

Nos. 1-13-0136 and 1-13-0139 (Consolidated)

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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.	)	Nos. 10 CR 17878
	)	11 CR 3823
	)	
THOMAS BRECKENRIDGE,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.  
Justices Lavin and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant eligible for TASC probation, so guilty plea made in exchange for sentence of two years' TASC probation not void or subject to withdrawal. Court held proper sentencing hearing where it expressly considered the pre-sentencing investigation report and made findings based on it, rather than ignoring the report and holding a "sham" hearing as contended.

¶ 2 Under the terms of a negotiated guilty plea in two cases, defendant Thomas Breckenridge was convicted of possession of a controlled substance (1 gram or more, but less than 15 grams, of heroin) with intent to deliver, and possession of a controlled substance (less than 15 grams of benzylpiperazine) and sentenced concurrently to two years of TASC probation with fines and fees. Later, after finding that Breckenridge violated his probation, the trial court revoked probation and sentenced him to consecutive prison terms of seven and three years.

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¶ 3 In this consolidated appeal, Breckenridge contends that his TASC probation was a key part of his plea agreement but was void due to his ineligibility so that he should be allowed to withdraw his underlying plea. Breckenridge also contends that the court deprived him of due process when it ordered as part of his underlying plea conviction that he would serve consecutive prison terms of seven and three years if he violated probation, so that his sentencing hearing after revocation of probation was "a sham proceeding" where the court ignored the pre-sentencing investigation report and imposed a pre-determined sentence (PSI). We reject both contentions and affirm.

¶ 4 **Background**

¶ 5 Breckenridge was charged in 10CR17878 with three counts of possession of a controlled substance – less than 15 grams each of benzylpiperazine, cocaine, and ecstasy (MDMA) – allegedly committed on September 8, 2010. He was charged in 11CR3823 with possession of a controlled substance (1 gram or more, but less than 15 grams, of heroin) with intent to deliver allegedly committed on February 11, 2011.

¶ 6 Breckenridge requested a TASC evaluation. The trial court asked if defendant is statutorily eligible for TASC with his criminal history, and defense counsel replied, "Based on background, yes." The trial court ordered TASC, Inc., to evaluate Breckenridge's eligibility for the TASC program and report back to the court. In its report, TASC, Inc., determined that Breckenridge was acceptable and "tentatively" eligible, based on a March 2011 evaluation but pending review of his criminal history, and recommended that he receive 90 days' residential treatment followed by monitoring and aftercare. At Breckenridge's request, a plea conference with the trial court was held off the record.

¶ 7 After the plea conference, the trial court recited that Breckenridge was pleading guilty to one count each in the two cases, and Breckenridge agreed. The trial court admonished Breckenridge that he was waiving his right to a trial by the court or a jury, including calling and examining witnesses and testifying or refraining from testifying on his own behalf. Breckenridge agreed orally and signed a jury waiver. The trial court recited the applicable sentencing ranges for the two sentences, including extended prison terms based on Breckenridge's criminal history, and told him that he would serve any prison sentence consecutively "because you were on pre-trial release on the first case when the second case took place." Breckenridge denied that he was forced to plead guilty or promised anything other than two years' TASC probation with 90 days in the inpatient TASC program with the proviso that, if he violated probation, he would receive consecutive prison terms of seven and three years for a total of ten years. Breckenridge and defense counsel confirmed that they consulted before the plea, and Breckenridge had no questions for the court. The trial court found the plea knowing and voluntary with a factual basis as presented in the plea conference and by the court's review of the record. Breckenridge waived his right to a pre-sentencing investigation, the trial court told him that it would sentence him based on his criminal history described in conference, and the parties declined to make additional arguments in aggravation or mitigation.

¶ 8 The trial court recited that Breckenridge had a 2009 juvenile "conviction" for robbery and was found eligible for TASC with a recommendation of 90 days' residential treatment and follow-up. The court sentenced Breckenridge to concurrent terms of two years' probation, on conditions, including that he complete the TASC program and pay fines and fees. The orders provided that Breckenridge be "release[d] to TASC only." Both probation orders, signed by Breckenridge as well as the trial court, state that Breckenridge "understands and agrees" that, on

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violating probation, he "will be sentenced" to three years in prison in 10CR17878 and seven years in prison in 11CR3823, to run consecutively for a total of 10 years' in prison. The trial court reminded Breckenridge that he could be sentenced on a violation of probation to "any sentence I could have given to you today" and admonished him of his appeal rights.

