

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210164-U

NO. 4-21-0164

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 10, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JEFFREY K. BUCHANAN,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Logan County
) No. 20CF72
)
) Honorable
) Jonathan C. Wright,
) Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding that no clear or obvious error occurred where the trial court sentenced defendant to imprisonment rather than Treatment Alternatives for Safe Communities probation.

¶ 2 Defendant, Jeffrey K. Buchanan, pled guilty to unlawful delivery of methamphetamine and was sentenced to four years' imprisonment. Defendant appeals, arguing that the trial court abused its discretion in failing to sentence him to Treatment Alternatives for Safe Communities (TASC) probation where he was found to be eligible to participate in the program by a TASC representative, the trial court found his offense was the result of his addiction, and the trial court made no finding on the record that imprisonment was necessary for protection of the public. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with unlawful delivery of methamphetamine (720 ILCS 646/55(a)(1), (a)(2)(A) (West 2020)) for an offense that allegedly occurred on January 28, 2020. Defendant entered an open plea of guilty.

¶ 5 A presentence investigation report (PSI) was prepared. The PSI indicated defendant had received a sentence of court supervision for a prior misdemeanor offense of driving under the influence of alcohol (DUI). The PSI stated defendant violated the terms of his court supervision by committing several new offenses and was thereafter discharged from court supervision.

¶ 6 Defendant had prior misdemeanor convictions for a second DUI offense, domestic battery, unlawful possession of drug paraphernalia, attempted criminal trespass to a residence, reckless driving, and driving while his license was suspended. Defendant received sentences of probation for five of these six offenses. Defendant was successfully discharged from probation in two cases after petitions to revoke were dismissed. Defendant was successfully discharged from probation in another case despite having been found in violation of the terms of his probation for willfully failing to complete public service work and testing positive for cannabis. Defendant was unsuccessfully discharged from probation in two cases after testing positive for cannabis.

¶ 7 Defendant reported that he began using methamphetamine regularly in 2018 or 2019. He indicated it gave him energy and helped with his depression symptoms. He used methamphetamine daily starting in June 2019 and ceased using it a few months before he was arrested in connection with the instant case. He reported he had been addicted to methamphetamine and sold it to support his addiction.

¶ 8 Defendant stated he had been prescribed hydrocodone for a back injury in 2015. He later began taking OxyContin although it had not been prescribed to him. He believed he was addicted to OxyContin. He took the opioid for several months and experienced severe withdrawal symptoms when he quit. Defendant reported he regularly smoked cannabis as a teenager but reduced his usage in 2008. Defendant indicated he had tried several other controlled substances as well but did not use them regularly.

¶ 9 Defendant reported that in the past, he consumed alcohol daily. He later began consuming alcohol only socially and stopped drinking alcohol in 2015.

¶ 10 A letter from a representative of TASC was attached to the PSI. The letter stated that a TASC representative had completed a behavioral health assessment of defendant and defendant met the diagnostic criteria for amphetamine use disorder, alcohol use disorder, and opioid use disorder. The recommended level of care was intensive outpatient treatment. The TASC representative indicated defendant had a strong likelihood for rehabilitation if he received intensive outpatient treatment.

¶ 11 At the sentencing hearing, Officer Joseph Meister of the Lincoln Police Department testified that he interviewed Darla Hyde on August 4, 2020. Hyde stated she had lived at a residence with defendant and several other individuals. Hyde was involved in selling methamphetamine from the residence. She would act as a “middleman,” taking money from a buyer, purchasing methamphetamine from a source, and delivering the methamphetamine to the buyer. Hyde stated defendant was her source. She earned \$20 for delivering methamphetamine to buyers, and she used the money to support her own drug addiction. Hyde stated that other people at the residence would purchase drugs from defendant and would also sell drugs.

¶ 12 The State argued a sentence of five years' imprisonment was appropriate. The State contended defendant would not be successful if given a chance at probation or TASC probation due to his history of violating the conditions of probation and court supervision. Defense counsel argued that the trial court should impose a sentence of TASC probation. Defense counsel contended defendant would be strongly motivated to successfully complete TASC probation to avoid both imprisonment and having a felony conviction on his record.

¶ 13 Defendant gave a statement in allocution. Defendant apologized for his actions, indicated he had gained clarity while in jail, and promised that "it's not going to happen again."

¶ 14 The trial court sentenced defendant to four years' imprisonment. The court noted it had considered the factual basis for the plea; the PSI; the TASC letter; the history, character, and attitude of defendant; the evidence and arguments; and defendant's statement in allocution. The trial court stated it had also considered the statutory factors in aggravation and mitigation. In mitigation, the court found that defendant was addicted to unlawful substances at the time of the offense, had a history of mental health issues, and had no prior felony convictions.

¶ 15 In aggravation, the court noted defendant had committed seven prior misdemeanors. The court stated:

"Of those seven misdemeanors, the defendant was given, by way of a presentence investigation report, six opportunities at a community-based setting sentence. Of those six opportunities, [defendant] violated in four of those, either through an unsuccessful discharge or the petition was dismissed but still noted that there were violations of those community-based settings in this case."

¶ 16 The trial court also found in aggravation that there was a need to deter others from selling drugs. The court further found in aggravation that defendant did not merely sell

methamphetamine to satisfy his own addiction but was a source of methamphetamine to be delivered by others. The court noted defendant had other addicts deliver methamphetamine to buyers to keep himself “out of harm’s way with the court system.”

¶ 17 The trial court found a sentence of probation or conditional discharge would deprecate the seriousness of the offense and would be inconsistent with the ends of justice. The court also found a sentence of imprisonment was necessary for deterrence.

¶ 18 Defendant filed a motion to reconsider the sentence, arguing that the trial court placed too much weight on aggravating factors and too little weight on mitigating factors. Defendant asserted that, even if a sentence of imprisonment was necessary, a sentence over the three-year minimum was excessive given the nature and circumstances of the offense and the characteristics of defendant.

¶ 19 The trial court denied the motion to reconsider the sentence. At the hearing on the motion to reconsider sentence, the court stated it would recommend that defendant be placed in a substance abuse program in the Department of Corrections because it found the “offense was committed as the result of the use of, abuse of, or addiction to alcohol or a controlled substance.” This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues the trial court abused its discretion by failing to sentence him to TASC probation. Defendant contends that, because he elected to participate in TASC and was found to be eligible to participate in the program by a TASC representative, the Substance Use Disorder Act (Act) (20 ILCS 301/1-1 *et seq.* (West 2020)) required the trial court to sentence him to TASC probation unless the court found and specified on the record that (1) there was no significant relationship between his addiction and the offense or

(2) imprisonment was necessary for protection of the public. Defendant argues that because the trial court made no such findings, it erred in failing to sentence him to TASC probation.

¶ 22 Defendant acknowledges he failed to preserve this issue because he did not raise it in his posttrial motion. However, defendant contends we may review the issue under the plain error doctrine. Under the plain error doctrine, a reviewing court may consider an unpreserved error, in the sentencing context, if the defendant shows that a clear or obvious error occurred and either “(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing.” *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Defendant argues his claim falls under the second prong. The first step under either prong of the plain error doctrine is determining whether a clear or obvious error occurred. *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 23 Section 40-10(b) of the Act (20 ILCS 301/40-10(b) (West 2020)) provides that if an eligible individual charged with a crime elects to undergo treatment, the court shall order an assessment from a designated program to determine whether the individual suffers from a substance use disorder and is likely to be rehabilitated through treatment. The designated program shall report the results of the assessment to the court. *Id.*

“If the court, on the basis of the report and other information, finds that such an individual suffers from a substance use disorder and is likely to be rehabilitated through treatment, the individual shall be placed on probation and under the supervision of a designated program for treatment *** unless, giving consideration to the nature and circumstances of the offense and to the history, character, and condition of the individual, the court is of the opinion that no significant relationship exists between the substance use disorder of the individual

and the crime committed, or that his or her imprisonment *** is necessary for the protection of the public, and the court specifies on the record the particular evidence, information, or other reasons that form the basis of such opinion.” *Id.*

However, if the court finds the defendant “is not likely to be rehabilitated through treatment, or that his or her substance use disorder and the crime committed are not significantly related, or that his or her imprisonment *** is necessary for the protection of the public, the court shall impose sentence as in other cases.” *Id.* § 40-10(c).

¶ 24 A defendant does not have an absolute right to the treatment alternative provided under the Act, and the trial court has broad discretion to grant or deny a defendant’s request to participate in the treatment program. *People v. Carroll*, 258 Ill. App. 3d 371, 374 (1994). “A trial court’s determination of defendant’s eligibility under the Act will not be reversed on appeal, absent a showing that the trial court acted in an arbitrary manner or abused its discretion.” *Id.*

¶ 25 Here, no clear or obvious error occurred when the trial court failed to sentence defendant to TASC probation without finding on the record that the offense was not significantly related to defendant’s addiction or that imprisonment was necessary for the protection of the public. Under the plain language of section 40-10(b) of the Act (20 ILCS 301/40-10(b) (West 2020)), such a finding is required before imposing a sentence other than TASC probation only if the trial court finds the defendant (1) suffers from a substance use disorder *and* (2) is likely to be rehabilitated through treatment. In the instant case, the trial court found defendant suffered from drug addiction but made no express finding as to whether defendant was likely to be rehabilitated through treatment.

¶ 26 Moreover, based on the trial court’s comments at the sentencing hearing and the fact that it imposed a sentence of imprisonment rather than TASC probation, it can be reasonably

inferred that the trial court did not find defendant was likely to be rehabilitated through TASC treatment. While the court stated it had considered the letter from TASC that was attached to the PSI, it did not indicate it adopted the TASC representative's finding that defendant had a strong likelihood to be rehabilitated through treatment. Rather, the court noted as a factor in aggravation that defendant had committed seven prior misdemeanors, received sentences of court supervision or probation in six of these cases, and violated the conditions of probation and court supervision in four cases. Defendant's criminal history and past failures to comply with the conditions of community-based sentences was relevant to his likelihood of success on TASC probation. See *People v. Williams*, 138 Ill. App. 3d 592, 594 (1985) (holding that the record supported the trial court's conclusion that the defendant was unlikely to comply with treatment due to his past probation violations). Thus, based on the facts and circumstances presented in this case, no clear or obvious error occurred when the trial court sentenced defendant to imprisonment rather than TASC probation.

¶ 27 We reject defendant's reliance on *People v. Demsko*, 2013 IL App (3d) 120391. In *Demsko*, the court held that the trial court abused its discretion in denying the defendant's request for TASC probation and instead sentencing him to regular probation. *Id.* ¶ 10. Before sentencing the defendant to regular probation, the trial court had found that the defendant had a substance abuse issue, was under the influence of alcohol and drugs at the time of the offense, and was likely to successfully complete TASC services. *Id.* ¶¶ 4-5. The *Demsko* court held that, in light of the trial court's findings, the Act mandated TASC treatment unless the trial court specifically determined no significant relationship existed between the defendant's addiction and the crime or imprisonment was required for protection of the public. *Id.* The *Demsko* court noted

that the trial court had made no such finding and, accordingly, found that the denial of TASC treatment was an abuse of discretion. *Id.*

¶ 28 Here, unlike in *Demsco*, the trial court did not find that defendant was likely to successfully complete treatment. Accordingly, unlike in *Demsco*, the plain language of section 40-10(b) of the Act does not mandate the imposition of TASC probation absent a specific finding on the record that the offense was unrelated to defendant's addiction or imprisonment is necessary for protection of the public. See *supra* ¶ 25. While it would have been preferable for the trial court to make a specific finding concerning defendant's likelihood to be rehabilitated through TASC treatment, the trial court's denial of TASC probation in this case did not amount to clear or obvious error. See *supra* ¶¶ 25-26.

¶ 29 Because no clear or obvious error occurred in this case, we need not consider whether the alleged error constituted second-prong plain error. See *People v. Bannister*, 232 Ill. 2d 52, 71 (2008) ("Having found no error, there can be no plain error.").

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.