

No. 1-10-3248

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 6458
)	
BOBBY WHITE,)	Honorable
)	Raymond Myles,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err at defendant's sentencing hearing in failing to advise defendant of the TASC probation alternative to a prison sentence or to order a substance abuse evaluation, where defendant's two prior convictions for violent crimes made him ineligible for TASC probation.
- ¶ 2 Following a bench trial, defendant Bobby White was convicted of possession of a controlled substance (cocaine), a Class 4 felony, and was sentenced to an extended term of five years in prison. On appeal, he contends the trial court erred in failing to advise him of his option to elect Treatment Alternatives for Safe Communities (TASC) probation. We affirm.

¶ 3 At defendant's sentencing hearing on October 21, 2010, the State asked the court to impose a maximum extended-term sentence of six years in prison. In support of its request, the State advised the court of defendant's extensive criminal conviction history which included: two Class 3 forgery convictions in 2009 with a three-year prison sentence; a 2008 Class 4 conviction of possession of a controlled substance with an 18-month prison sentence; a 2003 Class 4 conviction of possession of a controlled substance with a one-year prison sentence; a 1991 murder conviction with a 25-year sentence; and a 1985 attempted armed robbery conviction for which defendant received probation. Defendant's counsel referred the court to the presentence investigation (PSI) report which indicated that defendant had been using drugs since the age of 12. The report stated defendant had been drug-free for 12 years while in prison but returned to drug use after his release, and that in 2006 he successfully completed a 90-day treatment program at Loretto Hospital but one year later reverted to his habit. The report also stated defendant wished to attempt drug treatment again. Defendant's counsel asked the court to impose a reasonable sentence that would include drug treatment in prison. Defendant addressed the court and requested that he be given "some kind of drug treatment program."

¶ 4 The court imposed an extended sentence of five years in prison with credit for 226 days of presentence incarceration and a recommendation for drug treatment. The court did not mention the option of TASC probation.

¶ 5 On appeal, defendant asserts the trial court erred in failing to advise him of the possibility of electing TASC probation and failing to order a substance abuse evaluation. Defendant concedes that this issue was not preserved for review, but he contends the trial court's sentencing error is subject to plain-error review and that his trial counsel's failure to request a TASC evaluation constituted ineffective assistance of counsel for which he is entitled to relief. Defendant also asserts that he was not ineligible for TASC on the basis of prior convictions of

two or more crimes of violence where he had only one such conviction. The State responds that defendant forfeited this issue by failing to timely challenge his sentence and that defendant was ineligible for TASC probation because he had three prior convictions for crimes of violence: murder, conspiracy to commit armed robbery, and robbery.

¶ 6 Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act (Act) (20 ILCS 301/40-10 (West 2010)) provides that if a court has reason to believe that a person who is charged with or convicted of a crime suffers from alcoholism or other drug addiction and is eligible to elect treatment under the Act, "the court shall advise the individual that he or she may be sentenced to probation *** if he or she elects to submit to treatment and is accepted for treatment by a designated program." If the defendant is eligible for treatment and elects to undergo such treatment, the Act requires the court to order a substance abuse evaluation. *People v. Wallace*, 331 Ill. App. 3d 822, 836 (2002).

¶ 7 The court did not err in failing to advise defendant of the sentencing alternative of TASC probation because defendant was ineligible for TASC where he had two prior convictions for crimes of violence. Section 40-5(a) of the Act outlines the election of treatment for eligible addicts and states in relevant part that an addict or alcoholic who is charged with or convicted of a crime may elect treatment under the supervision of a licensed program unless: "(3) the person has a record of 2 or more convictions of a crime of violence." 20 ILCS 301/40-5(3) (West 2010).

¶ 8 At the sentencing hearing, the State accurately informed the court that defendant had a murder conviction for which he was sentenced in 1991 to 25 years in prison. Murder was a crime of violence under section 1-10 of the Act defining "crime of violence" (20 ILCS 301/1-10 (West 2010)). However, the 1986 conviction, which the State described at the hearing as an attempted armed robbery conviction, was a conviction of conspiracy to commit armed robbery for which defendant received a one-year probation sentence. In 1986, conspiracy to commit

armed robbery was an offense for which the accused could not receive a sentence in excess of that for a Class 4 felony. Ill. Rev. Stat. 1985, ch. 38, ¶8-2(c). We find no authority to support the State's position that the conspiracy conviction was a crime of violence under section 1-10.

¶ 9 However, defendant also had a prior conviction for robbery. His criminal history record from the Chicago Police Department and the Illinois State Police LEADS, both of which were attached to the PSI report and are included in the record on appeal, report defendant's conviction of a robbery for which he was arrested on November 2, 1981, and sentenced on January 6, 1982, to three years of felony probation. Section 1-10 of the Act specifies that both murder and robbery are crimes of violence. Defendant's prior convictions for murder and robbery made him ineligible to receive TASC probation under section 40-5(3) of the Act.

¶ 10 Defendant asserts that the validity of the conviction for the 1981 robbery is "highly questionable" because the State did not mention it at his sentencing hearing and because it is listed only in the LEADS criminal history record but not in the PSI report. Defendant concludes that it is "entirely plausible" that another individual, not defendant, was convicted of the robbery, particularly as defendant "has a very common name." We reject defendant's conjecture. Both the Chicago and State LEADS police records referenced the conviction, and both records were attached to the PSI report and specifically incorporated by reference. Defendant, who was born on September 7, 1964, also contends that "the LEADS sheet fails to list the offender's date of birth" for the robbery. However, for all of defendant's early arrests as an adult, beginning with his arrest on November 2, 1981 for the 1981 robbery and continuing with his subsequent arrests on April 20, 1983, November 16, 1983, and January 28, 1985, the LEADS record gave his birth date as 09/07/0000. Beginning with his arrest for murder on September 12, 1989, LEADS reported his birth date as 09/07/1964. We have no reason to doubt that the robbery conviction is attributable to defendant.

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¶ 11 As defendant's two prior convictions for crimes of violence made him ineligible for TASC, the trial court did not err in failing to advise him of the option of TASC probation. It follows that because of defendant's ineligibility for TASC, his trial counsel was not ineffective for failing to request a TASC evaluation. Accordingly, we affirm the judgment of the trial court.

¶ 12 Affirmed.