

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

STATE OF OHIO,

Plaintiff - Appellee

-vs-

ROBERT METZGER,

Defendant - Appellant

Case No. 26 CAC 04 0034

Opinion And Judgment Entry

Appeal from the Delaware Municipal Court,
Case No. 25CRB00963

Judgment: Reversed & Remanded

Date of Judgment Entry: October 14, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; David M. Gormley, Judges

APPEARANCES: TYLER A. SANDERS, for Plaintiff-Appellee; WILLIAM T. CRAMER, for Defendant-Appellant.

Montgomery, J.

{¶1} Defendant-Appellant, Robert Metzger, appeals from the judgment of the Delaware Municipal Court denying his request for intervention in lieu of conviction without hearing. For the reasons below, we reverse and remand to the trial court for further proceedings consistent with this opinion.

STATEMENT OF FACTS

{¶2} On August 18, 2025, defendant-appellant Robert Metzger (“Appellant”) was charged with a single misdemeanor offense - one count of telecommunications harassment in violation of R.C. 2917.21(A)(5). The complaint alleged that on August 5, 2025, the Delaware Police warned Appellant to cease contacting the victim. On August 15, 2025, Appellant sent the victim three additional text messages and was charged.

{¶3} Thereafter, Appellant filed motions challenging his competency and a written plea of Not Guilty by Reason of Insanity and requested an evaluation. The trial court ordered a competency evaluation. Appellant was evaluated and a report was filed with the court. The parties stipulated the findings in the report, including that Appellant was competent to stand trial. Appellant then filed a motion for intervention in lieu of conviction (“ILC”) pursuant to R.C. 2951.041, alleging that the offense arose from issues with “substance abuse and/or mental health,” “substance dependency and/or mental health,” “drug use and/or mental health,” and/or “substance use or mental health.”

{¶4} A change of plea hearing was scheduled for January 5, 2026. On that date, Appellant’s counsel filed a motion to continue and requested additional time to have an ILC assessment. Appellant filed and was granted additional continuances, and the matter was set for a plea hearing on March 2, 2026. On that date, Appellant again filed a motion for intervention in lieu of conviction and requested time to brief the ILC issues. Appellant subsequently filed a brief in support of intervention in lieu of conviction and the State filed its opposition. On March 20, 2026, the trial court denied Appellant’s request for ILC without holding a hearing. The Judgment Entry states that the court reviewed Appellant's motion for ILC and the State's memorandum contra and subsequently denied the request for a hearing.

Three days later, Appellant pled “no contest” to the charge and was sentenced. Appellant filed the instant appeal.

ASSIGNMENT OF ERROR

{¶5} “I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING INTERVENTION IN LIEU OF CONVICTION WITHOUT FIRST HOLDING A HEARING WHERE METZGER COULD PRESENT EVIDENCE OF WHETHER INTERVENTION WAS APPROPRIATE IN THIS CASE.”

STANDARD OF REVIEW

{¶6} The decision whether to grant a motion for ILC lies within the trial court's sound discretion, and an appellate court will not reverse the trial court's ruling absent an abuse of that discretion. *State v. Adkins*, 2012-Ohio-4744, ¶ 16 (2d Dist.). An abuse of discretion involves more than an error of judgment; it connotes an attitude on the part of the court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Here, the issue before the court is whether the trial court was required to hold an ILC hearing, and, if so, whether the trial court's failure to do so was an abuse of discretion.

ANALYSIS

{¶7} Intervention in Lieu of Conviction (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, mental illness, or being a person with an intellectual disability was a factor leading to the criminal behavior. *See* R.C. 2951.041(A); *See State v. Massien*, 2010-Ohio-1864, ¶ 9; *State v. Alexander*, 2017-Ohio-8828, ¶ 10 (5th Dist.). R.C. 2951.041 provides in part:

(A)(1) If an offender is charged with a criminal offense, * * * and the court has reason to believe that drug or alcohol usage by the offender was a factor leading

to the criminal offense with which the offender is charged or that, at the time of committing that offense, the offender had a mental illness, was a person with an intellectual disability * * * the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction.

* * *

Unless an offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court may reject an offender's request without a hearing. If the court elects to consider an offender's request or the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court shall conduct a hearing to determine whether the offender is eligible under this section for intervention in lieu of conviction and shall stay 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 intervention in lieu of conviction and recommending an appropriate intervention plan.

R.C. 2951.041(A)(1).

{¶8} “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.” *Massien* at ¶ 10, *quoting State v. Shoaf*, 140 Ohio App.3d 75, 77 (10th Dist. 2000) (referring to a previous, but similar, version of R.C. 2951.041). ILC is not

designed to be punishment, but rather an opportunity for certain offenders to receive help without the ramifications of a criminal conviction. *Id.*

{¶9} The plain language, which uses the word “shall,” provides that the duty to hold a hearing is mandatory if either of two conditions are met. *See State v. Mason*, 2026-Ohio-2039, ¶ 16 (12th Dist.), citing *State ex rel. v. Fornshell*, 2025-Ohio-65, ¶ 19 (12th Dist.) (“[T]he word ‘shall’ is construed as mandatory, unless there appears a clear and unequivocal legislative intent that these words receive a construction other than their ordinary usage.”). First, “the statute requires the trial court to hold an ILC hearing ‘[i]f the court ‘elects to consider an offender’s request’ for ILC. R.C. 2951.041(A)(1). Second, the statute requires the trial court to hold an ILC hearing [if] ‘the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense’ charged.” *Id.*

{¶10} Here, because Appellant alleged that drug or alcohol usage was a factor in the offense, along with mental health, the statute requires the trial court to conduct a hearing to determine whether the offender is eligible for intervention in lieu of conviction and then stay all criminal proceedings pending the outcome of the hearing. *Fornshell*, ¶ 19. Importantly however, 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. Dempsey*, 2003-Ohio-2579, ¶ 9 (8th Dist.).¹ Thus, even if an offender

¹ R.C. 2951.041(C) further provides: “If the court finds under this division and division (B) of this section that the offender is eligible for intervention in lieu of conviction, the court shall grant the offender’s request unless the court finds specific reasons to believe that the candidate’s participation in intervention in lieu of conviction would be inappropriate.” *State v. McIntyre*, 2025-Ohio-5842, ¶ 28 (9th Dist.) (emphasis added).

satisfies all statutory eligibility requirements for ILC, the trial court retains discretion to determine whether a particular offender is a good candidate for intervention. *State v. Owens*, 2024-Ohio-3383 (5th Dist.); *State v. Schmidt*, 2002-Ohio-3923 (2d Dist.); *Alexander*, ¶¶ 14-15 (denying request for ILC based on R.C. 2951.041(B)(6), finding that it would demean the seriousness of the offense).

{¶11} Because Appellant alleged that drug or alcohol usage was a factor leading to the criminal offense, the trial court erred in denying Appellant's request for ILC without first conducting a hearing. Further, because the court must conduct a hearing, the court shall order an assessment of the offender to determine eligibility for intervention in lieu of conviction and see if an appropriate intervention plan is recommended. Accordingly, we reverse and remand the matter to the trial court for further proceedings consistent with this opinion.

CONCLUSION

{¶12} Appellant's assignment of error is sustained. The judgment of the Delaware Municipal Court is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion.

{¶13} Any costs are waived.

By: Montgomery, J.
King, P.J. and
Gormley, J. concur.