011, ERIC CHRISTOPHER PARKER (Parker) was sentenced as follows:

INJURY TO CHILD, (a felony), Idaho Code § I. C. 18-1501(1), committed on October and November 2008 – 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 (6) years, for a total term not to exceed TEN (10) years.

Parker was sent to prison. The Court recommended in its judgment that the Idaho Department of Correction provide Parker with sex offender treatment, addiction treatment and cognitive restructuring.

On April 4, 2011, Parker filed the instant I.C.R. 35 Motion requesting that “the Court reconsider the Judgment and Sentence entered herein on March 16, 2011. Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1. Parker bases this motion on “...a plea for leniency.” *Id.* No other reasons were given in the motion.

In his motion, Parker requested 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.

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. 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 sentence imposed on March 16, 2011, was and is an appropriate sentence given Parker's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Parker's crimes.

Parker was initially charged with male rape, and was later reduced to felony injury to child. Parker’s victim was a seventeen-year-old male who, along with another female, were roommates of Parker for about a two months before the events in question. During that time, Parker asked the other two for a “threesome” on multiple occasions, but the two were able to avoid such. In November 2009, Parker brought a lot of alcohol home, consumed it, and told the male victim he would kick him out if he refused to have sex with Parker. The victim told Parker “no” throughout that night, but Parker overcame the seventeen-year-old’s defenses, and anally raped him. The female witnessed these events, said Parker told the seventeen-year-old male “it’s time to pay the rent”, that seventeen-year-old told Parker “no” but that she and the seventeen-year-old had had sex with Parker in exchange for the rent. PSI, p. 2. When investigated, Parker admitted to law enforcement that he knew his male victim was only seventeen. PSI, p. 3. Parker exhibited grooming behavior, as he enticed the female roommate to sleep with him because he was “afraid to dying alone in his sleep.” PSI, p. 4. Parker exhibited coercive if not extortion behavior “time to pay the rent”. Parker exhibited little remorse for his victim

or for his crime. Parker is manipulative and opportunistic. At sentencing, a full-disclosure polygraph was presented by Parker, but it had no questions about the events of the crime. In 1991, as a juvenile, Parker was convicted of First Degree Incest in the State of Washington, reduced down from two counts of rape of a child. PSI, p. 8. He was given the Special Sex Offender Disposition Alternative. *Id.* In 1992, as a juvenile, he was convicted of Indecent Liberties in the State of Washington, and sentenced to 80 weeks in prison. *Id.* He has felony convictions for three counts of burglary in 1997, theft in 1997, trafficking in stolen property in 1997, and three counts of theft in 1998. PSI, pp. 8-10. Parker lied to the presentence investigator about his prior offenses. PSI, p. 22. At sentencing Parker produced evidence he has a disease and can no longer drink alcohol. That argument is not persuasive as Parker had that disease when he committed this crime. Prison was recommended by the presentence investigator. The prosecutor had made a plea agreement for supervised probation. The Court was not bound by that agreement.

This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Parker and others.

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

IT IS FURTHER ORDERED that the hearing on Parker's I.C.R. 35 Motion scheduled for June 8, 2011, is **VACATED**.

NOTICE OF RIGHT TO APPEAL

YOU, ERIC CHRISTOPHER PARKER, 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 7th day of June, 2011.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of June, 2011 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Anne C. Taylor
Prosecuting Attorney -

ERIC CHRISTOPHER PARKER
IDOC # 99502

Probation & Parole

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy