

No. 1-12-3383

**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.	)	No. 11 CR 14333
	)	
ALLEN DEAN,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Cunningham concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Defendant's appeal dismissed where he forfeited review of his contentions regarding the trial court's failure to offer to sentence him to TASC probation; and alternatively, the issue is moot.
- ¶ 2 Following a bench trial, defendant Allen Dean was convicted of possession of a controlled substance and sentenced to 18 months' imprisonment followed by one year of mandatory supervised release (MSR). On appeal, defendant does not question the sufficiency of

the evidence to sustain his conviction, and solely contends that the trial court abused its discretion in failing to offer to sentence him to Treatment Alternatives for Safe Communities (TASC) probation.

¶ 3 Defendant was charged with possession of a controlled substance (heroin) on August 13, 2011. Prior to trial, defendant asked to be evaluated by TASC, which the court allowed. TASC noted that defendant indicated that he has been smoking marijuana since he was 13 years old and smokes 7 blunts of marijuana a day. TASC found that defendant was marijuana dependent, appears to be statutorily eligible for TASC services based on his criminal history report, and was acceptable to TASC for services. TASC recommended that defendant receive intensive outpatient services.

¶ 4 Defendant also requested a Supreme Court Rule 402 (eff. July 1, 2012) conference which was held on February 14, 2012. He was then granted a continuance to consider the offer and rejected it on March 13, 2012.

¶ 5 Thereafter, defendant went to trial and was convicted on evidence showing that at 6:20 p.m. on August 13, 2011, Chicago police officer Darren Dehaan observed defendant walking in a T-shaped alley in the area of Drake and Chicago Avenues. The officer exited his vehicle, and walked to the corner of the intersection of the alley where he observed defendant remove a golf ball sized plastic bag from his pocket, which contained "shiny objects," and place the bag on a horizontal slat on the other side of a fence there. Defendant then walked in the opposite direction of the officer, who he did not notice. Officer Dehaan sent out a police radio call with a description of defendant, then went to the wooden fence, and removed the plastic bag containing tinfoil packets of heroin. Shortly thereafter, defendant was stopped by police, and Officer

Deehan identified him as the person he observed with the plastic bag. At the police station, Officer Deehan asked defendant why he was selling drugs, and he told him that he lost his job at Kentucky Fried Chicken (KFC), and was "just doing what he had to do."

¶ 6 Defendant denied placing a plastic bag on a horizontal rung of the fence in the alley. He maintained that as he was walking through the alley, police asked him about some money he had on him, which he told them was from his job at KFC. They laughed, and said, "somebody's got to go down for some heroin." Defendant denied telling the officer that he had to do what he had to do. In rebuttal, the State presented a copy of defendant's prior 2005 conviction for manufacture and delivery of cannabis within 1,000 feet of a school.

¶ 7 At sentencing, the State noted, in aggravation, that defendant had two prior felony narcotics convictions, and "nothing to show for his life." In mitigation, defense counsel noted that defendant worked for KFC, that he was helping to support his children, and although he has two prior felony convictions, they date back to 2005. The court sentenced defendant to 18 months' imprisonment, and counsel made "an oral motion to reconsider sentence," which the court denied.

¶ 8 On appeal, defendant contends that the trial court abused its discretion in failing to offer to sentence him to TASC probation where he elected it under the TASC statute (20 ILCS 301/40-5, *et seq.* (West 2012)), was found eligible for TASC services, and the trial court did not find his imprisonment was necessary to protect the public or that his crime was unrelated to his addiction. He thus requests that this cause be remanded for TASC consideration.

¶ 9 The State initially responds that defendant has forfeited this issue for review because he failed to raise it contemporaneously at sentencing, or in a written post-trial motion, and has failed

to sufficiently raise plain error or meet his burden in showing it. Defendant responds that the State forfeited its argument because it did not object to his oral motion to reconsider sentence, and that the issue should be reviewed for plain error because his substantial rights were affected.

¶ 10 In order to preserve a sentencing issue for review, both a contemporaneous objection and written postsentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); see also *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant did not object during sentencing, nor did he file a written motion to reconsider the sentence imposed. Defendant notes, however, that he presented an oral motion to reconsider sentence, and maintains that he did not have to present a written motion because the State failed to object to his oral motion. Although we agree with that principle (*Enoch*, 122 Ill. 2d at 188; *People v. Davis*, 356 Ill. App. 3d 725, 731 (2005)), we observe that defendant did not raise the TASC probation issue in his oral motion to reconsider or present a contemporaneous objection at sentencing, and has thus forfeited consideration of this issue on review (*Hillier*, 237 Ill. 2d at 544; *People v. Solheim*, 54 Ill. App. 3d 379, 386 (1977)).

¶ 11 As a consequence, we may review this claim of error only if *defendant has established* plain error. (Emphasis added.) *Hillier*, 237 Ill. 2d at 545. The plain error doctrine is a narrow and limited exception to the general waiver rule allowing a reviewing court to consider a forfeited issue that affects substantial rights. *People v. Herron*, 215 Ill. 2d 167, 177-79 (2005). In the context of a sentencing hearing, we will review an error that is not properly preserved as plain error where the evidence is closely balanced or the error is so fundamental that it may have deprived defendant of a fair sentencing hearing. *People v. Thomas*, 178 Ill. 2d 215, 251 (1997).

¶ 12 In this case, defendant merely asserted in his brief that the error affected his substantial

rights without presenting argument as to how either of the two prongs of the plain error doctrine is satisfied. *People v. McDade*, 345 Ill. App. 3d 912, 914 (2004). By failing to do so, he has forfeited plain error review. *Hillier*, 237 Ill. 2d at 545-46.

¶ 13 Defendant maintains in his reply brief, however, that the sentence imposed by the trial court was in conflict with the TASC statute (20 ILCS 301/40-10(b) (West 2012)), thereby rendering his sentence void. He maintains that a sentence that does not conform to a statutory requirement is void and may be corrected at any time. *People v. Arna*, 168 Ill. 2d 107, 113 (1995). Again, we agree with this principle of law, but find that it has no bearing in this case.

¶ 14 The sentencing range for possession of a controlled substance, a Class 4 felony, is one to three years' imprisonment. 720 ILCS 570/402(c) (West 2012); 730 ILCS 5/5-4.5-45(a) (West 2012). Here, the court imposed a sentence of 18 years' imprisonment which was in conformity with the law, and, therefore, not void. *Hillier*, 237 Ill. 2d at 547. As such, it cannot be attacked for the first time on appeal. *People v. Brown*, 229 Ill. 2d 374, 391-92 (2008).

¶ 15 Notwithstanding, the State points out that because defendant is no longer incarcerated and has completed his MSR term, TASC consideration would be a waste of judicial resources. We agree that under these circumstances, no effectual relief could be granted, and that defendant's sentencing challenge is moot. *People v. McNulty*, 383 Ill. App. 3d 553, 558 (2008).

¶ 16 Based on our finding that the sole issue raised by defendant has been forfeited, and, alternatively, is moot, we dismiss this appeal. *McNulty*, 383 Ill. App. 3d at 558.

¶ 17 Appeal dismissed.