

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.)
)
STEVEN DOUGLAS MCBRIDE)
DOB: 07-20-1967)
SSN: 534-76-6890)
IDOC: 99390)
)
Defendant.)

Case No. **CRF 2010 1435**

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER ORDER
DENYING I.C.R. 35
MOTION AND NOTICE OF
RIGHT TO APPEAL**

The following is taken from this Court's November 8, 2011, Order Denying I.C.R.
35 Motion and Notice of Right to Appeal:

On December 30, 2010, Steven Douglas McBride (McBride) pled guilty to possession of a controlled substance, methamphetamine, an offense which occurred on January 7, 2010. This was a conditional guilty plea in which McBride reserved the right to appeal this Court's July 22, 2010, twenty-six page Memorandum Decision and Order Denying Defendant's Motion to Suppress.

A presentence report was ordered. That report showed McBride had committed a felony 2nd degree theft in Washington in 1985, two separate felony 2nd degree burglary offenses in Washington in 1988, a felony possession of a controlled substance charge in Washington in 1989, two felony possession of a controlled substance with the intent to deliver charges in Washington in 1991, a felony taking motor vehicle without owner's permission in Washington in 1994, a felony 2nd degree theft in Washington in 1995, two separate felony forgery offenses in Washington in 1997, a felony possession of stolen property in Washington in 1997, a felony 2nd degree theft in Washington in 2000, a felony possession of a controlled substance charge in Washington in 2004, and a felony 2nd degree burglary in Washington in 2004. Presentence Report, pp. 4-12. The presentence report also showed numerous misdemeanor convictions. *Id.* Not surprisingly, McBride had spent significant time in prison prior to his

January 7, 2010, offense in the present case. In his Presentence Report, and the State of Idaho Department of Corrections recommended this Court retain jurisdiction. The Court also ordered a mental health screening evaluation pursuant to I.C. § 19-2524. That report diagnosed McBride with: Axis I, Cannabis Dependence, Amphetamine Dependence, Cocaine Dependence, and Axis II, Antisocial Personality Disorder. On February 11, 2011, STEVEN DOUGLAS MCBRIDE was sentenced as follows:

POSSESSION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE), (a felony), Idaho Code § 37-2732(c)(1), committed on January 7, 2010 – to the custody of the Idaho State Board of Correction for a fixed term of FIVE (5) years followed by an indeterminate term of TWO (2) years, for a total term not to exceed SEVEN (7) years.

Sentencing Disposition, p. 1. On February 11, 2011, this Court retained jurisdiction for up to one year, and sent McBride to a prison program aimed at chemical dependency treatment and changing McBride's protracted criminal thinking. *Id.*, p. 2. On March 17, 2011, McBride appealed this Court's decision on his motion to suppress. Notice of Appeal, p. 2.

On July 26, 2011, McBride returned to the Kootenai County Jail and appeared before this Court for his jurisdictional review hearing. A month before that hearing, the Idaho Department of Corrections (IDOC) had issued a report (Addendum to Presentence Investigation) from North Idaho Correctional Institution (Cottonwood, Idaho) dated June 17, 2011, in which the IDOC recommended this Court relinquish jurisdiction and have McBride serve the remainder of his sentence. The basis for that recommendation was McBride's poor performance on his retained jurisdiction. The report noted McBride had five informal disciplinary sanctions while at Cottonwood.

McBride's psychosocial rehabilitation specialist noted as to those five sanctions:

As Mr. McBride has spent several years in correctional institutions, I would expect him to follow the rules. However, his "timer" attitude needs to be considered while evaluating his behavior.

Addendum to Presentence Report, p. 2. His psychosocial rehabilitation specialist continued:

Mr. McBride has not demonstrated the necessary skills to facilitate his successful return to his community. Mr. McBride remained largely unwilling to participate in the group discussions, process sessions, and homework assignments.

Mr. McBride was not able to discover his criminal and addictive thinking distortions. * * * However, Mr. McBride steadfastly refused to demonstrate any form of empathy throughout the group. In the first couple of days of group, Mr. McBride stated that his judge messed up and that he should have put him on probation and that he was only here for a cotton ball in his girlfriend's purse.

Id., pp. 2-3.

The bottom line is Mr. McBride has either been late or has had to redo almost every presented assignment because he

kept taking short cuts. It appears that Mr. McBride is only interested in jumping through hoops and has never been interested in doing what it would take to facilitate sincere change in his life.

Id., p. 3.

