

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK THOMAS LUCKEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59011

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony DUI. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Patrick Thomas Luckey contends that the district court exceeded its authority by including the following language in the judgment of conviction: "It is further recommended that the Defendant not be eligible to participate in the 305 program." See Winkle v. Warden, 127 Nev. ___, ___ n.2, 269 P.3d 898, 899 n.2 (2011) ("The 305 Program . . . established a post-sentence treatment program for the purpose of rehabilitating and treating certain DUI offenders with substance abuse problems."); see also NRS 209.425-.429 (codifying the 305 Program). The State agrees that the language is surplusage.

The Director of the Department of Corrections determines whether to assign an offender to the 305 Program. See NRS 209.427. In Winkle, we concluded "that the express language of NRS 209.427 and NRS 209.429 requires the Director to assign an eligible offender to the 305 Program for alcohol treatment and residential confinement one year prior to parole eligibility." 127 Nev. at ___, 269 P.3d at 901 (emphasis added).

Here, the district court's statement in Luckey's judgment of conviction, without any explanation, disregards the statute's mandate and is not relevant to the Director's eligibility determination. We conclude that the surplusage is improper. Therefore, on remand, the district court shall excise the offending language and enter an amended judgment of conviction. Accordingly, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.¹

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.