MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kimberly Ann Haddix,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 14, 2022

Court of Appeals Case No. 22A-CR-1195

Appeal from the Marion Superior Court

The Honorable Charnette D. Garner, Judge

The Honorable Barbara L. Crawford, Senior Judge

Trial Court Cause No. 49D35-2110-CM-31233

Mathias, Judge.

[1] Kimberly Ann Haddix appeals her sentence following her convictions on Count 1, Class A misdemeanor domestic battery, and Count 2, Class A misdemeanor battery. Haddix raises a single issue for our review, namely, whether a conflict between the trial court's oral and written sentencing statements as to her sentence on Count 2 requires remanding for resentencing. The State concedes that remand is required. We agree, and therefore we remand for resentencing on Count 2.

Facts and Procedural History

[2] On October 10, 2021, the State charged Haddix with two counts. Count 1 alleged that Haddix had committed Class A misdemeanor domestic battery. Count 2 alleged that Haddix had committed Class A misdemeanor battery resulting in bodily injury. After a bench trial, the court found Haddix guilty on both counts.

[3] Thereafter, the court held Haddix's sentencing hearing. At the conclusion of that hearing, the court pronounced Haddix's sentence as follows:

> [T]he Court . . . is going to . . . sentence you . . . to 365 days. You'll receive credit for 4 actual plus 4 earned jail credit days, giving you a total of 8 days credit time. [Three-hundred and fifty-seven] days will be suspended. You will be on probation for that period of time. If there are no violations of the No Contact Order that's going to be put in place, and there are no violations of any other term of probation, the Court will order that your probation be terminated after 180 days. . . .
>
> * * *

> So . . . the Court has found you guilty of two offenses, and . . . I'm sorry. I did not . . . separate the sentence. Um, so, the sentence will be the same for Counts 1 and 2, and they will run concurrent to each other.

Tr. Vol. 2, pp. 120, 122. However, in its ensuing written sentencing order, the trial court identified only Haddix's conviction and sentence on Count 1. The written sentencing order makes no mention at all of a conviction or sentence on Count 2. *See* Appellant's App. Vol. 2, p. 14. This appeal ensued.

Discussion and Decision

[4] Haddix appeals the conflict in the trial court's oral and written sentencing statements as to her sentence on Count 2. As our Supreme Court has explained:

> The approach employed by Indiana appellate courts in reviewing sentences in non-capital cases is to examine both the written and oral sentencing statements to discern the findings of the trial court. *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) ("In reviewing a sentencing decision in a non-capital case, we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.") (quoting *Walter v. State*, 727 N.E.2d 443, 449 (Ind. 2000)); *Strong v. State*, 538 N.E.2d 924, 929 (Ind. 1989) ("In addition to the discussion set forth in the separate sentencing order, this Court has reviewed the trial court's thoughtful comments at the conclusion of the sentencing hearing."); *see also Gibson v. State*, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006); *Powell v. State*, 751 N.E.2d 311, 315 (Ind. Ct. App. 2001); *Newman v. State*, 719 N.E.2d 832, 839 (Ind. Ct. App. 1999). Rather than presuming the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court. This Court has the option of crediting the statement that accurately pronounces the sentence

> or remanding for resentencing. *Willey v. State*, 712 N.E.2d 434, 446 n. 8 (Ind. 1999) ("[T]he trial court issued its written sentencing order that was consistent with the Abstract of Judgment, but at odds with the oral pronouncement at the sentencing hearing. . . . Based on the unambiguous nature of the trial court's oral sentencing pronouncement, we conclude that the Abstract of Judgment and Sentencing Order contain clerical errors and remand this case for correction of those errors."). . . .

McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007).

[5] Here, the trial court's oral sentencing pronouncement appeared to sentence Haddix to an identical term on Count 2 as it sentenced her on Count 1, with the two sentences to run concurrently. However, the court's written sentencing statement does not identify a conviction or sentence on Count 2 at all, which suggests that the trial court may have intended to vacate Count 2 out of double jeopardy concerns. We are unable to reconcile the conflict in the trial court's oral and written sentencing statements. We therefore reverse any sentence on Count 2 and remand for resentencing on that Count.

[6] Remanded.

Robb, J., and Foley, J., concur.