

2013 IL App (2d) 120364-U
Nos. 2-12-0364 & 2-12-0366 cons.
Order filed February 25, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 02-CF-2063
)	
RYAN BASHAW,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 04-CF-59
)	
RYAN BASHAW,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not entitled to the vacation of his convictions upon his successful completion of drug court: when he pleaded guilty he had received no such promise from either the State or the trial court, and the judge's subsequent promise was not enforceable, as defendant did not detrimentally rely on it; however, because of his successful completion, his sentence was statutorily required to be time served in the program, and thus we vacated the trial court's sentence of conditional discharge and entered the appropriate sentence.

¶ 2 Defendant, Ryan Bashaw, appeals from the denial of his motion to vacate a conviction of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2002)) and a conviction of DUI (625 ILCS 5/11-501(c-1) (West 2004)) and from the denial of his motion for reconsideration of his sentences. The following issues are raised: (1) whether defendant was denied due process of law when the trial court denied his motion to vacate his DUI convictions (his third and fourth) after defendant's successful completion of the drug court program, where the original trial judge promised defendant that the convictions would be vacated; and (2) whether the trial court's sentence of 12 months' conditional discharge complied with the provisions of the Drug Court Treatment Act (Act) (730 ILCS 166/35(b) (West 2010)). For the reasons that follow, we affirm the denial of the motion to vacate the convictions; we vacate the sentence imposed; we sentence defendant to time served in the program; and we order defendant discharged from further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On September 6, 2002, defendant was indicted for, *inter alia*, aggravated DUI, a Class 4 felony (625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 2002)), and driving while his license was revoked, a Class A misdemeanor (625 ILCS 5/6-303(a) (West 2002)) (case No. 02-CF-2063 and appeal No. 2-12-0364). On January 9, 2004, defendant was charged with DUI, a Class 3 felony (625 ILCS 5/11-501(c-1)(2) (West 2004)) (case No. 04-CF-59 and appeal No. 2-12-0366).

¶ 5 On March 26, 2004, defendant pleaded guilty in each case before Judge James T. Doyle. Defense counsel informed the court that defendant “signed the paperwork *** regarding a plea agreement. *** [E]ntering a plea agreement and requesting that this court allow him to enter into the drug [court] program.” Judge Doyle advised defendant of the sentences he faced and spoke at length about defendant’s history and how he had been sent to prison for prior offenses. Judge Doyle explained the purpose behind the drug court program. After the State presented the factual bases for the pleas, the following colloquy took place:

“THE COURT: [Defendant], what’s your plea?

THE DEFENDANT: Guilty.

THE COURT: Plea of guilty is done freely and voluntarily on your part today?

THE DEFENDANT: Yes.

THE COURT: No one threatened or coerced you to enter into the plea of guilty?

THE DEFENDANT: No.

THE COURT: No one promised anything other than everything we talked about, the drug rehabilitation court?

You are not under the influence of alcohol, drugs or medication today?

THE DEFENDANT: Right.

THE COURT: Gone through the pleas of guilty, waiver of your rights, stipulations on the violations of probation with your attorney and you signed all these in open court today?

THE DEFENDANT: Yes, your Honor.

THE COURT: I accept the pleas of guilty and stipulations of violations. Defendant was advised of his rights, understands them, understands the charges. Plea is voluntary. There is a factual basis for the plea. Enter judgment and conviction at this time.”

¶ 6 Thereafter the judge discussed the appropriate treatment plans for defendant. The judge stated: “I want a 90 day treatment program. Order it and work out that and get him in there. *** You are getting a break. Nobody else with your charges would ever put you back into the treatment program.”

¶ 7 Documents entitled “Plea of Guilty,” dated March 26, 2004, contained a handwritten entry that read “Conviction Enters.” The documents also indicated that the sentencing hearing was continued to March 24, 2006, two years later. The common-law record shows that, over the next two years, the parties appeared for status calls several times, and the cases were repeatedly continued. There is nothing in the record showing that a sentencing hearing ever took place.

¶ 8 On November 29, 2006, defendant filed a motion to modify the terms of his probation. Defendant asked that all fees and costs be waived due to his successful completion of all the terms and conditions of his probation. He further asked that he be released from further drug testing due to his completion of all parts of the drug court program.

