

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).

2012 IL App (4th) 101009-U

Filed 6/5/12

NO. 4-10-1009

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JONATHAN ALLEN JAMISON,	)	No. 09CF1049
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

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PRESIDING JUSTICE TURNER delivered the judgment of the court.  
Justices Steigmann and Knecht concurred in the judgment.

### ORDER

- ¶ 1 *Held:* Where the record shows trial counsel possibly neglected the handling of an issue related to defendant's Class X sentencing, the trial court erred by not appointing new counsel and holding an evidentiary hearing to address that issue.
- ¶ 2 Pursuant to a plea agreement, defendant, Jonathan Allen Jamison, pleaded guilty to one count of unlawful delivery of a controlled substance, a Class 1 felony (720 ILCS 570/401(c) (West 2008)). At a May 2010 sentencing hearing, the McLean County circuit court sentenced defendant, as a Class X offender under section 5-4.5-95(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-95(b) (West 2008) (formally 730 ILCS 5/5-5-3(c)(8))), to 16 years' imprisonment. That same month, defense counsel filed a motion to withdraw defendant's guilty plea and a motion to reconsider defendant's sentence. Defendant filed a *pro se* postplea motion, raising numerous allegations of ineffective assistance of counsel.

At a November 2010 hearing, the court first conducted an inquiry under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and concluded defendant's ineffective-assistance-of-counsel claims did not warrant the appointment of new counsel. The court also heard and denied the postplea motions filed by defendant counsel.

¶ 3 Defendant appeals, asserting the trial court erred by denying defendant's postplea motions and in sentencing him as a Class X offender under section 5-4.5-95(b) because one of the convictions that made defendant eligible for Class X sentencing was an uncounseled felony conviction. We affirm in part, reverse in part, and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In November 2009, a grand jury indicted defendant with three counts of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2008)), one count of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(d)(i) (West 2008)), and one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)) for his actions on various dates between September and November 2009. In March 2010, the parties entered into a plea agreement, under which defendant would plea guilty to one count of unlawful delivery of a controlled substance and the State would move to dismiss the other four counts and the charges in a separate case (*People v. Jamison*, No. 08-CF-1201 (Cir. Ct. McLean Co.)). The agreement also provided for the amount of costs, fines, and fees defendant would have to pay but was open as to the actual term of imprisonment. At the plea hearing, the trial court admonished defendant in accordance with Illinois Supreme Court Rule 402(a) (eff. July 1, 1997), including informing him that he was subject to Class X sentencing (730 ILCS 5/5-4.5-95(b) (West 2008)) with a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-

4.5-25(a) (West 2008)). The court accepted the plea agreement and dismissed the other charges.

¶ 6 The April 2010 presentence report showed defendant had a lengthy criminal history, including two Class 2 felonies, a 1994 delivery-of-a-controlled-substance (less than a gram) conviction from Cook County (People v. Jamison, No. 94-CR-25350 (Cir. Ct. Cook Co.)) and a 2004 delivery of a schedule III narcotic (People v. Jamison, No. 04-CF-577 (Cir. Ct. McLean Co.)). On May 3, 2010, the trial court held defendant's sentencing hearing. Defendant did not challenge his eligibility for Class X sentencing under section 5-4.5-95(b), and the court sentenced him to 16 years' imprisonment.

¶ 7 On May 18, 2010, defense counsel filed two postplea motions. The motion to withdraw defendant's guilty plea asserted defendant did not fully consider the ramifications of his plea and did not fully understand the consequences of his actions at the time of his plea. The motion to reconsider defendant's sentence alleged defendant's sentence was excessive. In August 2010, defense counsel filed the required certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). On November 22, 2010, defendant filed a 12-page *pro se* motion raising numerous allegations of ineffective assistance of counsel, including the claim he informed counsel he was ineligible for Class X sentencing and counsel refused to obtain sentencing transcripts for the Cook County case that the State sought to use to enhance his sentence in this case.

¶ 8 At the beginning of the November 22, 2010, hearing on the postplea motions, the court announced he would consider the ineffective-assistance-of-counsel claims for the purposes of a *Krankel* inquiry. The court asked defendant if he had anything to add to his written motion. Defendant noted he had not received the sentencing transcripts. The court then discussed its

observations and generally discussed defendant's claims. It concluded defendant's concerns did not rise to the level of a *prima facie* showing of ineffective assistance of counsel and declined to appoint defendant new counsel. The court did not specifically address defendant's Class X sentencing argument.

¶ 9 As to defense counsel's postplea motions, defense counsel called defendant to testify. Defendant testified he did not understand how much prison time he was eligible to receive. Defendant stated he had a constitutionally infirm conviction in Cook County, which the State used as an aggravating factor. He explained he was not allowed counsel when he pleaded guilty to the charge. Defendant also alleged he had a plea agreement for a one-year sentence in the Cook County case but his sentence was a three-year term. Defendant did not believe he was eligible for Class X sentencing, and had he known he was eligible for Class X sentencing, he would not have pleaded guilty. Defendant also asserted that, without the Cook County case, he would have received a lesser sentence in this case. The trial court denied the postplea motions, noting the unconstitutionality of his Cook County conviction had never been authenticated and the conviction still stood. It further noted that, if a court that reviews such matters agrees with defendant's unconstitutionality argument, then defendant had a "very good argument" the sentence in this case needed to be reviewed.

¶ 10 On December 15, 2010, defendant filed a timely notice of appeal in substantial compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). Thus, this court has jurisdiction over this appeal under Rule 604(d) (eff. July 1, 2006).

¶ 11 II. ANALYSIS

¶ 12 Defendant's arguments on appeal are based on his claim he is ineligible for Class

X sentencing under section 5-4.5-95(b) of the Unified Code because one of the convictions that made defendant eligible for Class X sentencing was an uncounseled felony conviction. Defendant first raised this issue in the context of a *pro se* ineffective-assistance-of-counsel claim, which raised many other claims against counsel. The trial court conducted a *Krankel* inquiry and declined to appoint defendant new counsel. On appeal, defendant contends the trial court erred by failing to appoint new counsel to address the Class X sentencing issue.

¶ 13 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court is not automatically required to appoint new counsel. *People v. Moore*, 207 Ill. 2d 68, 77, 797 N.E.2d 631, 637 (2003). Rather, the court first examines the factual basis of the defendant's claim. *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637. Generally, this examination requires some interchange between the court, trial counsel, and defendant regarding the facts and circumstances surrounding the alleged denial of effective assistance of counsel. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. Additionally, the evaluation may be based on the court's own knowledge of defense counsel's performance at trial. *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. On review, the operative concern is whether the trial court conducted an adequate inquiry into the defendant's *pro se* ineffective-assistance-of-counsel allegations. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. If the court finds the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations demonstrate possible neglect of the case, the court should appoint new counsel. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. Whether the trial court made an adequate *Krankel* inquiry presents a question of law, and thus we review this issue *de novo*. *People v. Strickland*, 363 Ill. App. 3d 598, 606, 843 N.E.2d 897, 904 (2006).

¶ 14 Here, the trial court asked defendant if he had anything to add to his lengthy *pro se* motion and then relied on its review of defendant's written motion and knowledge of defense counsel's performance in finding appointment of new counsel was unwarranted. The court did not question counsel about whether she had looked into defendant's claim about one of his prior felonies being constitutionally infirm and thus rendering him ineligible to be sentenced as a Class X offender. Defendant's claim clearly did not pertain to a matter of trial strategy and was not a matter for which the court would have knowledge. Moreover, if defendant's assertion is correct, his sentence in this case would have to be set aside. In *People v. Laskowski*, 287 Ill. App. 3d 539, 544, 678 N.E.2d 1241, 1245 (1997), this court noted the United States Supreme Court has declared "an uncounseled felony conviction may not be used to enhance a sentence following a subsequent conviction (*Burgett v. Texas*, 389 U.S. 109, 115, 19 L. Ed. 2d 319, 325, 88 S. Ct. 258, 262 (1967)), and subsequent sentences based in part on prior invalid convictions must be set aside (see *United States v. Tucker*, 404 U.S. 443, 447-49, 30 L. Ed. 2d 592, 596-97, 92 S. Ct. 589, 592 (1972))." Thus, we find the trial court's *Krankel* inquiry was inadequate as to the Class X sentencing issue, which we recognize was one of many set forth by defendant.

¶ 15 While the Class X sentencing issue was not addressed during the *Krankel* inquiry, defense counsel did call defendant to the stand at his sentencing hearing and examined him in a manner that allowed him to explain his Class X sentencing claim. However, defense counsel did not present any evidence in support of defendant's claim or argue the matter to the trial court. Such actions *suggest* defense counsel did not look into the matter and *possible* neglect of the case. Accordingly, we find a further *Krankel* inquiry is unwarranted as the record indicates the appointment of new counsel is necessary. We note this order in no way addresses the merits of

defendant's ineffective-assistance-of-counsel claim or his Class X sentencing claim.

¶ 16 Accordingly, we find the trial court erred by failing to appoint new counsel to examine defendant's ineffective-assistance-of-counsel claim based on counsel's failure to investigate his Class X sentencing issue and hold an evidentiary hearing on that matter. Such a hearing would properly allow both sides to fully address the sentencing matter and present all of the available evidence on the prior felony case. We note the few documents from defendant's prior felony case that defendant attempted to present on appeal are not properly before this court. Generally, "a party may supplement the record on appeal only with documents that were actually before the trial court." *People v. Mann*, 397 Ill. App. 3d 767, 770, 922 N.E.2d 533, 536 (2010). Defendant did not cite an exception to that rule in his motion to supplement the record on appeal, and thus we now deny the motion to supplement as to the documents from the Cook County case since they were never presented to the trial court. Additionally, we note defendant does not raise any other ineffective-assistance-of-counsel claims or challenge any other aspect of the trial court proceedings, and thus the proceedings on remand are limited to the Class X sentencing issue. See *People v. Moore*, 389 Ill. App. 3d 1031, 1045, 907 N.E.2d 877, 888-89 (2009) (holding the trial court properly limited the scope of appointed counsel to the one issue the trial court found had potential merit). Last, if defendant succeeds on his ineffective-assistance-of-counsel motion, he should be allowed to file a new postplea motion addressing only the resulting void Class X sentence.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons stated, we reverse the McLean County circuit court's judgment denying defendant's *pro se* postplea motion on defendant's Class X sentencing issue, affirm the

court's judgment in all other respects, and remand the cause for the appointment of new counsel and an evidentiary hearing to address the Class X sentencing issue. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed in part and reversed in part; cause remanded.