

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
DENNIS MAY, JR.	:	Case No. 18-COA-038
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 18-CRI-079
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	June 7, 2019
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APPEARANCES:

For Plaintiff-Appellant

MATTHEW J. MALONE  
10 East Main Street  
Ashland, OH 44805

For Defendant-Appellee

COLE F. OBERLI  
110 Cottage Street  
Ashland, OH 44805

*Wise, Earle, J.*

{¶ 1} Defendant-Appellant, Dennis May, Jr., appeals the October 25, and December 12, 2018 judgment entries of the Court of Common Pleas of Ashland County, Ohio denying his motion for intervention in lieu of conviction. Plaintiff-Appellee is state of Ohio.

#### FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 10, 2018, the Ashland County Grand Jury indicted appellant on one count of aggravated possession of drugs in violation of R.C. 2925.11.

{¶ 3} On June 20, 2018, appellant filed a motion for intervention in lieu of conviction pursuant to R.C. 2951.041. A hearing was held on October 22, 2018. By judgment entry filed October 25, 2018, the trial court found appellant did not meet the requirements for intervention in lieu of conviction.

{¶ 4} On November 2, 2018, appellant pled guilty to the charge. By judgment entry filed December 12, 2018, the trial court sentenced appellant to one hundred eighty days in jail.

{¶ 5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 6} "THE TRIAL COURT ERRED BY FINDING THAT EXPERT OPINION ON ELIGIBILITY FACTORS WAS NECESSARY IN ORDER TO FIND APPELLANT ELIGIBLE FOR INTERVENTION IN LIEU OF CONVICTION UNDER R.C. 2954.041."

I

{¶ 7} In his sole assignment of error, appellant claims the trial court erred in denying his motion for intervention in lieu of conviction. Specifically, appellant claims the trial court erred in finding expert opinion on eligibility was necessary in order to find him eligible. We disagree.

{¶ 8} As stated by our colleagues from the Eighth District in *State v. Foreman*, 8th Dist. Cuyahoga No. 105717, 2018-Ohio-1970, ¶ 10:

The decision whether to grant a motion for ILC lies within the sound discretion of the trial court, and an appellate court will not reverse the trial court's ruling on a motion for ILC absent an abuse of that discretion. *State v. Alexander*, 5th Dist. Licking No. 17 CA 0039, 2017-Ohio-8828, ¶ 14, citing *State v. Adkins*, 2d Dist. Miami No. 2011 CA 28, 2012-Ohio-4744, ¶ 16. On the other hand, the trial court's interpretation and application of R.C. 2951.041(B)'s eligibility requirements for ILC is a matter of law subject to de novo review. *State v. Boehm*, 5th Dist. Licking No. 16-CA-77, 2017-Ohio-4285, ¶ 17, citing *State v. Fowle*, 5th Dist. Delaware No. 09 CAA 04 0035, 2010-Ohio-586, ¶ 37.

{¶ 9} R.C. 2951.041 governs intervention in lieu of conviction. Subsection (A)(1) includes the following: "If the court schedules a hearing, the court *shall* order an assessment of the offender for the purpose of determining the offender's program eligibility for intervention in lieu of conviction and recommending an appropriate

intervention plan." (Emphasis added.) The trial court ordered an assessment and scheduled a hearing.

{¶ 10} In its judgment entry filed October 25, 2018, the trial court denied appellant's motion, finding it reviewed an updated report from a Dr. Patton and "the Defendant did not meet the requirements for intervention in lieu of conviction under Ohio law."

{¶ 11} During the October 22, 2018 hearing at 3-4, the trial court noted the following:

This matter was continued from an earlier hearing in September simply because the Court did not have the appropriate assessment report from ACCADA [Ashland County Counsel on Alcoholism and Drug Abuse], it was just a progress report, so ACCADA was afforded an opportunity to update the information to address the statutory requirements, and the report that the Court has received, makes findings relative to the statutory requirements that would indicate that Mr. May is not eligible, and the Court based on the assessment report received from ACCADA, does not have an expert finding that is statutorily required that is in support of ILC, so the Court is not in a position to grant the motion today, that would allow for the Court to grant that motion because there is no expert opinion that can find ILC being appropriate with this Defendant, so the Court cannot find him an eligible offender under the statute.

{¶ 12} The assessment report by Dr. Patton declared appellant was ineligible for intervention in lieu of conviction. We note it is not included in the record for our review. The trial court did not have any other reports to review. Appellant could have chosen to have an independent evaluation, but did not do so.

{¶ 13} Upon review, given that the only report before the trial court found appellant to be ineligible, we do not find the trial court abused its discretion nor erred in denying appellant's motion for intervention in lieu of conviction.

{¶ 14} The sole assignment of error is denied.

{¶ 15} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby affirmed.

By Wise, Earle, J.

Hoffman, P.J. and

Baldwin, J. concur.

EEW/db 531