¶ 9 On January 3, 2007, the State appeared before a different trial court judge, and the following transpired:

“[Assistant State’s Attorney]: ***

Your Honor, [defense counsel] was previously here along with [defendant], and as the Court recollects, we did have a conference on this case. Pursuant to the conference, State and the defense have agreed to waive all fines and costs because [defendant] does not owe

any restitution, based on the previous agreement with the Court; and we would ask that the orders enter accordingly, waiving any remaining fines and costs and closing the file.

THE COURT: Very well. By agreement, the Court will waive—pursuant to the Court’s previous agreement with this defendant, he having complied with all of the Court’s orders, the Court will waive fines and costs, by agreement with the State, as so ordered.”

Thereafter, the trial court entered an order in each case. In case No. 02-CF-2063, the order read: “Discharge & Close per orders 1/3/07.” In case No. 04-CF-59, the order read: “Waive F&C, Close File.”

¶ 10 On March 5, 2010, defendant filed an amended petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), seeking to vacate his convictions. In the petition, defendant alleged that “[w]hen [he] pled guilty, convictions were entered against [him] ***, and he was placed in Kane County’s Drug Court with the promise that if he successfully completed Drug Court, all convictions entered against him in both *** cases would be vacated.” He sought “enforcement of the agreement entered between himself and the Court when he pled guilty and entered Drug Court[,]” *i.e.*, vacation of his convictions. In support, defendant attached his own affidavit, along with affidavits from Judge Doyle; Leonard Solfa, defendant’s attorney; and Randy Reusch, a Kane County probation officer. Each affidavit supported defendant’s claim that he was told that his convictions would be vacated if he successfully completed all the requirements of the drug court program.

¶ 11 On April 6, 2010, the State moved to dismiss defendant’s petition as untimely, arguing that the orders entered on March 26, 2004, were final orders, as defendant “was in essence sentenced to participate in drug court.” The State argued further that, even if the court disagreed that the March

26, 2004, orders were final, the orders entered in January 2007, which closed the files, were final. According to the State, under either scenario, defendant's petition was untimely, because under section 2-1401 of the Code a petition challenging a final order must be filed no more than two years after entry of the final order. See 735 ILCS 5/2-1401(c) (West 2008).

¶ 12 On May 20, 2010, the trial court agreed with the State that a final judgment had been entered; “[w]hether it [was] entered in 2004 or in 2007, it is a final judgment[.]” Therefore, the court concluded that defendant's petition was untimely and dismissed it.

¶ 13 Defendant timely appealed. We affirmed the dismissal of defendant's petition but not on the basis relied upon by the trial court. *People v. Bashaw*, Nos. 2-10-0779 & 2-10-0780 cons. (2011) (unpublished order under Supreme Court Rule 23). Instead, we found that dismissal was proper because no final order had been entered by the trial court. We stated: “[W]hen defendant pleaded guilty on March 26, 2004, the court continued each case for a sentencing hearing on March 24, 2006, two years later. There is no evidence that the sentencing hearing took place on that date or any other date. Nor is there evidence that the convictions were vacated. Thus, the cases remain open and pending.” *Id.* at 5. We concluded that the trial court “retains jurisdiction to either vacate defendant's convictions or impose sentences thereon.” *Id.*

¶ 14 On remand, the following testimony was provided at the hearing on defendant's motion to vacate his convictions. Judge Doyle testified that he presided over the Kane County drug court from August 2000 until March 2005. According to Judge Doyle, his “number one rule” in drug court was that “everybody had to plead guilty to come into the court ***; and if they didn't want to plead guilty, transfer it to another court and they can dispose of it; but if you want to come in and abide by the rules and regulations of the drug rehabilitation court, the key was entering a plea of guilty,

signing a contract that everybody signed to get in, so those were the combination.” Judge Doyle explained that “there was a contract that everybody would sign abiding by the rules that were going to apply, the drug testing, for example, the three meetings, 12-step meetings, a week and meeting with the judge once a week and those kind of things like that and try to get jobs.”

¶ 15 When Judge Doyle was asked to explain the various ways a case could end after the guilty plea was entered, the following colloquy occurred:

“A. That becomes a little tricky. First offenders was really easy. First of all is you have to remember when we started drug rehabilitation court, the 2-year program was the longest in the country. Most of the courts lasted 6 months. When I looked at what the other courts in the country were doing, I thought 6 months was a complete failure. I felt people can—they can sober up for a short period of time and they can make it, but they’re not going to be changing their lifestyles, which was really critical. So we created the program to be a minimum of a 2-year program. As I dictated to every individual, I don’t expect any relapses, but we made arrangements for the relapses because those were some of the complications that you have to deal with with the disease of the brain. So we started looking really carefully at dealing with relapses. So within the first year within the drug rehabilitation court, we could have a couple of relapses. It was mandated that they had to be a full year clean and sober and abiding by all the rules in every aspect of the drug rehabilitation court in order to complete the program and graduate.

Q. Whose mandate was that, was that yours?

A. That was mine, absolutely.

Q. What were the various ways a person could successfully complete drug court with regard to convictions or no convictions?

A. That was really an important issue depending upon individuals. Some of the individuals, like I said, they came in, we had a lot of kids coming in out of St. Charles with good backgrounds, got into drugs in high school and got caught committing crimes to support the addiction where they ended up with a drug felony on their record. For example, they complete the program in 2 years, we would not enter a conviction and vacate the guilty plea and close the file.

Q. So one way was vacating a guilty plea, no conviction is ever entered and then they would be successfully sent on their way?

A. Right. There's other cases with extensive records, you can see people that have extensive records. There were other people I sent to prison numerous times before and so now we're trying to work with them, they had never gotten help, never got any assistance or any treatment. So now when they came in, really there was no reason in any way, fashion or form to not enter the conviction against them because it wasn't going to make an impact on their lives whatsoever, they've got a history of it, they've been to the penitentiary, it's not going to make a difference in terms of any type of additional schooling or any type of occupation. So their carrot was I'm not going to send you to prison again.

Q. Okay.

A. There was a third category then that would also be used where we could have somebody that's got cases and numerous cases but they're going to have a situation where the new cases coming before me are going to have dire consequences. And so that would be

a situation where we would take into consideration, I'd enter a conviction and I'm a tough judge on those things, as you know, and I'd enter a conviction and give them a chance to work it off.

Q. When you say give them a chance to work it off, what was the exact carrot in that situation?

A. The carrot would be you come into the courtroom and you work for several years, have absolutely no relapses, you abide by every single rule and regulation and everything is absolutely perfect, then we work with the police, the prosecutors and everybody's in agreement to vacate the conviction."

¶ 16 Judge Doyle testified that he had an independent recollection of defendant coming before him. Judge Doyle stated that defendant was a "Batavia kid" and that defendant and his brother played baseball at the school. Judge Doyle's children also played baseball. When defendant's case came before him, he looked at all defendant's arrests and all the problems defendant had been dealing with. Defendant was addicted to cocaine and alcohol and also suffered from bipolar disorder. Judge Doyle remembered defendant applying for drug court. Defendant was in jail at the time. He did not recall if he met with defendant before defendant pleaded guilty.

¶ 17 Judge Doyle testified that, because of defendant's "extensive record," he entered convictions for defendant. When asked whether the "carrot" for defendant was keeping him out of jail or the possible vacation of his convictions, Judge Doyle stated that "the carrot would be to vacate the convictions." He explained: "With the convictions entered, he's never going to get a driver's license the rest of his life. It's a big carrot, it's a big incentive to work real hard to get through the addiction issues." Judge Doyle remembered telling defendant that his convictions would be vacated, but he

did not remember if it was before or after defendant pleaded guilty. Judge Doyle was shown the handwritten entry that reads “Conviction Enters” on defendant’s pleas of guilty and asked whether it properly reflected what he wanted to happen when defendant pleaded guilty. He responded: “Absolutely.”

¶ 18 Judge Doyle testified that defendant complied with everything Judge Doyle had asked. He stated that defendant did a great job working with the whole drug court community. He had no recollection of any violations or problems. When asked whether he intended to vacate defendant’s convictions if defendant continued to comply through March 2006, Judge Doyle responded:

“That would have been my intention completely, vacate that conviction, 2 full years changing his whole personality, changing everything, dealing with the mental health issues, dealing with the drug and alcohol problems and give him a chance to have a driver’s license so he’s not spending the rest of his time without a driver’s license. It’s going to be an issue of getting jobs.”

¶ 19 On cross-examination, Judge Doyle agreed that the plan or intention to vacate the convictions in this case “absolutely” required the agreement of the assistant State’s Attorney. Judge Doyle believed that Simeon Kim was the assistant State’s Attorney involved.

¶ 20 On redirect examination, Judge Doyle agreed that, if the State objected to anything, the State would get its way. He did not recall Kim objecting to the way he was handling defendant’s case. Although he would try to make the prosecutors aware of his plans on a given case, he did not recall if he did so in defendant’s case. He would talk to the prosecutors at some point and ask if they had problems with his plan, but he was transferred out of drug court when defendant had a full year left.

¶ 21 Leonard Solfa testified that he had represented defendant in the underlying DUI proceedings and was present when defendant entered his guilty pleas on March 26, 2004. Solfa recalled talking to Judge Doyle before the guilty pleas were entered. He did not recall if defendant was present. The conversations were not on the record. Judge Doyle said that his “philosophy in the drug court program was to rehabilitate individuals; and if [defendant] would complete the drug court program, he would, in his terms, give [defendant] a clean record, a clean slate, successfully complete the program.” Solfa understood that to mean that defendant would not have the convictions on his record. The assistant State’s Attorney was not present during this conversation.

¶ 22 Randy Reusch, Kane County drug court supervisor, testified that he was involved in the majority of meetings with defendant after defendant came into drug court. Defendant was required to come in to drug court every week. Reusch believed that defendant fulfilled all the requirements. Reusch recalled Judge Doyle telling defendant “if he completed the program successfully, that he would not have those convictions.” Reusch had heard Judge Doyle say the same thing to other defendants.

¶ 23 Defendant testified that he was 33 years old and attending college to become a psychologist. Defendant pleaded guilty to the underlying DUIs (his third and fourth) so that he could get into drug court. Defendant did everything that was asked of him and successfully completed drug court. No promises had been made to defendant when he pleaded guilty. About a month after he had pleaded guilty, while he was still in jail, Judge Doyle told him several times that, if he did everything that was asked of him, he would be able to drive again. Defendant testified that he did not go to court on March 24, 2006, because “[t]hey never asked [him] to. It was just kept further proceedings due

to *** the fines.” He was in drug court for about six to eight months past the two-year period because of the issue of the outstanding fines.

¶ 24 Simeon Kim testified that he worked as an assistant State’s Attorney for Kane County from 2001 through 2004. When guilty pleas were entered, the assistant State’s Attorney would write either “judgment deferred” or “conviction enters.” In the “judgment deferred” cases, the assistant State’s Attorney intended to dismiss the case upon successful completion of drug court. On the “conviction enters” cases, the conviction would be entered at that time and the defendant would be given a sentencing date two years later. The assistant State’s Attorney made no agreement as to what the sentence would be or that the conviction would be vacated. “If there was a successful completion of the drug court program on the cases where conviction enters, the defendant would be sentenced to the period of probation that they served and then be given credit for the probation that they served, and their case would be closed.” Vacation of convictions occurred on only the “judgment deferred” cases. He did not recall a case with a conviction entering where a sentence was imposed on a defendant after successfully completing the program.

¶ 25 Kim was shown the guilty pleas that were entered in defendant’s case and identified his handwriting on the forms. He had no independent recollection of defendant or his proceedings. The only two alternatives available when defendant pleaded guilty were “judgment deferred” and “conviction enters.” In cases where “conviction enters,” an assistant State’s Attorney would “never go and then vacate the plea and dismiss the case.”

¶ 26 On February 23, 2012, the trial court denied defendant’s motion to vacate, finding that there was no enforceable agreement made between Judge Doyle and defendant. The court found that, although Judge Doyle made “superfluous remarks” to defendant concerning “what he might do if

he did complete [drug court] perfectly,” defendant could not have relied on these remarks in pleading guilty, because they were expressed after entry of the guilty pleas. The court further noted that, as Judge Doyle testified, in order for Judge Doyle to vacate defendant’s convictions, there would have to have been an agreement with the State, and Kim testified that there was no agreement.

¶ 27 Thereafter, the court conducted a sentencing hearing. The State asked that defendant be sentenced to a term of nonreporting conditional discharge on both files, that he be sentenced to the fines and costs previously imposed, and that the case would close on the convictions at the end of the conditional discharge. Defendant requested that he be sentenced to probation served. The trial court reviewed the “fairly lengthy” presentence investigation report and noted that the biggest factor in aggravation was defendant’s prior history of criminality or delinquency. The court noted that defendant had four prior felony convictions, for which he served time in prison, and a number of driving-related offenses, including two other DUIs. The court also noted that, from 2004 through 2011, defendant had no additional convictions. The court then sentenced defendant to a 12-month term of conditional discharge subject to compliance with certain conditions and reporting requirements.

¶ 28 Following the denial of his motions for reconsideration of the denial of his motion to vacate his convictions and for reconsideration of his sentence, defendant timely appealed.

¶ 29

II. ANALYSIS

¶ 30 Defendant argues that he was denied due process of law when the trial court denied his motion to vacate his convictions upon his successful completion of the drug court program, because Judge Doyle “repeatedly promised” him that his convictions would be vacated. According to defendant, “whenever a plea rests in any significant degree on a promise or agreement of the State,

making it part of the inducement or consideration, the promise must be fulfilled.” Defendant maintains that “[t]he remedy for failure to fulfill such promises may be specific enforcement where the defendant substantially relied on the agreement.” The State argues that the trial court properly denied defendant’s motion to vacate his convictions, because the promises made to defendant were made after defendant pleaded guilty, were not part of the basis of his pleas, and were made off the record with no assistant State’s Attorney present. We agree with the State.

¶ 31 Initially, we note that, according to defendant, our standard of review is *de novo*, because there is no factual dispute as to whether defendant was promised that his convictions would be vacated. See *People v. Coleman*, 307 Ill. App. 3d 930, 933-34 (1999). The State maintains (without any citation to authority) that we should review the court’s ruling for an abuse of discretion. We need not address the appropriate standard, because under either standard we would affirm.

¶ 32 The trial court found that, while it was clear that Judge Doyle did make the representations to defendant concerning the possibility of having his convictions vacated, these representations were made to defendant after he had pleaded guilty. The court stated: “This is not a situation where the defendant relied only on the statements of Judge Doyle since he had already pleaded guilty[.]” The trial court’s finding was amply supported by the record. A review of the plea hearing and the pleas of guilty signed by defendant makes clear that vacation of the convictions was not a part of the plea agreement. Indeed, defendant himself stated that no promises had been made to him when he pleaded guilty. Moreover, as this court recently noted,

“[t]he parties to a plea agreement are the State and the defendant. [Citation.] *** [T]he terms that the parties negotiate include not only the sentence, but the facts that the State will present to the court. The parties set out the agreement by means of the plea hearing; they

introduce the facts through the factual basis (and those counts of the charging instrument to which the defendant pleads guilty). Those facts determine the validity of the sentence.”

People v. Hubbard, 2012 IL App (2d) 120060, ¶ 21.

Thus, notwithstanding the comments made by Judge Doyle, it is clear that the State made no promises to defendant. In addition, Judge Doyle admitted that any vacation of the convictions required agreement from the State. According to Kim, in cases like defendant’s case, where “conviction enters,” an assistant State’s Attorney would “never go and then vacate the plea and dismiss the case.”

¶ 33 Defendant argues that the present situation differs from cases involving claims that prosecutors violated due process principles by reneging on promises made as part of the inducement to enter a guilty plea, because here “the judge himself stands as the representative of the State who conveyed a promise not fulfilled in future court proceedings, thereby violating constitutional principles.” Defendant argues that the principles of promissory estoppel require enforcement of Judge Doyle’s promise.

“Promissory estoppel arises when (1) an unambiguous promise was made, (2) the defendant relied on the promise, (3) the defendant’s reliance on the promise was reasonable, and (4) the defendant suffered a detriment. [Citation.] In determining whether the defendant suffered a detriment, the court must decide whether enforcing the promise is the only way that the detriment can be avoided. [Citation.] If the enforcement of the promise is the only way that the defendant can avoid a detriment, then the promise should be enforced.” *People v. Fako*, 312 Ill. App. 3d 313, 318 (2000).

As noted, because defendant had already pleaded guilty, he could not have relied on the promise in entering his plea. Thus, according to defendant, his detriment was in “submitting to an additional nine months of restricted liberty beyond the two-year extent of the program” based on his trust in the judge’s promise. We disagree. While defendant may have remained in the drug court program for several months past the originally scheduled sentencing date of March 24, 2006, his testimony makes clear that (1) he failed to attend court on March 24, 2006; and (2) his case remained open due to unresolved issues as to fines due. Thus, he suffered no detriment as a result of Judge Doyle’s promise. Moreover, defendant’s participation in the drug court program can hardly be viewed as a detriment; indeed, although he was required to meet the performance standards of the drug court rules and regulations, he otherwise would have been sent to prison.