¶ 9 In May 2012, as amended in June 2012, the State filed a petition to revoke Breckenridge's probation, alleging that Breckenridge committed (and was separately charged with) possession of a controlled substance on or about May 23, 2012, and that he had \$3,930 in fines and costs and \$1,200 in probation fees on which he had made no payment.

¶ 10 At the hearing on the petition, the trial court heard Officer Antonio Phillips testify that Breckenridge dropped (and Officer Phillips recovered) 25 plastic bags containing a rocky white substance and the parties stipulated to forensic testing finding that 18 of the 25 bags contained a total of 5.2 grams of cocaine. Following argument, the trial court held Breckenridge violated his probation and ordered a PSI.

¶ 11 The PSI stated that Breckenridge had a 2007 juvenile finding of guilt of robbery with three years' probation, a 2011 conviction for DUI punished by jail, a 2009 conviction for aggravated unlawful use of a weapon punished by one year of imprisonment, and the convictions in these two cases and sentence of probation.

¶ 12 The PSI further stated that Breckenridge, who was born in 1990, was the only child of his parents; his mother died in 1998, and his father raised him. There was no abuse. He has three maternal half-siblings with whom he keeps in touch and a paternal half-sibling with whom he does not. He has never married, has a daughter, and has a good relationship with his daughter and her mother. He completed grade school but did not complete high school due to prior incarceration. He was taking GED classes in jail as of the time of the PSI. Except for brief

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employment in a barbershop, his family supported him. He denied any past or present physical or mental health issues. He had his first drink of alcohol when he was 12 years old and drank several times a year in the two years preceding the PSI. Breckenridge admitted that "he may have an alcohol abuse problem" for which his only treatment was through TASC. He also began using marijuana at age 12 and ecstasy at age 17, and while he used ecstasy regularly on weekends, he "did not feel he had a drug abuse problem" and never received drug abuse treatment.

¶ 13 Breckenridge filed a motion to reconsider the finding of violation of probation, arguing insufficiency of the evidence and denial of due process and equal protection without specificity.

¶ 14 On December 13, 2012, Breckenridge stood on the written motion to reconsider and the trial court denied it. The parties offered no changes to the PSI, the State argued Breckenridge's "extensive criminal background," and Breckenridge argued his childhood without a mother and "early experience with alcohol and marijuana" in mitigation. Breckenridge declined to address the court personally.

¶ 15 The trial court noted that Breckenridge admitted in the PSI that he has an alcohol abuse problem but denied having a drug abuse problem despite that the three cases "before me are all drug related cases." The court recited that it "considered all factors in aggravation and mitigation, all the statutory factors, the matters contained in the" PSI and sentenced Breckenridge to consecutive prison terms of seven and three years in 11CR3823 and 10CR17878, respectively. Breckenridge made a motion to reconsider his sentence and the court denied it, reiterating that it considered "all the factors contained in the" PSI including Breckenridge's criminal history and denial of a "drug problem." These appeals timely followed.

¶ 16 Analysis

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¶ 17 Breckenridge first contends that he was not eligible for TASC probation so he should be allowed to withdraw his negotiated guilty plea that relied on a void sentence.

¶ 18 Generally, on appeal from a revocation of probation where the underlying conviction was on a guilty plea, this court has no jurisdiction to consider challenges to the guilty plea or resulting sentence because the challenges should have been raised in a timely post-plea motion and appeal. *In re J.T.*, 221 Ill. 2d 338, 346-47 (2006). But, when a court exceeds its statutory authority to act and enters a void order, that order may be challenged at any time in any court with jurisdiction. *People v. Bailey*, 2014 IL 115459, ¶ 12; *People v. Chambers*, 2013 IL App (1st) 100575, ¶ 31.

¶ 19 Article 40 of the Alcoholism and Other Drug Abuse and Dependency Act (the Act) governs "Treatment Alternatives for Criminal Justice Clients," also called TASC. 20 ILCS 301/40-5 *et seq.* (West 2012). It provides 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 designated by the Department, referred to in this Article as 'designated program', unless: \*\*\* (4) other criminal proceedings alleging commission of a felony are pending against the person." 20 ILCS 301/40-5(4) (West 2012). Where a court sentencing a defendant for a crime finds him or her eligible to make an election, the court may impose treatment as a condition of probation. 20 ILCS 301/40-10(a), (b) (West 2012).

