

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	CASE NO. CA2026-01-010
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
JONATHAN JOSHUA PEREZ,	:	9/14/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 24CR41556

David P. Fornshell, Warren County Prosecuting Attorney, and Kirsten A. Brandt, Assistant Prosecuting Attorney, for appellee.

Christopher Bazeley, for appellant.

OPINION

PIPER, P.J.

{¶ 1} Appellant, Jonathan Joshua Perez, appeals the Warren County Court of Common Pleas' order upwardly modifying the previously agreed-upon \$70,000 in

restitution to \$77,078 as part of his plan for intervention-in-lieu-of-conviction ("ILC").¹ For the reasons set forth below, we dismiss the appeal for lack of a final, appealable order.

{¶ 2} On March 25, 2024, a Warren County Grand Jury indicted Perez for grand theft, a fourth-degree felony. Soon after, on May 30, 2024, Perez moved for ILC. Approximately two months later, on August 14, 2024, the trial court granted Perez's ILC motion, stayed the criminal proceedings for three years, and referred the matter to the probation department.

{¶ 3} That same day, on August 14, 2024, Perez changed his plea from not guilty to guilty and agreed to and signed the ILC "Rules, Conditions, and Intervention Plan." As part of his ILC plan, Perez agreed to (1) pay the fines, costs of prosecution, restitution, and attorney fees; (2) remain free of any establishment where alcohol is sold and consumed on the premises; (3) undergo and successfully complete a program of alcohol/drug treatment and a program of mental health treatment; and (4) pay \$70,000 in restitution to the victim, EssilorLuxottica.

{¶ 4} One year later, on August 20, 2025, Perez filed a motion to modify restitution, determine ability to pay, and compel disclosure of insurance reimbursement. The following year, on January 20, 2026, the trial court held a restitution hearing. At that hearing, the trial court heard testimony from two EssilorLuxottica employees, Kevin Gormley and Lori Stackpole, as well as from Perez. Based on the testimony and evidence presented, the trial court found that EssilorLuxottica was damaged in the amount of \$77,078 and ordered Perez to pay that amount in restitution. Perez now appeals from the trial court's decision, raising one assignment of error for our review, which states:

1. "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*, 2010-Ohio-1864, ¶ 9, citing R.C. 2951.041(A)(1).

THE TRIAL COURT ERRED WHEN IT DETERMINED THE
AMOUNT OF RESTITUTION PEREZ OWED TO BE \$77,078.

{¶ 5} In his sole assignment of error, Perez argues that the trial court erred in increasing the previously agreed-upon restitution that he was ordered to pay as a condition of his ILC plan from \$70,000 to \$77,078. To this, the State asserts that this court should dismiss the appeal for want of jurisdiction because no final, appealable order exists. Given the parties' arguments, before we address the merits of Perez's appeal, we must first determine whether this appeal arises from a final, appealable order. This is because, as it is now well established, a court of appeals "has no jurisdiction over orders that are not final and appealable." *State v. Wilson*, 2025-Ohio-1696, ¶ 9 (12th Dist.), quoting *State v. Beckett*, 2021-Ohio-1687, ¶ 6 (12th Dist.); see also Ohio Const., art. IV, § 3(B)(2).

{¶ 6} To determine whether an order is final and appealable, we turn to the requirements set forth in R.C. 2505.02(B). In describing final orders, R.C. 2505.02(B) provides that (1) an order is final and appealable if it affects a substantial right that effectively determines the action, preventing a judgment; (2) an order that affects a substantial right made in a special proceeding. R.C. 2505.02(B)(1)-(2). With this in mind, the Supreme Court of Ohio has rejected the notion that granting a request for ILC is a final, appealable order because an order granting ILC is *permissive* and, "therefore, does not implicate a substantial right." *State v. Yontz*, 2022-Ohio-2745, ¶ 19, citing *State v. Slack*, 2021-Ohio-974, ¶ 4 (2nd Dist.); see also *State v. Williams*, 2024-Ohio-788, ¶ 12 (11th Dist.) ("R.C. 2951.041 gives the court discretion to grant an offender ILC if the statutory requirements are met"); *State v. Bellman*, 2015-Ohio-2303, ¶ 10 (9th Dist.) ("R.C. 2951.041 is permissive in nature and confers substantial discretion to the trial court to grant a defendant's request without providing for appellate review").

{¶ 7} Because the trial court, in exercising its discretion, granted Perez eligibility for the ILC program, an appeal from the order modifying the terms of his ILC plan is not permitted. As such, ILC is not a right provided to a defendant. It is instead a special opportunity available to select defendants who are eligible for ILC. *Bellman* at ¶ 10. Therefore, the trial court's restitution order, as a modification to the conditions of Perez's ILC, is not a final, appealable order. *Yontz* at ¶ 16 ("We conclude that the trial court's order denying Yontz's motion to modify the terms of his ILC supervision does not fall into any of these [R.C. 2505.02(B)] categories and therefore was not a final, appealable order"). Accordingly, for the reasons set forth above, we lack jurisdiction to consider the trial court's order of restitution because it does not constitute a final, appealable order. It is for this reason that Perez's appeal must be dismissed.

{¶ 8} Appeal dismissed.

M. POWELL and SIEBERT, JJ., concur.

JUDGMENT ENTRY

Upon consideration of the appeal and briefs before this court, and the above Opinion, it is the order of this court that this appeal should be and hereby is dismissed because the order appealed from is not a final appealable order. This court is therefore without jurisdiction.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge