

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JERRY C. BUTLER,

Defendant-Appellant.

CASE NO. 2026-P-0001

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2025 CR 00122

OPINION AND JUDGMENT ENTRY

Decided: September 14, 2026
Judgment: Affirmed

Connie J. Lewandowski, Portage County Prosecutor, and *Timothy P. Bogner*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Thomas I. Perotti, Perotti Law Offices, L.L.C., 147 Bell Street, Suite 200, Chagrin Falls, OH 44022 (For Defendant-Appellant).

EUGENE A. LUCCI, J.

{¶1} Appellant, Jerry C. Butler, appeals the judgment of the Portage County Court of Common Pleas, convicting him, after he entered a plea of guilty to felony-four failure to comply with the order or signal of a police officer, in violation of R.C. 2921.331. Mr. Butler was subsequently referred to the adult probation department for an intervention in lieu of conviction (“ILC”) evaluation. After a sentencing hearing, Mr. Butler was sentenced to two years’ probation with various conditions. The issues in this matter are (1) whether the trial court erred in accepting Mr. Butler’s guilty plea *before* referring him for an ILC assessment which, in Mr. Butler’s view, rendered his guilty plea invalid, and (2)

whether the trial court erred, as a matter of law, when it allegedly ruled the offense to which Mr. Butler pleaded guilty was not an eligible offense under the ILC statutory scheme. Regarding the first issue, we conclude the trial court did not err; as to the second issue, we conclude the trial court did not enter a specific judgment regarding eligibility, and thus the hypothetical issue is moot. The judgment of the trial court is therefore affirmed.

{¶2} On February 13, 2025, Mr. Butler was indicted on one count of failure to comply with the order or signal of a police officer, a felony of the fourth degree, in violation of R.C. 2921.331; obstructing official business, a misdemeanor of the second degree, in violation of R.C. 2921.31; and criminal trespass, a misdemeanor of the fourth degree, in violation of R.C. 2911.21. He pleaded not guilty to the charges.

{¶3} On August 6, 2025, Mr. Butler signed a written plea agreement to the felony-four failure-to-comply charge.¹ The matter proceeded to a plea hearing. At the plea hearing, the State indicated it did not object to Mr. Butler being reviewed for ILC. Defense counsel observed that Mr. Butler intended to enter a plea of guilty but ostensibly agreed to the assessment.

{¶4} The State noted that there were no issues of drugs or alcohol involved in the matter. Specifically, the prosecutor pointed out that “we just believe he was having a bad mental health day which caused him to make the choices he did and if he seeks treatment for that and gets some insight into why he acted the way he did, we feel he would be a good candidate for ILC.” Defense counsel requested the court set the matter for status conference and allow Mr. Butler to be assessed by a mental health facility. No

1. The docket indicates the plea agreement was time-stamped on August 7, 2025; the record indicates, however, the written agreement and the plea hearing occurred on August 6, 2025.

formal motion or request was filed on Mr. Butler's behalf regarding ILC prior to or at the time of the plea hearing. The trial court accordingly ordered that the matter be referred to adult probation for an ILC evaluation and report. No objection was advanced regarding the referral, and Mr. Butler did not seek a stay of proceedings in light of the referral. To the contrary, Mr. Butler *represented* (expressly and via counsel) that he was poised to accept the State's plea offer at that time.

{¶5} Given the parties' statements, the trial court conducted a complete plea hearing. The trial court advised Mr. Butler of the various rights he would be waiving if it were to accept the plea of guilty, and Mr. Butler stated he understood his waivers. The trial court stated that "even though I am going to follow the recommendation and have you assessed for [ILC], if I choose today, I could proceed to sentence you to eighteen months in prison, do you understand that?" Mr. Butler responded in the affirmative.

{¶6} The trial court, after fully advising Mr. Butler of the rights he was waiving, determined he knowingly, voluntarily, and intelligently entered into the plea of guilty. The trial court then referred the matter to adult probation so an "ILC assessment" would be completed within 30 days.