¶ 20 Eligibility for treatment under the Act is determined as of the time of sentencing. *People v. Dean*, 363 Ill. App. 3d 454, 459-60 (2006). Thus, a defendant who pleads guilty to two unrelated felonies that were consolidated for sentencing is eligible for treatment under the Act despite the disqualification because no other felony proceedings were pending against the defendant immediately before sentencing. *Dean*, 363 Ill. App. 3d at 459, citing *People v. Braje*,

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130 Ill. App. 3d 1054, 1059 (1985). "After the court here accepted defendant's guilty pleas, no other felony proceedings were pending against him. Thus, immediately prior to sentencing, defendant was not disqualified from electing treatment under the [Dangerous Drug Abuse] Act on the basis relied upon by the trial judge." *Braje*, 130 Ill. App. 3d at 1061.

¶ 21 The provision of the Dangerous Drug Abuse Act (Ill.Rev.Stat.1983, ch. 91½, ¶ 120.8(d)) interpreted in *Braje* provided that an "addict charged with or convicted of a crime is eligible to elect treatment under the supervision of a licensed program designated by the Commission instead of prosecution or probation, as the case may be, unless \*\*\* (d) other criminal proceedings alleging commission of a felony are pending against the addict." It is substantially identical to the provision of the Act at issue. See *People v. Sullivan*, 332 Ill. App. 3d 628, 631 (2002)(in case under the Act, finding *Braje* distinguishable because "*Braje* involved a coordinated sentencing proceeding" while *Sullivan* did not, rather than because of any difference between the Act and Dangerous Drug Abuse Act).

¶ 22 As a threshold matter, we note that while the TASC report indicated Breckenridge's tentative eligibility pending a review of his criminal record, defense counsel told the trial court that Breckenridge's record did not render him ineligible. Combined with the trial court spreading of record that it heard Breckenridge's history in the plea conference, we reject the implication that the trial court ordered TASC probation without evaluating Breckenridge's eligibility.

¶ 23 On the contention that Breckenridge was not eligible for TASC in each of his two cases because the other was pending, we hold that the relevant provision of the Act should be interpreted as the similar provision in the Dangerous Drug Abuse Act was interpreted in *Braje*. By logic, and by the intention of the parties and the trial court implicit in their actions, a defendant with two pending felony cases who participates in a plea conference on both

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simultaneously and then simultaneously pleads guilty in and is sentenced on both has no other felony charges pending at the time of his or her sentencing on the two cases before the sentencing court. As that was the situation, we conclude that Breckenridge was eligible for TASC probation. Therefore, neither his sentence of two years' TASC probation nor his guilty plea in exchange for that sentence is void and he is not entitled to withdraw his plea.

¶ 24 Breckenridge also contends that the court deprived him of due process when it ordered as part of his underlying plea conviction that he would serve consecutive prison terms of seven and three years if he violated probation, so that his sentencing hearing on revocation of probation was a "sham" proceeding where the court ignored the PSI and imposed a pre-determined sentence.

¶ 25 A defendant is not denied due process simply because the trial court pre-determined the sentence for a violation of probation before probation was revoked. *People v. Bedell*, 253 Ill. App. 3d 322, 335-36 (1993). "That the trial judge articulated the sentence he would impose in the event defendant failed to adhere to the terms of probation does not constitute bias or prejudice against him. Nor does the fact that the trial judge recalled at the sentencing hearing on the unlawful delivery charge the 'promise' of penitentiary time he previously made in the event defendant violated probation." *Id.*

¶ 26 Notably, the trial court did not recall during the sentencing hearing on the violation of probation its earlier sentencing "promise" from the guilty plea hearing. Instead, after ensuring that the parties had no corrections to the PSI, seeking and hearing arguments in aggravation and mitigation, and giving defendant an opportunity to address it, the court expressly stated in sentencing defendant on the violation, and again in denying reconsideration of that sentence, that it considered the factors in aggravation and mitigation set forth in the PSI. Moreover, the trial court based its sentence at least partially on the PSI: Breckenridge denied in the PSI that he has a

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drug abuse problem, and the court expressly found that assertion untenable when he had three drug offenses before the court at that moment. We find the record belies Breckenridge's contention of a "sham" sentencing hearing.

¶ 27 Accordingly, the judgment of the circuit court is affirmed.

¶ 28 Affirmed.