

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 KURTIS LARSON)

DOB: 06-19-87)

SSN: 536-15-2627)

IDOC: 100327)

Defendant.)

Case No. **CRF 2010 21861**

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

On May 17, 2011, ERIC KURTIS LARSON (Larson) was sentenced as follows:

DOMESTIC BATTERY (a felony), Idaho Code S 18-903, 89-918(2), committed on October 31, 2010 – to the custody of the Idaho State Board of Correction for a fixed term of THREE (3) years followed by an indeterminate term of FOUR (4) years for a total term of SEVEN (7) years.

At the conclusion of that sentencing hearing, Larson was placed on supervised probation for five years. Probation term and condition number 30 required Larson to attend a probation review hearing on November 15, 2011. Larson, along with his attorney, attended that hearing on November 15, 2011, and at that hearing, Larson and his counsel were handed a police report regarding stalking of the victim in this case, allegedly by Larson on October 16, 2011. Larson's counsel requested a continuance, which was granted, and the probation review hearing was continued to December 19, 2011. At the December 19, 2011, hearing, the police report was admitted into evidence, and Larson testified in his own defense. At the conclusion of that probation review hearing, the Court added additional probation terms and conditions, but kept Larson on supervised probation.

On January 3, 2012, Larson filed the instant I.C.R. 35 Motion requesting that

“Defendant is concerned that the record, as it currently stands, reflects a probation violation, and will impair his ability to move the Court for dismissal of said charge at the successful completion of his probation pursuant to Idaho Code Section 19-2604.” I.C.R. 35 Motion, p. 2. Larson also requested a hearing, “...oral argument, leave to adduce testimony.” *Id.* 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, 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). 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 from the November 15, 2011, and the December 19, 2011, hearings, and the pre-sentence report. *If* the remedy sought by Larson were correction or reduction of sentence, there is nothing that could be presented at a hearing that would be of benefit to the Court. *If* the remedy sought by Larson were correction or reduction of sentence, a hearing would only waste counsel and the Court’s time.

However, Larson is not seeking a correction or reduction of sentence. Thus, Larson is seeking relief which is not provided by I.C.R. 35. Idaho Rule of Criminal Procedure speaks only to “correction or reduction of sentence”, and neither of those remedies are being sought by Larson. The purpose of Larson’s motion is simply: “Defendant is concerned that the record, as it currently stands, reflects a probation violation, and will impair his ability to move the Court for dismissal of said charge at the successful completion of his probation pursuant to Idaho Code Section 19-2604.” I.C.R. 35 Motion, p. 2. Additionally, asking the Court now for a determination of whether this amounted to a probation violation well over four years before his probation would end, amounts to asking the court for an advisory opinion. Because Larson is asking for a

remedy not allowed under I.C.R. 35, and because Larson seeks an advisory opinion, no purpose would be served by a hearing on Larson's I.C.R. 35 Motion. It would seem that Larson's remedy regarding this Court's decision following the hearing held December 19, 2011, is limited to an appeal.

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

NOTICE OF RIGHT TO APPEAL

YOU, ERIC KURTIS LARSON, 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 23rd day of January, 2012.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of January, 2012 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – James Siebe
Prosecuting Attorney – Art Verharen

ERIC KURTIS LARSON
IDOC # 100327

Probation & Parole

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

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy