

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Suzy St. John
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Richard L. Miekow,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 6, 2022

Court of Appeals Case No.
21A-CR-2164

Appeal from the
Vermillion Circuit Court

The Honorable
Jill D. Wesch, Judge

Trial Court Cause No.
83C01-2011-F6-143

Molter, Judge.

- [1] Richard L. Miekow pleaded guilty to Level 6 felony unlawful possession of a syringe and admitted he was a habitual offender. In exchange, the State

dismissed a Level 6 felony possession of methamphetamine charge. Pursuant to the parties' plea agreement, the trial court sentenced Miekow to 545 days for the unlawful possession of a syringe conviction enhanced by 545 days for his habitual offender admission, totaling 1,090 days. The trial court ordered 730 days executed in the Indiana Department of Correction ("DOC") and the rest suspended to probation. However, there is a discrepancy regarding Purposeful Incarceration between the trial court's oral and written sentencing statements on the one hand, and the abstract of judgment on the other.

[2] At sentencing, the trial court told Miekow that it "will recommend Recovery While Incarcerated for you, which means that you can file for a modification upon completion of that program." Tr. Vol. 2 at 27. Likewise, the trial court's written sentencing order included two boxes with the statements: "The Defendant is a good candidate for Purposeful Incarceration" and the "Court will consider a sentence modification should the offender successfully complete [a DOC] Therapeutic Community." Appellant's App. Vol. II at 39–40. The trial court checked both boxes. *Id.* But in Part IV of the abstract of judgment, which was labeled "Additional Information," the trial court wrote the word "No" under the words "Purposeful Incarceration." *Id.* at 41.

[3] "As a general rule, when we are faced with a discrepancy between a sentencing order and an abstract of judgment, we conclude that the sentencing statement rather than the abstract of judgment controls." *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). This is because an abstract of judgment is distinct from a written sentencing order and is not the "judgment of conviction." *Robinson v.*

State, 805 N.E.2d 783, 794 (Ind. 2004). Instead, an abstract of judgment is a “form issued by the [DOC] and completed by trial judges for the convenience of the Department.” *Id.* When the sentencing court’s intent is unambiguous, it is appropriate to remand for correction of clerical errors. *Skipworth v. State*, 68 N.E.3d 589, 593 (Ind. Ct. App. 2017); *see also Willey v. State*, 712 N.E.2d 434, 445 n.8 (Ind. 1999) (concluding that, based on the unambiguous nature of the trial court’s oral sentencing pronouncement, the abstract of judgment and written sentencing order contained clerical errors and remanding for correction of those errors).

[4] Miekow and the State agree the abstract of judgment does not accurately reflect the trial court’s intention to recommend him for Purposeful Incarceration, which would allow him to petition for a sentence modification. They also agree a remand is appropriate so that the trial court can correct the abstract. We do too.

[5] To recommend a defendant for Purposeful Incarceration, the trial court must communicate with the DOC that the trial court considers the defendant a good candidate for Purposeful Incarceration and that it will consider a sentence modification on the defendant’s completion of a substance abuse treatment program in the DOC. *See Hogan v. State*, 95 N.E.3d 181, 183–84 (Ind. Ct. App. 2018). Trial courts may make a recommendation for Purposeful Incarceration while a convicted defendant is in the DOC, but they lack the authority to place defendants into the program. *Sargent*, 158 N.E.3d at 786.

[6] Here, it is clear the trial court intended to recommend Miekow as a good candidate for Purposeful Incarceration because it expressed that intent in both its oral and written sentencing statements. We, therefore, remand for the limited purpose of allowing the trial court to correct the discrepancy between the sentencing order and abstract of judgment regarding its intent to recommend Miekow for Purposeful Incarceration and to consider a sentence modification.

[7] Affirmed and remanded.

Riley, J., and Robb, J., concur.