Should he be released, I do not believe that Mr. McBride has any intention of seeking community based drug treatment.

Id., p. 4.

While at North Idaho Correctional Institution, it appears that Mr. McBride demonstrated himself as a serious disciplinary problem. It is a serious concern that Mr. McBride presented himself as unwilling to correct his criminal thinking or to follow up on treatment that would help him correct it. Mr. McBride has followed the rules and guidelines of the institution for the most part. However, he has remained unwilling to sincerely participate in his "A New Direction" program. Mr. McBride has not responded to multiple staff interventions to address his failure to progress throughout the "A New Direction" program.

* * *

Multiple staff members have noted some aspect of Mr. McBride's unchecked "timer mentality." He is protective of his criminal behavior. He is antisocial and has had several issues with his negative sense of entitlement. Finally, he appears more interested in getting out than in making the necessary changes that it will take for him to be successful.

Id., p. 5. At the conclusion of that July 26, 2011, jurisdictional review hearing, this Court relinquished jurisdiction and sent McBride to prison. On August 10, 2011, McBride filed another Notice of Appeal, this time claiming the Court "...abused its discretion by relinquishing jurisdiction." (Second Notice of Appeal, p. 2.

On September 16, 2011, McBride filed the instant "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35", requesting that "...the Court reconsider the Judgment and Sentence entered herein February 11, 2011." Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, p. 1.

McBride bases this motion on "...a plea for leniency, and on the basis of new or additional evidence to be presented in this matter." *Id.* However, McBride gave no indication of what that "new or additional evidence" was. In his Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, McBride requested a hearing. Since McBride has failed to shed even a modicum of light as to what any "new or additional evidence" might be, the Court finds there is no reason for a hearing on such unidentified "new or additional evidence."

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4. The Court concluded:

The sentence imposed on February 11, 2011, was and is an appropriate sentence given McBride's anti-social personality, his extensive

criminal history and the crime for which sentence was imposed. A lesser sentence would depreciate the seriousness of McBride's crimes. Imposition of that sentence and relinquishment of jurisdiction following McBride's retained jurisdiction is warranted, given McBride's pathetic performance during his retained jurisdiction, coupled with his twenty-five year multiple felony history. This Court concludes that the sentence imposed was and is necessary for the protection of society and the deterrence of McBride and others.

Id., p. 6.

On November 8, 2011, this Court entered an Order Denying I.C.R. 35 Motion and Notice of Right to Appeal. Since that time, McBride, *pro se*, even though he had court appointed counsel, sent the Court a document entitled "Notice of Hearing (to Correct a Manifest of Justice) to Withdraw Guilty Plea." This was received by the Court on November 29, 2011. There was no indication on the document whether this was an original or copy, and no direction on the document asking the Court to file such. Because McBride has court appointed counsel, the Court did not consider such a filed document and the Court sent a copy to McBride's counsel and the Kootenai County Prosecuting Attorney the same day.

On November 28, 2011, McBride, through his counsel, filed a "Motion to Reconsider Denial of I.C.R. 35". No rule basis is stated for this motion. Attached to that document were handwritten reasons (presumably written by McBride) why McBride disagrees with the Court's decision on his I.C.R. 35 motion. On November 29, 2011, McBride, through his counsel, filed a "Notice of Filing in Support of Motion to Reconsider Denial of I.C.R. 35." Attached to that document were more handwritten reasons why McBride disagrees with the Court's decision on his I.C.R. 35 motion.

There is no rule basis under which McBride may make this "motion to reconsider." Nothing in the Idaho Criminal Rules provides for a motion to reconsider. A motion to reconsider a denial of an I.C.R. 35 motion is a renewed motion under I.C.R. 35 and is not

permitted. *State v. Lenwai*, 122 Idaho 258, 261, n. 1, 833 P.2d 116, 119, n.1 (Ct.App. 1992), *citing State v. Hickman*, 119 Idaho 7, 802 P.2d 1219 (Ct.App. 1990). See also *State v. Atwood*, 122 Idaho 199, 832 P.2d 1134 (Ct.App. 1992).

McBride's "Motion to Reconsider Denial of I.C.R. 35" must be denied.

IT IS THEREFORE ORDERED that McBride's "Motion to Reconsider Denial of I.C.R. 35" is **DENIED**.

DATED this 5th day of December, 2011.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Sean Walsh
Prosecuting Attorney -

STEVEN DOUGLAS MCBRIDE
IDOC # 99390

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy