

FILED

January 5, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Starcher, J., dissenting:

The sole reason that this young man was “sent back” from the Anthony Center was because he has diabetes; and the Anthony Center didn’t want to be responsible for treating his diabetic condition. The omission in the sentencing order by the sentencing judge of the proper “magic words” was merely an inadvertent technical omission that the circuit court quickly corrected.

However, the circuit court didn’t want to require the Anthony Center to treat the defendant’s diabetes; and the circuit court also didn’t want to put the defendant on probation. So he was sentenced to a prison term, at the taxpayers’ expense.

I agree with the circuit court that probation *may* not have been a good choice. But I entirely disagree with the circuit court’s refusal to make the Anthony Center treat the defendant’s diabetes. The law is clear that people should not be denied an otherwise appropriate post-conviction placement, merely because of a medical disability.

I would instruct the circuit court to require the Anthony Center to provide treatment for the defendant’s diabetes.