[Cite as *State v. Birch*, 2012-Ohio-543.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-10-256
	:	O P I N I O N
- vs -		2/13/2012
	:	
ELEANOR B. BIRCH,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2010-04-0639

Michael T. Gmoser, Butler County Prosecuting Attorney, Donald R. Caster, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

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YOUNG, J.

{¶ 1} Defendant-appellant, Eleanor Birch, appeals her conviction and sentence in the Butler County Court of Common Pleas for obstructing official business, following her guilty plea to that charge.

{¶ 2} On March 17, 2010, Lieutenant Lara Fening of the Oxford Police Department was dispatched to Woody's One Up Bar, located in Oxford, Ohio, in response to the owner's

report of a female patron refusing to leave. Upon her arrival, Lieutenant Fening witnessed appellant screaming obscenities at the owner of the establishment. According to Lieutenant Fening, appellant was glassy-eyed, smelled of alcohol, and was slurring her speech. When Lieutenant Fening attempted to place appellant under arrest, appellant refused to place her hands behind her back, despite the lieutenant's repeated requests to do so. When Lieutenant Fening finally handcuffed appellant, appellant urinated on herself and the lieutenant's pant leg.

{¶ 3} During the car ride to the Oxford Police Station, appellant managed to slip out of her handcuffs. When Lieutenant Fening attempted to secure appellant's handcuffs for a second time, a struggle ensued. During the struggle, Lieutenant Fening was forced to bring appellant to the ground, scraping her knee and tearing her uniform in the process.

{¶ 4} Upon entering the police station, officers removed appellant's handcuffs so that she could tend to her personal hygiene. While washing her hands, appellant threw a handful of water at an officer and attempted to escape through a side door. Officers subdued appellant and subsequently transported her to the Butler County Jail.

{¶ 5} Appellant was indicted for escape, obstructing official business, resisting arrest, and underage possession of alcohol. Prior to trial, appellant filed a motion for intervention in lieu of conviction ("ILC"), seeking substance abuse treatment over a prison term. The trial court ordered a presentence investigation report (PSI) and a TASC (Treatment Alternatives for Safe Communities) report to determine appellant's eligibility for the program.

{¶ 6} On July 28, 2010, the trial court denied appellant's ILC motion during a hearing, stating:

> [W]hen I look at the conduct which is involved in this case, * * * [i]t really would be demeaning to what happened in this particular case to put [appellant] in an intervention in lieu of conviction program. First of all, because there is no indication from the TASC evaluation that she suffers from a serious alcohol

> problem. What she did was have a serious alcohol event here in which obviously she lost control, but there's nothing in the TASC evaluation that says this is a chronic alcoholic or drug-addicted person. This was a person who simply drank too much and her conduct crossed any line of any acceptable conduct.

{¶ 7} Following the ILC hearing, appellant pleaded guilty to obstructing official business, a fifth-degree felony in violation of R.C. 2921.31. The trial court accepted the plea and sentenced appellant to a four-year period of community control.

{¶ 8} Appellant timely appeals her conviction and sentence, raising three assignments of error for review.

{¶ 9} Assignment of Error No. 1:

{¶ 10} BIRCH'S GUILTY PLEA WAS NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY MADE.

{¶ 11} In her first assignment of error, appellant argues the entry of her guilty plea was not knowing, intelligent, and voluntary, because the trial judge failed to fully comply with the requirements of Crim.R. 11(C)(2)(c). Specifically, appellant argues the trial court failed to explain her privilege against compulsory self-incrimination during the plea hearing.

