

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
PREBLE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2014-12-015
- vs -	:	<u>OPINION</u>
	:	6/15/2015
CHARLES E. TOLSON,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 14 CR 11547

Martin P. Votel, Preble County Prosecuting Attorney, Preble County Courthouse, 101 East Main Street, Eaton, Ohio 45320, for plaintiff-appellant

Maria L. Spencer, 120 North Commerce Street, P.O. Box 221, Lewisburg, Ohio 45338, for defendant-appellee

RINGLAND, J.

{¶ 1} Plaintiff-appellant, the state of Ohio, appeals a decision of the Preble County Court of Common Pleas granting a motion for intervention in lieu of conviction (ILC) in favor of defendant-appellee, Charles E. Tolson.

{¶ 2} On May 9, 2014, police were dispatched to Water Works Park upon a report that two men with a dog had discharged a firearm. Officers identified Tolson as a suspect. Tolson acknowledged to the officers that he was carrying a gun. The officers found the gun

concealed in the rear waistline of his pants. Tolson admitted to firing the gun. Officer Hurd noted that Tolson smelled of alcohol, but that Tolson claimed he drank only one beer hours earlier.

{¶ 3} Tolson was charged with one count of carrying concealed weapons in violation of R.C. 2923.12(A)(2), a felony of the fourth degree, and one count of discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(2), a misdemeanor of the fourth degree.

{¶ 4} Tolson then filed a motion for ILC, claiming that, "[t]he crime [Tolson] has been charged with arose as a result of his drug dependence." Tolson provided the court with an evaluation from the Recovery & Wellness Centers of Midwest Ohio. That evaluation found that Tolson is an abuser of alcohol and opioids.

{¶ 5} The trial court held a hearing on Tolson's motion for ILC and subsequently granted the motion over the state's objections.

{¶ 6} The state now appeals, raising a single assignment of error for review.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT MISAPPLIED THE STATUTORY ELIGIBILITY REQUIREMENTS OF THE INTERVENTION IN LIEU OF CONVICTION STATUTE, R.C. 2951.041.

{¶ 9} Within this assignment of error, the state argues that, "the trial court erred when it found defendant/appellee had met the ILC statutory eligibility requirement pursuant to R.C. 2951.041(B)(6)."

{¶ 10} Pursuant to R.C. 2951.041(B):

An offender is eligible for intervention in lieu of conviction if the court finds all of the following:

* * *

(6) The offender's drug usage, alcohol usage * * * was a factor leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of recidivism.

{¶ 11} In the present case, the trial court failed to make a finding that Tolson's drug or alcohol usage was a factor leading to his carrying concealed weapons and discharging a firearm near prohibited premises.

{¶ 12} Based on the addiction services assessment and intake interview, the trial court found that the record supports the claim that Tolson is at risk of abusing drugs and alcohol in the absence of treatment. The trial court further found that ILC, "if successful, would support the claim that recidivism would be less likely, even if alcohol did not play a role in the instant offense."

{¶ 13} However, R.C. 2951.041 does not make ILC available to anyone who suffers from addiction or is in need in treatment. Rather, ILC is available where drug or alcohol usage *was a factor leading to the instant offense*. Therefore, absent a finding by the trial court that alcohol or drug usage was a factor leading to the offenses with which he was charged, Tolson was not eligible for ILC.

{¶ 14} In light of the foregoing, having found that the trial court granted the motion for ILC without finding that drug or alcohol usage was a factor leading to Tolson carrying concealed weapons and discharging a firearm near prohibited premises, the state's sole assignment of error is sustained. On remand, the trial court may either make the necessary findings in order for Tolson to be eligible for ILC pursuant to R.C. 2951.041(B)(6), or, if such a finding cannot be made, conduct further proceedings in accordance with law.

{¶ 15} Judgment reversed and remanded.

PIPER, P.J., and HENDRICKSON, J., concur.