¶ 34 Based on the foregoing, we find that the motion to vacate was properly denied.

¶ 35 Turning to the issue of sentencing, defendant argues that the court erred in failing to either dismiss the charges against him or discharge him from further proceedings upon his successful completion of the drug court program, as required by section 35 of the Act (730 ILCS 166/35 (West 2010)). The State maintains that the trial court’s sentence fully complied with the Act. Because this involves a question of statutory interpretations, our standard of review is *de novo*. *People v. Bauman*, 2012 IL App (2d) 110544, ¶ 20.

¶ 36 Section 35 of the Act provides:

“Violation; termination; discharge.

(a) If the court finds from the evidence presented including but not limited to the reports or proffers of proof from the drug court professionals that:

(1) the defendant is not performing satisfactorily in the assigned program;

(2) the defendant is not benefitting from education, treatment, or rehabilitation;

(3) the defendant has engaged in criminal conduct rendering him or her unsuitable for the program; or

(4) the defendant has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate;

the court may impose reasonable sanctions under prior written agreement of the defendant, including but not limited to imprisonment or dismissal of the defendant from the program and the court may reinstate criminal proceedings against him or her or proceed under Section 5-6-4 of the Unified Code of Corrections for a violation of probation, conditional discharge, or supervision hearing.

(b) *Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.*" (Emphasis added.) 730 ILCS 166/35 (West 2010).

¶ 37 The parties agree that, because defendant successfully completed the program, the trial court was subject to subsection (b). Under subsection (b), the court may: (1) dismiss the original charges against defendant; (2) terminate defendant's sentence; or (3) otherwise discharge him from any further proceedings. The parties disagree as to whether the court's sentence complied with subsection (b). According to the State, it did. The State contends that, because there were no charges pending against defendant (convictions had entered), there were no charges to dismiss, and, because there was no sentence imposed, there was no sentence to terminate. We agree with both of

these contentions. The question becomes whether the court was then required to “otherwise discharge [defendant] from any further proceedings.” The State claims that the court could not “discharge defendant from any further proceedings from the original prosecution, as none remained, except sentencing.” Further, the State points out that our mandate in the prior appeal was to enter a sentence. Thus, according to the State, the court properly sentenced defendant.

¶ 38 While we agree that, once the court refused to vacate the convictions, our mandate required the court to sentence defendant, the sentencing provisions of the Unified Code of Corrections do not apply to a defendant under subsection (b). Further, contrary to the State’s position, we fail to see how sentencing defendant and discharging him from further proceedings are mutually exclusive. Under the provisions of the Act, the only proper sentence in this case is a sentence to time served in the program, which effectively discharges defendant from further proceedings. As Kim explained: “If there was a successful completion of the drug court program on the cases where conviction enters, the defendant would be sentenced to the period of probation that they served and then be given credit for the probation that they served, and their case would be closed.” This seems to be what was intended when defendant’s case was purportedly “closed” on January 3, 2007.¹

¹This also seems to be current standard operating procedure according to the “Participation Agreement” now used in the “Kane County Combination Drug Rehabilitation Court Program,” which became effective in February 2005. <http://www.illinois16thjudicialcircuit.org/drugCourt/participationAgreement.pdf> (last visited Feb. 5, 2013). According to the Participation Agreement, in cases like the present case where judgment is not deferred: “Defendant is ordered to successfully complete [Drug Rehabilitation Court]. Upon successful completion, defendant will be sentenced to time in the program considered served and the case closed with a conviction being entered.

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, we affirm the denial of defendant's motion to vacate his convictions; we vacate the sentence imposed by the trial court; we impose a sentence of time served in the program; and we order defendant discharged from further proceedings.

¶ 41 Affirmed in part and vacated in part; judgment entered.

Failure to successfully complete the program may result in the defendant being sentenced according to the Criminal Code. Sentencing end date is initially scheduled for.” <http://www.illinois16thjudicialcircuit.org/drugCourt/participationAgreement.pdf> (last visited Feb. 5, 2013).