{¶ 12} It is well established that when a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). "Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *Id.* "The United States Supreme Court has held that a knowing and voluntary waiver of the right to jury trial, the right against compulsory self-incrimination, and the right to confront one's accusers cannot be inferred from a silent record." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 7. Crim.R. 11 was adopted to give detailed instructions to trial courts on the procedures to follow before accepting pleas of guilty or no contest. *Id.*

{¶ 13} Crim.R. 11(C) requires a trial judge to determine whether a criminal defendant

is fully informed of his rights and understands the consequences of a guilty plea. Of particular relevance to this case is Crim.R. 11(C)(2)(c), which provides:

> In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:
> * * *
> (c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 14} In *Veney*, the Supreme Court of Ohio reaffirmed its position in *State v. Ballard*, 66 Ohio St.2d 473 (1981), that strict compliance with Crim.R. 11(C)(2)(c) is required when advising a defendant of the constitutional rights he is waiving by pleading guilty or no contest. *Veney*, 2008-Ohio-5200 at ¶ 18. These rights are: (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. *Id.* at ¶ 31.

{¶ 15} Pursuant to the strict-compliance standard, the trial court must orally inform the defendant of all five rights during the plea colloquy for the plea to be valid. *Id.* at ¶ 29. The preferred procedure for informing a criminal defendant of his constitutional rights during the plea colloquy is to use the language in Crim.R. 11(C). *Id*. However, failure to literally comply with Crim.R. 11(C) does not invalidate a plea agreement if the record demonstrates that the trial court explained the constitutional rights "*in a manner reasonably intelligible to that defendant.*" (Emphasis sic.) *Ballard* at paragraph two of the syllabus.

{¶ 16} A reviewing court looks to the record to determine whether a trial court strictly complied with its duty. *Veney*, 2008-Ohio-5200 at ¶ 29. "When the record confirms that the

trial court failed to perform this duty, the defendant's plea is constitutionally infirm, making it presumptively invalid." *Id.*

{¶ 17} In the present case, appellant argues the trial court failed to explain her privilege against compulsory self-incrimination during the oral colloquy. Conversely, the state argues appellant was sufficiently informed of this right under the "totality-of-the-circumstances approach," as applied in *Ballard*.

{¶ 18} In *Ballard*, the Supreme Court of Ohio upheld defendant's plea even though the trial court failed to specifically mention the right to a jury trial by name, because the trial court did explain that "neither the Judge nor the jury" could draw any inference if defendant refused to testify and that he "was entitled to a completely fair and impartial trial under the law." *Ballard*, 66 Ohio St.2d at 479. The court held, "these statements * * * *taken together*, lead us to the conclusion that the [defendant] was informed of his right to a trial by jury." (Emphasis added.) *Id.* at 481.

{¶ 19} The Ohio Supreme Court has since held that if the colloquy, viewed in its totality, provides a "reasonably intelligible explanation" of all the constitutional rights, a reviewing court may consider additional evidence, such as the written plea agreement, to reconcile any ambiguity. *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, ¶ 20, 25. In *Barker*, the court also limited *Veney* to situations where a trial court wholly omits a discussion of a constitutional right during the oral colloquy.

{¶ 20} Here, the state argues the trial court's statement that appellant was "not required to prove [her] innocence," coupled with the language in the written plea agreement, was sufficient to inform appellant of her privilege against compulsory self-incrimination. The state's argument lacks merit.

{¶ 21} Upon review, we find the trial court omitted any discussion of appellant's constitutional privilege against compulsory self-incrimination during the oral colloquy. This is

not a case of a variation from the literal wording of Crim.R. 11(C)(2)(c) causing an ambiguity. *Compare Barker*, 2011-Ohio-4130. By stating, "[y]ou are not required to prove your innocence," the trial court was explaining in laymen's terms the state's burden of proof beyond a reasonable doubt. This is particularly clear when read in conjunction with the remainder of the court's statement, which reads:

> THE COURT: You further understand that if there would be a trial, at that trial the State of Ohio would have what we call the burden of proof. At a trial, the State of Ohio would have to prove that you are guilty by proof beyond a reasonable doubt. You are not required to prove your innocence. However, when you stand before the Court and say I'm guilty, two things occur. A plea of guilty is an admission of your guilty [sic.] And a plea of guilty relieves the State of Ohio of its burden of proof. Do you understand that?
> THE DEFENDANT: Yes.

{¶ 22} From this, it is clear the trial court was explaining appellant's right to require the state to prove her guilt beyond a reasonable doubt, as it even incorporates the literal language relating to state's burden under Crim.R. 11(C)(2)(c). Moreover, the court did not use any additional language that could be seen as a "reasonably intelligible explanation" of the privilege against compulsory self-incrimination at the time appellant entered her guilty plea. *Barker*, 2011-Ohio-4130 at ¶ 20; *Veney*, 2008-Ohio-5200 at ¶ 26.

{¶ 23} Thus, the record confirms the trial court wholly failed to orally explain appellant's constitutional privilege against compulsory self-incrimination. Where the colloquy is silent, neither the trial court nor the prosecution may rely on other sources, such as the written plea agreement, to convey this right. *Veney* at ¶ 29. This failure to strictly comply with Crim.R. 11(C)(2)(c) renders appellant's plea invalid.

{¶ 24} Appellant's first assignment of error is well-taken and sustained.

{¶ 25} Assignment of Error No. 2:

{¶ 26} THE TRIAL COURT MISAPPLIED THE ELIGIBILITY FACTORS IN THE IILC

[sic] STATUTE.

{¶ 27} In her second assignment of error, appellant argues the trial court erroneously applied the factors in R.C. 2951.041(B) in determining that she was ineligible for ILC. Specifically, she argues the trial court erroneously insisted on evidence that she suffered from a "serious alcohol problem" or "chronic" alcoholism in evaluating her eligibility under R.C. 2951.041(B)(6).

{¶ 28} Intervention in lieu of conviction is a procedure governed by R.C. 2951.041. In enacting R.C. 2951.041, "the legislature made a determination that when chemical abuse is the cause or at least a precipitating factor in the commission of a crime, it may be more beneficial to the individual and the community as a whole to treat the cause rather than punish the crime." *State v. Flanagan*, 12th Dist. No. CA2002-05-120, 2003-Ohio-1444, ¶ 7, quoting *State v. Shoaf*, 140 Ohio App.3d 75, 77 (10th Dist.2000).

{¶ 29} The granting of a motion for ILC lies in the trial court's sound discretion. *Flanagan* at ¶ 8. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable, and not merely an error of law or judgment. *Id.*; *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 30} R.C. 2951.041(A)(1) provides that if a trial court has reason to believe alcohol usage was a factor leading to the criminal offense with which the defendant is charged, the court "may" accept the defendant's request for treatment in lieu of conviction. R.C. 2951.041(B) establishes the conditions for eligibility. At issue is R.C. 2951.041(B)(6), which states as follows:

> (B) An offender is eligible for intervention in lieu of conviction if the court finds all of the following:
> * * *
> (6) The offender's drug usage, alcohol usage, mental illness, or intellectual disability, whichever is applicable, was a factor leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the

> seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity.

{¶ 31} Here, the trial court determined that granting appellant's request for ILC would demean the seriousness of the offense, and therefore denied appellant's motion. In so doing, the court stated:

> [T]here is no indication * * * that she suffers from a serious alcohol problem. What she did was have a serious alcohol event here in which she obviously lost control, but there's nothing in the TASC evaluation that says this is a chronic alcoholic or drug-addicted person. This is a person who simply drank too much and her conduct crossed any line of any acceptable conduct.

{¶ 32} Appellant argues the trial court erroneously imposed stricter eligibility conditions than required by R.C. 2951.041(B)(6), because the statute does not demand chronic alcoholism as a prerequisite for eligibility. Instead, appellant argues alcohol need only be a factor in the offense, and that situational binge drinking qualifies as "alcohol usage" under R.C. 2951.041(B)(6). Appellant cites *State v. Fullenkamp*, 2nd Dist. No. 2001 CA 1543, 2001 WL 1295372 (Oct. 26, 2001), to support her argument.

{¶ 33} In *Fullenkamp*, the trial court denied ILC upon finding defendant's alcohol problem did not appear "so grave that his future conduct [was] permanently linked to alcohol[.]" *Id.* at *1. The court explained it granted ILC only in the "more serious cases of long-term alcohol/drug abuse where there is a substantial likelihood of additional criminal or anti-social behavior without intervention[.]" *Id.* The Second District Court of Appeals found the trial court abused its discretion because it denied ILC "*solely* because [defendant's] alcohol problem was not serious enough." (Emphasis sic.) *Id.* at *2.

{¶ 34} This case is distinguishable from *Fullenkamp*. Here, the trial court did not deny ILC *solely* because appellant lacked a serious, or chronic, alcohol problem. It also found that ILC would demean the seriousness of the offense, due to the grossly improper nature of appellant's conduct. As stated above, pursuant to R.C. 2951.041(B)(6), the court should

consider whether the offender's alcohol usage was a factor leading to the criminal offense *and* whether ILC would demean the seriousness of the offense. *See, e.g., State v. Wiley*, 10th Dist. Nos. 03AP-362, 03AP-363, 2003-Ohio-6835.

{¶ 35} At the time of the offense, appellant was apprehended for screaming obscenities in public while heavily intoxicated. Appellant repeatedly resisted arrest and forced an officer to wrestle her to the ground. Appellant also removed her handcuffs en route to the police station and tried to escape custody by throwing water on an officer and running towards the door. During this time, appellant placed both herself and the officers at serious risk of harm. Given these facts, we agree with the trial court that ILC would demean the seriousness of appellant's conduct.

{¶ 36} While we agree with appellant that a trial court may not impose stricter eligibility conditions than intended by the legislature in enacting R.C. 2951.041, we find the trial court's insistence on evidence of chronic alcoholism is harmless error, where it used additional, valid logic in its decision. *See* Crim.R. 52(A) (harmless error is "[a]ny error, defect, irregularity, or variance which does not affect substantial rights").

{¶ 37} Lastly, we note that ILC is a privilege, and R.C. 2951.041 does not create a legal right thereto. Rather, the statute is "permissive in nature and provides that the trial court may, in its discretion, grant the defendant an opportunity to participate in the early intervention in lieu of a sentence." *State v. Nealeigh*, 2nd Dist. No. 2010CA28, 2011-Ohio-1416, ¶ 9. *See also* 29 Ohio Jurisprudence 3d, Criminal Law, Procedure, Section 2717 (2012) ("[e]ven if an offender satisfies all of the statutory eligibility requirements, a trial court has the discretion to determine whether the particular offender is a candidate for ILC").

{¶ 38} Based on the foregoing, we conclude the trial court did not abuse its discretion in deciding appellant was ineligible for ILC under R.C. 2951.041(B)(6).

{¶ 39} Appellant also challenges the state's alternative argument that she should be

excluded from ILC under R.C. 2951.041(B)(7), which renders an offender ineligible if the "alleged victim of the offense * * * was a peace officer engaged in the officer's official duties at the time of the alleged offense." While the trial court did not reach this argument, appellant argues it is meritless because an officer was not the "victim" of the obstruction charge. Because we presume appellant will file a new motion for ILC upon remand, we will briefly address the issue.

{¶ 40} Appellant cites R.C. 2930.01(H)(1), which defines "victim" as an individual identified as such in a "police report or in a complaint, indictment, or information that charges the commission of a crime." Appellant argues an officer was not the "victim" of the obstruction offense because the police report listed "the State of Ohio" as the victim, and the indictment did not name a victim at all. Unfortunately for appellant, R.C. 2930.01 specifically limits its application to R.C. Chapter 2930, the victims' rights statute. Thus, the court is not required to abide by its definitions in interpreting R.C. 2951.041(B)(7).

{¶ 41} While we are not in a position to speculate how the trial court will interpret "victim" under R.C. 2951.041(B)(7), we reject appellant's interpretation on a cursory level, as she cites irrelevant statutory language and relies on incomplete information from the record.[1] Although the trial court may not make an arbitrary decision on the matter, we will not forbid it from considering appellant's eligibility under R.C. 2951.041(B)(7), if the issue arises on remand.

{¶ 42} Appellant's second assignment of error is overruled.

{¶ 43} Assignment of Error No. 3:

{¶ 44} IT IS UNCONSTITUTIONAL FOR A STATE RULE TO PRECLUDE

1. The "remarks" section of the police report indicates several officers were targets of appellant's criminal conduct. In describing the incident, Lieutenant Fening stated, "[d]uring the struggle, * * * I took [appellant] to the ground and handcuffed her. During that take-down to the ground, I superficially injured my knee." The lieutenant also stated appellant "threw water at Officer Sikora" in an attempt to escape from custody.

APPELLATE COUNSEL'S ACCESS TO SENTENCING EVIDENCE THAT WAS RELIED UPON BY THE TRIAL COURT.

{¶ 45} Appellant asserts several arguments in her third assignment of error. We will address each argument in turn.

{¶ 46} Appellant first argues R.C. 2951.03, which requires copies of the PSI to be returned to court immediately after imposition of sentence, is unconstitutional. Appellant argues the statute precluded appellate counsel from reviewing the PSI, and as a result, she was denied her constitutional rights to the effective assistance of appellate counsel, an adversarial trial, and the right to rebut relied-upon sentencing information.

{¶ 47} We have not found any judicial authority that would require us to hold that the Ohio scheme permitting a defendant to view a PSI only prior to sentencing is constitutionally infirm. *See State v. Fisher*, 12th Dist. No. CA98-09-190, 2002 WL 745330, *6 (Apr. 29, 2002); *State v. Dietz*, 89 Ohio App.3d 69 (11th Dist.1993) (rejecting argument that trial court should have released PSI to defendant under R.C. 2951.03 after conviction). Appellant, however, argues that *Townsend v. Burke*, 334 U.S. 736, 68 S.Ct. 1252 (1948); *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039 (1984); and *Stewart v. Erwin*, 503 F.3d 488 (6th Cir.2007), support her position. Her reliance on these cases is misplaced.

{¶ 48} In *Townsend*, the Supreme Court of the United States found a pro se defendant was denied due process because he was sentenced on the basis of assumptions shown to be materially untrue. The Court found counsel could have ensured defendant's conviction and sentence were not predicated on misinformation or the misreading of court records. *Id.* at 741. *Townsend* is inapplicable here since appellant had counsel capable of speaking on her behalf, and the Court did not address the issue of whether a PSI had to be revealed to the defendant.

{¶ 49} Similarly, *Cronic* does not apply. Under *Cronic*, ineffective assistance of

counsel is presumed when the defendant's representation was hindered to such an extent that "the likelihood that counsel could have performed as an effective adversary [was] so remote as to have made the trial inherently unfair." *Cronic*, 466 U.S. at 660-661. Appellant argues that without access to the TASC report, appellate counsel could not subject its contents to adversarial testing as required by *Cronic*.

{¶ 50} The record does not support this conclusion, where there is no evidence that appellate counsel could not discuss the contents of the TASC report with trial counsel while preparing for appeal. *See* R.C. 2953.01(B)(1)-(5) (defendant or defendant's counsel shall be permitted to review the PSI at a "reasonable time before imposing sentence"). Thus, this is not a case where the information appellate counsel sought was inaccessible so as to hinder appellant's representation or warrant a presumption of ineffectiveness. *Compare Cronic*, 466 U.S. at 661.

{¶ 51} We also reject appellant's argument that R.C. 2951.03 denies her constitutional due process right to rebut relied-upon sentencing information. Her reliance on *Erwin* for this proposition is misplaced. In *Erwin*, defendant's trial counsel had no opportunity to review and rebut allegedly false information contained in victim impact statements, which the trial court considered during sentencing. On remand, the Sixth Circuit Court of Appeals ordered the prosecution to disclose the statements, recognizing defendants must be "afforded the opportunity of rebutting derogatory information demonstrably relied upon by the sentencing judge, when such information can in fact be shown to have been materially false." *Erwin*, 503 F.3d at 495. However, the court emphasized there is no clearly established law "ensuring [a defendant] an opportunity to review, rebut, and explain all of the information relied upon by the state trial court in determining [defendant's] sentence[.]" *Id.* at 498.

{¶ 52} Here, we fail to see how appellant's sentence might have been based on materially false information in the PSI that she could not rebut, when there is no evidence

that trial counsel was denied the opportunity to review the PSI and contest its contents prior to sentencing. *See* R.C. 2951.03(B)(1)-(5).

{¶ 53} Moreover, both the trial court's summation of the PSI and appellant's independent evaluation indicated that her activity was a single "alcohol event," and an "aberration in her drinking pattern and behavior," respectively. Both documents also recommended appellant for an ILC program. Thus, we disagree with appellant that there was a "reasonable possibility that the sentencing judge relied upon materially erroneous facts," where the reports contain strikingly similar conclusions about appellant's diagnosis. Appellant's argument that her due process rights were violated under the principles of *Erwin* is without merit.

{¶ 54} Moreover, and perhaps most importantly, we reiterate that as of today, an accused does not have a constitutional right to access a sealed PSI on appeal. Absent a controlling decision to the contrary, we decline to entertain appellant's argument.

{¶ 55} Lastly, appellant argues the trial court erroneously denied ILC based solely upon the findings in the TASC report, while ignoring the separate evaluation she submitted prior to the motion hearing. This argument lacks merit.

{¶ 56} R.C. 2951.041 does not require a trial court to base its decision regarding ILC on an independent report submitted by the offender. Instead, the statute defers to the trial court, which "may" order an assessment for the purpose of determining the offender's eligibility. R.C. 2951.041(A)(1). Thus, the trial court was not required to consider appellant's ILC evaluation in rendering its decision.

{¶ 57} Appellant's third assignment of error is overruled.

{¶ 58} The trial court's judgment is affirmed in part, appellant's conviction and guilty plea are hereby reversed and vacated, and this matter is remanded to the trial court for further proceedings.

HENDRICKSON, P.J., concurs.

RINGLAND, J. concurs separately.

RINGLAND, J., concurring separately.

{¶ 59} I concur with the judgment of the majority. I write separately, however, because I disagree with the majority's analysis as it relates to appellant's second assignment of error.

{¶ 60} The majority distinguishes this case from the Second District's decision in *Fullenkamp* by finding the trial court did not deny appellant's ILC request based solely on her lack of a serious, or chronic, alcohol problem. While this may be true, I find this fact to be without distinction and otherwise unnecessary to support this court's resolution in this matter. I recognize that this decision may conflict with the rationale of the Second District.

{¶ 61} By enacting R.C. 2951.041, "the legislature made a determination that when chemical abuse is the cause or at least a precipitating factor in the commission of a crime, it may be more beneficial to the individual and the community as a whole to treat the cause rather than punish the crime." *State v. Shoaf*, 140 Ohio App.3d 75, 77 (10th Dist.2000), citing *State v. Baker*, 131 Ohio App.3d 507, 510 (7th Dist.1998). In turn, ILC is a "statutory creation that allows a trial court to stay a criminal proceeding and order an offender to a period of rehabilitation if the court has reason to believe that drug or alcohol usage was a factor leading to the offense." *State v. Massien*, 125 Ohio St.3d 204, 2010-Ohio-1864, ¶ 9. However, because R.C. 2951.041(A)(1) makes it clear that the trial court "may" accept an offender's request for treatment in lieu of conviction, the trial court is never required to grant such a request even if all the ILC eligibility requirements are met. ILC is simply another tool the trial court can use within its sole discretion to rehabilitate the offender and protect the public. Therefore, so long as the trial court adheres to the requirements of the ILC statute,

such as the case here, no abuse of discretion will occur.

{¶ 62} ILC is not a right to be afforded to all offenders when drug or alcohol abuse was a contributing factor in the commission of a crime. Instead, it is a privilege that the trial court possesses nearly unlimited discretion to deny. Accordingly, based on the foregoing analysis, I find no merit to appellant's second assignment of error.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.