{¶7} Approximately six weeks later, on October 20, 2025, Mr. Butler filed a "request for [ILC] and time waiver [pursuant to] R.C. 2951.041." In the motion, Mr. Butler stated that, under R.C. 2951.041, "alcohol and drug usage, mental illness, intellectual disability, was a factor leading to the criminal behavior charged." Mr. Butler accordingly (and notwithstanding his plea of guilty) waived his "right to a speedy trial, a public jury trial as guaranteed by the United States Constitution, the Ohio Constitution, and R.C. 2945.71, et seq."

{¶8} On October 29, 2025, the State filed a bench memorandum regarding “ILC on failure to comply,” essentially withdrawing its previous recommendation that Mr. Butler would be a “good candidate” for ILC. The State argued that, pursuant to R.C. 2951.041(B)(10), Mr. Butler would be ineligible for ILC because he was charged with an offense that would disqualify him “from operating a commercial motor vehicle” *Id.* The State cited *State v. Schneider*, 2025-Ohio-4625 (12th Dist.), wherein the appellate court determined that a violation of failure to comply, under R.C. 2921.331, disqualifies an individual from participating in an ILC program. *Schneider* at ¶ 10.²

{¶9} The matter proceeded to sentencing on December 9, 2025. During sentencing, the trial court indicated it had received Mr. Butler’s ILC assessment. Prior to ruling on the ILC issue, however, Mr. Butler withdrew his request for ILC. Defense counsel specifically stated that “after copious talks with my client . . . I have to withdraw my motion for ILC.” The trial court accepted defense counsel’s withdrawal and confirmed that Mr. Butler had nothing to add regarding the withdrawal or the court proceeding to sentencing.

{¶10} The trial court ordered Mr. Butler to serve two years’ probation; that he engage in a mental health assessment through Stepping Stone and follow any recommendations; that he attend counseling “actively”; that he complete anger management; that his driver’s license be suspended for three years, retroactive to the

2. It is unclear whether the defendant in *Schneider* possessed a license to operate a commercial motor vehicle. Instead, the analysis was peremptory such that the charge under R.C. 2921.331 would necessitate the option of even applying for such a license. And, although we do not have the benefit of the defendant’s appellate brief in *Schneider*, the Twelfth District observed “[t]here is nothing ‘premature’ or speculative about the trial court’s decision as Schneider suggested in her appellate brief. The trial court, just like this court on appeal, applied the plain language of the statutes involved.” *Id.* at ¶ 11. Accordingly, under *Schneider*, it would appear that the actual possession of a CDL or other commercial motor vehicle license is irrelevant to the extent that the charged offense of failure to comply would be a disqualifying offense. This note is merely informational because, as will be discussed below, the legal merits of this point are not before this court in the instant matter.

date of arrest; that he be screened for drug and alcohol issues; that he refrain from consuming alcohol, illegal drugs, or marijuana; and that he pay court costs. This appeal follows.

{¶11} Mr. Butler assigns two errors for this court's review. His first provides:

{¶12} "The trial court erred as a matter of law when it accepted a guilty plea before referring defendant for an ILC assessment."

{¶13} Under this assignment of error, Mr. Butler argues that once a court accepts a request for ILC, an eligibility hearing must follow and all criminal proceedings must be stayed under R.C. 2951.041. He claims that the trial court reversed or inverted the order of the proper procedure by first accepting his guilty plea and then referring the matter to adult probation for ILC eligibility. Mr. Butler therefore argues that his guilty plea was not entered "knowingly and voluntarily" because it occurred before any eligibility hearing. We do not agree with Mr. Butler's position.

{¶14} "Because a . . . guilty plea involves a waiver of constitutional rights, a defendant's decision to enter a plea must be knowing, intelligent, and voluntary." (Citations omitted.) *State v. Dangler*, 2020-Ohio-2765, ¶ 10. If a guilty plea was not entered knowingly, intelligently, and voluntarily, "enforcement of that plea is unconstitutional." (Citations omitted.) *Id.*

{¶15} When a criminal defendant seeks to have his or her conviction reversed on appeal, the general rule requires that the alleged error occurred in the trial-court proceedings and that he or she was prejudiced by that error. *Id.* at ¶ 13. The Supreme Court of Ohio has established a limited exception to the prejudice component of that rule in the context of a plea of guilty in a criminal matter. *Id.* at ¶ 14. "When a trial court fails

to explain the constitutional rights that a defendant waives by pleading guilty or no contest, we presume that the plea was entered involuntarily and unknowingly, and no showing of prejudice is required.” *Id.*, citing *State v. Clark*, 2008-Ohio-3748, ¶ 31.

{¶16} The Court has also set forth an “additional exception to the prejudice requirement: a trial court’s *complete* failure to comply with a portion of Crim.R. 11(C) eliminates the defendant’s burden to show prejudice.” *Danglerat* ¶ 15, citing *State v. Sarkozy*, 2008-Ohio-509, ¶ 22. (In *Sarkozy*, the Court determined the trial court had wholly failed to comply with Crim.R. 11(C)(2)(a)’s mandate that it explain the maximum penalty when the court made no mention of postrelease control in the plea colloquy, despite the fact the defendant was subject to a mandatory five years of postrelease control.)

{¶17} Beyond these narrow exceptions, “the traditional rule continues to apply: a defendant is not entitled to have his plea vacated unless he [or she] demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C).” *Dangler*, 2020-Ohio-2765, at ¶ 16. In *Dangler* at ¶ 17, the Court clarified the analysis a reviewing court should apply when the issue of the validity of a defendant’s plea of guilty is before the appellate court. Specifically, the Court determined:

Properly understood, the questions to be answered are simply: (1) has the trial court complied with the relevant provision of the rule? (2) if the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?

{¶18} We conclude the trial court fully complied with the rule and Mr. Butler, in view of his specific contentions on appeal, has failed to establish prejudice.

{¶19} Initially, trial counsel advised the trial court that Mr. Butler was submitting a “knowing and voluntary guilty plea.” Consistent with Crim.R. 11, the trial court advised Mr. Butler of each constitutional right he was waiving and engaged in a colloquy demonstrating Mr. Butler understood the waiver.³ The trial court also advised Mr. Butler of each so-called “non-constitutional” right (i.e., he was informed of the maximum possible penalty, the nature of the charges, and the effect of the plea) that are involved in entering his plea of guilty. The trial court therefore complied.

{¶20} Mr. Butler does not dispute the trial court’s compliance in these respects. Instead, he appears to argue his plea was invalid because the trial court may have (implicitly) promised to find him eligible and permit him to participate in an ILC program OR that the trial court’s acceptance of his guilty plea *prior to* conducting an ILC eligibility hearing somehow affected his entry of the plea. This court considers both arguments meritless.

{¶21} 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[, or that the offender had a mental illness or other qualifying circumstance,] was a factor leading to the offense.” *State v. Dawson*, 2017-Ohio-2833, ¶ 11 (9th Dist.), quoting *State v. Massien*, 2010-Ohio-1864, ¶ 9, citing R.C. 2951.041(A)(1). R.C. 2951.041(A)(1) states:

If the court elects to consider an offender’s request . . . , the court shall conduct a hearing to determine whether the offender is eligible under this section for [ILC] and shall stay

3. Pursuant to Crim.R. 11(C)(2)(c), the trial court must inform and determine that a “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.”

all criminal proceedings pending the outcome of the hearing. 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 [ILC] and recommending an appropriate intervention plan.

{¶22} Pursuant to R.C. 2951.041(A)(1), however, a court may deny a request for intervention in lieu of conviction without a hearing. *State v. Cebula*, 2014-Ohio-3276, ¶ 17 (11th Dist.); *see also State v. Leisten*, 2006-Ohio-2362, ¶ 6 (2d Dist.). If the court instead elects to consider the request, the court must conduct a hearing to determine whether the offender meets all of the eligibility requirements in R.C. 2951.041(B) for intervention in lieu of conviction. *Cebula* at ¶ 17.

{¶23} Considering these points, a stay of criminal proceedings is triggered upon the trial court's election to "consider the request . . . [.]” hold a hearing, and order an assessment of the offender to determine his or her eligibility. R.C. 2951.041(A).⁴

{¶24} Here, we emphasize that no formal request or motion (either oral or written) was made before the court on Mr. Butler's behalf prior to the plea hearing. See R.C. 2951.041(A)(1) (indicating that an offender's request must be submitted prior to the entry of a guilty plea). While we recognize the State, via the prosecuting attorney, indicated it did not object to the possibility of Mr. Butler receiving ILC and defense counsel acquiesced to the State's point, stating that counsel "had a chance to discuss this with [his] client and that is a knowing and voluntary guilty plea and we would respectfully ask for the court to set it for status, giving him enough time to go to the Coleman Center and get assessed."

4. R.C. 2951.041 has been amended several times after the release of *Leisten* and *Cebula*. The procedural points, however, are still valid.

{¶25} Under the circumstances, defense counsel (not unreasonably) appeared to agree with the State, after consulting with Mr. Butler, that an evaluation was appropriate; still, the record reflects that Mr. Butler was interested in going forward with the guilty-plea hearing and, as a result, was voluntarily interested in accepting the State's plea offer.

{¶26} Moreover, it bears emphasis that Mr. Butler filed his formal request for ILC and time waiver on October 20, 2025. This request was filed well after the plea hearing occurred.

{¶27} Over forty years ago, this court observed that “[a]n eligibility hearing on an offender’s request for treatment in lieu of conviction . . . is mandatory only if the request comes *before entry of a plea*.” (Emphasis added.) *State v. Eisnaugle*, 1984 WL 6477, *3 (11th Dist.), quoting *State v. Lampkin*, 3 Ohio App.3d 341, 341 (8th Dist.). Because no formal motion was before the trial court when Mr. Butler knowingly and voluntarily entered his plea, and no assessment regarding Mr. Butler’s potential eligibility for ILC had taken place, we maintain that holding an eligibility hearing before the guilty-plea proceedings would make little sense. We discern no reason to depart from the simple, procedural legal point announced and followed by this court in *Eisnaugle*.

{¶28} Moreover, the language of R.C. 2951.041, the ILC statute, does not, on its face, concern or impact an otherwise valid guilty plea. Even though the statute provides that when a court “elects to consider an offender’s request . . . [the court] shall stay all criminal proceedings pending the outcome of the hearing[.]” this does not imply that a court’s referral to a treatment clinic, at the State’s mere “yielding” to such a request, requires a stay of plea proceedings. R.C. 2951.041(A). This is especially true where no formal motion or request has been filed prior to or during the proceedings by a defendant

and the defendant has represented that he or she wishes to knowingly and voluntarily enter a guilty plea in light of the foreseeable evaluation.

{¶29} Finally, we point out that, even though Mr. Butler’s withdrawal of the ILC request occurred after the trial court’s acceptance of his guilty plea, the withdrawal implies Mr. Butler was comfortable with and accepted, knowingly, voluntarily, and intelligently, the guilty plea into which he entered. Specifically, Mr. Butler’s decision not to object to the withdrawal, question the withdrawal, or exercise his right of allocution pertaining to the withdrawal of the ILC request, provides a compelling foundation for the conclusion that his decision to enter the guilty plea was not affected by the possibility of ILC eligibility. In this respect, we cannot conclude that the lack of ILC participation was instrumental or sine qua non for entering his plea of guilty.⁵

{¶30} We hold Mr. Butler’s plea of guilty is valid. And to the extent Mr. Butler claims his guilty plea was not knowing, intelligent, and voluntary due to the trial court’s procedural sequence, his argument is meritless.

{¶31} Mr. Butler’s second assignment of error provides:

{¶32} “The trial court erred as a matter of law when it ruled that R.C. 2921.331 was an offense that rendered defendant ineligible for ILC.”

{¶33} We need not engage in an in-depth discussion of Mr. Butler’s argument under his second assignment of error because the trial court *did not* actually make a formal ruling that he was ineligible for ILC. As noted above, at sentencing, Mr. Butler withdrew his request for ILC and, as a result, any issue pertaining to eligibility was no

5. We recognize that Mr. Butler appears to assert that he withdrew the ILC request because the trial court indicated (during an off-record sidebar) that it intended to find he was ineligible for ILC, pursuant to R.C. 2951.041(B)(10) (because he was charged with an offense that would disqualify him “from operating a commercial motor vehicle . . .”). This characterization, however, is not of record.

longer a matter in controversy. In effect, Mr. Butler voluntarily waived any argument pertaining to ILC. *United States v. Olano*, 507 U.S. 725, 733 (1993), quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (“[W]aiver is the ‘intentional relinquishment or abandonment of a known right.’”).

{¶34} Further, the suspension at issue is an independent, mandatory consequence of Mr. Butler’s conviction under R.C. 2921.331(E). The suspension attached by operation of law, regardless of any possible ineligibility or other disqualification issues. “Pursuant to R.C. 2921.331(E), a charge of fourth-degree felony failure to comply with the order or signal of a police officer in violation of R.C. 2921.331(B) includes a requirement that the trial court suspend the offender’s driver’s license for a period of three years to life.” *State v. Pettigrew*, 2026-Ohio-2312, ¶ 17 (2d Dist.), quoting *Schneider*, 2025-Ohio-4625, ¶ 9-10 (12th Dist.). Even if the trial court ruled on the matter, no ruling from this court could afford Mr. Butler relief from the same. In short, because Mr. Butler’s withdrew his ILC request and stands convicted, any challenge to his eligibility can afford him no relief and is rendered moot.

{¶35} “The doctrine of mootness is rooted both in the ‘case’ or ‘controversy’ language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint.” (Citation omitted.) *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 791 (10th Dist. 1991). Ohio has no constitutional counterpart to Section 2, Article III. *Id.* Nevertheless, “[t]he duty of [the court] . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”” *Empaco Equip. Corp. v.*

Maximus Consulting, L.L.C., 2015-Ohio-1801, ¶ 5 (9th Dist.), quoting *Miner v. Witt*, 82 Ohio St. 237, 238 (1910), quoting *Mills v. Green*, 159 U.S. 651, 653 (1895). “In other words, an issue is moot when it has no practical significance, being instead merely hypothetical or academic.” *In re Guardianship of Weller*, 2011-Ohio-5816, ¶ 7 (2d Dist.).

{¶36} Considering these points, “it is well established that courts do not have jurisdiction to consider moot issues; rather, courts decide actual cases in controversy.” (Citation omitted.) *Deluca v. Aurora*, 144 Ohio App.3d 501, 508 (11th Dist. 2001). A case is moot “when an event occurs that renders it impossible for the court to grant the requested relief” because “under such circumstances, there is no longer a ‘live’ issue that demands resolution.” *Ohio Renal Assn. v. Kidney Dialysis Patient Protection Amendment Committee*, 2018-Ohio-3220, ¶ 12; see also *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979). “It is not the duty of [a] court to answer moot questions” *State ex rel. Gaylor, Inc. v. Goodenow*, 2010-Ohio-1844, ¶ 10, quoting *Miner* at syllabus (“It is not the duty of the court to answer moot questions, and when, pending proceedings in error in this court, an event occurs without the fault of either party, which renders it impossible for the court to grant any relief, it will dismiss the [action].”).

{¶37} Here, because Mr. Butler withdrew his request for ILC, any issue of eligibility of the same is moot. There is no case in controversy because he voluntarily withdrew his request and the trial court did not issue a ruling on the issue of eligibility. It therefore follows “when there is ‘no case in controversy, there will be no appellate review [of the issue advanced].” *State ex rel. Evans v. Mohr*, 2018-Ohio-5089, ¶ 5, quoting *Adkins v. McFaul*, 1996-Ohio-388, ¶ 3 (1996). “Ordinarily when there is no case in controversy,

there will be no appellate review unless the underlying legal issue is capable of repetition yet evading review.” *Id.*, ¶ 1, citing *State v. Bistricky*, 51 Ohio St.3d 157, 158-159 . . .; *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164, 165 (1995). Here, there is nothing to review. See also, *State v. Bishop*, 2018-Ohio-5132, ¶ 27.

{¶38} The trial court accepted Mr. Butler’s request without issuing a judgment or final order on eligibility (or lack thereof). Indeed, in its final judgment on sentence, the trial court stated it granted Mr. Butler’s “motion” to withdraw his request for ILC. Because there is no judgment relating to eligibility, there is no judgment upon which relief can be granted. The issue is therefore moot.

{¶39} Mr. Butler’s second assignment of error is moot, and we accordingly decline to address the same.

{¶40} The judgment of the Portage County Court of Common Pleas is affirmed.

MATT LYNCH, P.J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's first assignment of error is without merit, and his second assignment of error is rendered moot. It is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

JUDGE EUGENE A. LUCCI

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
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