

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.)

KATHLEEN PEARSON-DOUGLASS)

DOB: 4-20-67)

SSN: 553-35-6125)

IDOC: 84249)

Defendant.)

Case No. **CRF 2006 19658**

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

On February 22, 2007, KATHLEEN PEARSON-DOUGLASS was sentenced as follows:

GRAND THEFT, to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of FIVE (5) years, for a total unified sentence not to exceed EIGHT (8) years.

Pearson-Douglass committed that theft by stealing over \$20,000 (including interest from the time of the offense) over several months in 2006, from a student exchange program.

The Court imposed that sentence, sent Pearson-Douglass to prison and retained jurisdiction. Following the retained jurisdiction, on August 1, 2007, the Court placed Pearson-Douglass on four years of supervised probation. On December 8, 2010, Pearson-Douglass admitted violating her probation as alleged in the Report of Violation dated June 7, 2010, and as alleged in the Report of Violation dated October 25, 2010.

These violations involved Pearson-Douglas borrowing several thousand dollars from several different individuals, specifically violating term and condition of probation number 29, which reads: "You are prohibited from borrowing from any individual (only institutional

lenders) and you are prohibited from lending money to any person or entity.” As a result of these violations, on January 31, 2011, the Court sent Pearson-Douglass to prison to serve the remainder of her sentence. Two days later, on February 2, 2011, Pearson-Douglass timely filed the instant I.C.R. 35 Motion requesting that the Court reconsider its decision. Pearson-Douglass bases this motion on a plea for leniency. Pearson-Douglass requested a hearing. A hearing was held May 9, 2011. Pearson-Douglass appeared telephonically from prison, and testified at that hearing. At the conclusion of that hearing, the Court stated on the record it was willing to grant Pearson-Douglass’ Rule 35 Motion if she could prove she had employment. The employment to which Pearson-Douglass testified did not materialize, and Pearson-Douglass requested another hearing. A hearing was held on October 4, 2011. Pearson-Douglass appeared telephonically and testified. At the conclusion of that hearing, the Court again stated on the record it was willing to grant Pearson-Douglass’ Rule 35 Motion if she could prove she had employment. On October 19, 2011, the Court received the Affidavit of Ron Anderson.

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, 237 (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).

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 February 22, 2007, was and is an appropriate sentence given Pearson-Douglass's social and criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of Pearson-Douglass's crimes. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of Pearson-Douglass and others.

However, imposition of that sentence, which was reasonable on January 31, 2011, the Court finds is no longer reasonable given the information presented to the Court at the May 9, 2011, and October 4, 2011, hearings. Pearson-Douglass has proven she has

employment available in the area, at a minimum of \$600.00 per month, and she has identified a provider for Cognitive Self Change. This would allow her to begin making restitution payments. In prison, Pearson-Douglass has not only not been able to earn any significant money (she is presently at a community work center), she has not had any programming in prison to help her address her criminal thinking.

IT IS THEREFORE ORDERED that Pearson-Douglass's I.C.R. 35 Motion is **GRANTED**, Pearson-Douglass will be placed on probation as soon as she is returned back from prison to attend a hearing on November 21, 2011, and **at that time** she will no longer be in the custody of the State of Idaho Board of Correction and her sentence will be suspended.

IT IS FURTHER ORDERED that Pearson-Douglass be transported to the Kootenai County Jail to await a hearing on November 21, 2011, to pronounce terms and conditions of probation (this Order to Transport is covered in a separate order).

NOTICE OF RIGHT TO APPEAL

YOU, KATHLEEN PEARSON-DOUGLASS, 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 19th day of October, 2011.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney – Jedediah Whitaker
Prosecuting Attorney -
KATHLEEN PEARSON-DOUGLASS
IDOC # 84249
Probation & Parole

Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445
**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy

