

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-1294

IRINEO TIJERINA-PALACIOS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 7, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CR 2010-1639-1]

HONORABLE ROBIN F. GREEN,
JUDGE

REMANDED WITH DIRECTIONS

RITA W. GRUBER, Judge

This is the second time that this case has been before this court. In the first appeal, appellant’s counsel filed a motion to withdraw and an accompanying no-merit brief, *Tijerina-Palacios v. State*, 2012 Ark. App. 444, and we ordered rebriefing in adversary form. Appellant, Irineo Tijerina-Palacios, now appeals, arguing that the circuit court erred in ordering him to complete a sex-offender treatment program while incarcerated. He contends that this constitutes an illegal sentence. Appellant is correct, and we remand for modification of his sentence.

Appellant was convicted of rape and sentenced to forty years in the Arkansas Department of Correction with credit for 288 days in jail, a fine of \$1000, court costs, and fees. In its judgment and commitment order entered on August 18, 2011, the court provided as a special condition that appellant “complete Sex Offender program while in the Department of Correction.” In Arkansas, sentencing is entirely a matter of statute, and a

sentence is illegal when the law does not authorize the particular sentence. *McArty v. Hobbs*, 2012 Ark. 257, at 4. By statute, a circuit court may clearly place conditions on a defendant when the court suspends the imposition of sentence or places the defendant on probation, but there is no similar statutory provision that allows a court to place specific conditions on a sentence of incarceration. *White v. State*, 2012 Ark. 221, at 3, 408 S.W.3d 720, 721 (citing *Richie v. State*, 2009 Ark. 602, at 8, 357 S.W.3d 909, 914). Generally, absent a statute, rule, or available writ, once the court enters a judgment and commitment order, jurisdiction is transferred to the Department of Correction—the Executive Branch—and it is for that branch to determine any conditions of incarceration. *Richie*, 2009 Ark. 602, at 11, 357 S.W.3d at 915.

Accordingly, we hold that the condition of appellant’s sentence requiring sex-offender treatment is illegal, and we remand for the circuit court to strike the unlawful condition and enter a corrected judgment and commitment order.

Remanded with directions.

GLADWIN and GLOVER, JJ., agree.

James E. Hensley, Jr., for appellant.

Dustin McDaniel, Att’y Gen., by: *Brad Newman*, Ass’t Att’y Gen., for appellee.