

SIXTH DIVISION  
September 30, 2014

No. 1-12-2750

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF	)	Appeal from the
ILLINOIS,	)	Circuit Court of
	)	Cook County.
	)	
Plaintiff-Appellee,	)	
	)	
	)	
v.	)	No. 05 CR 20591
	)	
	)	
PARIS KNOX,	)	
	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

**Held:** Trial court erred by failing to conduct an appropriate preliminary inquiry under *People v. Krankel*, 102 Ill 2d. 181 (1984), and the error was not harmless.

¶ 1 Defendant Paris Knox was indicted for the stabbing death of Malteeny Taylor, her boyfriend at the time and the father of her baby son. She was tried by a jury. Evidence at trial established that defendant and Taylor had a tumultuous relationship, with arguments frequently escalating to verbal and physical abuse by both individuals. The jury was instructed on self-defense and second-degree murder for provocation and unreasonable self-defense. Defendant was ultimately convicted of first-degree murder and sentenced to 40 years' imprisonment.

¶ 2 Defendant now appeals from a judgment entered following our remand to the trial court to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). For the reasons that follow, we reverse the trial court's denial of appointment of new counsel and remand this matter to the court to conduct a proper preliminary *Krankel* inquiry to determine if appointment of new counsel is warranted to independently evaluate the ineffective assistance of counsel issue.

¶ 3 On the first direct appeal, we remanded the case to the trial court for the limited purpose of conducting a preliminary inquiry under *Krankel* and we reserved judgment on the remaining issues raised in the appeal. *People v. Paris Knox*, No. 1-08-3019 (2011) (unpublished order under Supreme Court Rule 23). We determined the case should be remanded for a preliminary inquiry under *Krankel* to evaluate if new counsel should be appointed to undertake an independent review of whether defendant's trial counsels provided ineffective assistance by failing to investigate and discover records of her psychiatric history which she argued on appeal would have bolstered her theories of provocation or an unreasonable belief in the need for self-defense. *Knox*, slip order at 2.

¶ 4 We found that trial counsels' lack of pretrial knowledge of defendant's psychiatric history was apparently revealed at a hearing concerning defendant's fitness for sentencing, as shown by the following colloquy:

" ' [Assistant State's Attorney]: Judge, today was set for post-trial motions and sentencing. One of the issues that counsels had brought up pursuant to some information provided in the presentence investigation was that they wanted the defendant evaluated \*\*\* for fitness and that was done by Dr. Kelly.

THE COURT: Yes.

\*\*\*

[Assistant State's Attorney]: Judge, in reviewing the report of Dr. Kelly which was filed in this court on June 10th and counting up the days, we are outside of the 45 day period. So I am going to ask that [defendant] be resent up to the tenth floor for an updated evaluation that is fresh and within 45 days for our hearing. And Judge, the report that I have received yesterday which is causing this delay is written by a Dr. Hayden.

[Defense Counsel]: Hanlon.

[Assistant State's Attorney]: Hanlon. And there is an opinion here. It is in my opinion within a reasonable degree of neurophysiological and scientific certainty that [defendant] manifests significant cognitive defects involving impaired executive functioning and memory capacity which are consistent with her previously diagnosed mood disorders, specifically bipolar disorder.

Judge, although counsel has insisted and repeatedly told me that they are not trying to make an issue as to sanity at the time.

THE COURT: Or their ineffective assistance.

[Assistant State's Attorney]: For not having raised it, I would ask that a further evaluation be done by Dr. Kelly specifically addressing this issue so it's not brought up at some later date in a PC where Dr. --

[Defense Counsel]: Hanlon.

[Assistant State's Attorney]: Hanlon is called in to give an opinion as to that.

[Defense Counsel]: Judge, Dr. Hanlon is a sentencing witness. And I think the defendant's state of mind at the time of the incident is relevant to the sentencing. That is what we are calling it as. It is not an insanity defense.

THE COURT: I would assume you are not trying to say that the State doesn't have the right to have somebody else examine her with respect to the same kind of statement that you plan to offer through the doctor, correct?

[Defense Counsel]: Of course not.

THE COURT: So what's the big deal?

[Defense Counsel]: We are not asserting any type of insanity.

THE COURT: You know --

[Defense Counsel]: It should be clear. We would have done it before trial.

THE COURT: I would hope so but who knows what somebody else's interpretation of what's going on here might be or what someone else might make of what you're doing at this point in this case.

[Defense Counsel]: Just so it's clear, Judge, this came up when we got the PSI and the PSI indicated that Cermak there was a diagnosis of bipolar disorder and that's where this is all stemming.

THE COURT: At Cermak when? Before trial?

[Defense Counsel]: Yes.

THE COURT: Okay. Are you saying that you didn't know about it before trial? Do we want to keep going on with this?

[Defense Counsel]: No. I am just explaining the situation.

THE COURT: All right. Fine. This is called a can of worms, I think, as you well know based on your experience that you have opened up here basically. So we need to proceed with all due caution which we will do \*\*\*. ' " *Knox*, slip order at pp. 4-6.

¶ 5 We found the trial court's comments indicated that defense counsels possibly neglected defendant's case by failing to investigate and discover readily discoverable records of her psychiatric history prior to trial. *Knox*, slip order at p. 6; see *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992) (finding that trial judge's strong comments to counsel indicated the judge was made aware of counsel's possible neglect of defendant's case). We determined that fundamental fairness obligated the trial court to *sua sponte* conduct a preliminary investigation of defense counsels' performances pursuant to *Krankel*. We cited to cases holding that a defense counsel's failure to investigate and discover a defendant's readily discoverable psychiatric history can amount to ineffective assistance. See *People v. Baldwin*, 185 Ill. App. 3d 1079, 1090-91 (1989); *People v. Howard*, 74 Ill. App. 3d 138, 142 (1979) (pre-*Srickland* case finding the same). *Knox*, slip order at p. 6. We remanded the case for the limited purpose of allowing the trial court to conduct a preliminary inquiry under *Krankel* and we reserved judgment on the remaining issues raised in the appeal. *Knox*, slip order at p. 2.

¶ 6 By the time the case was remanded to the circuit court for the *Krankel* hearing, Judge Lawrence P. Fox who presided over defendant's trial and sentencing hearings had retired. In

addition, defendant's lead attorney from the trial had become an associate judge. The *Krankel* hearing was conducted by Judge Charles P. Burns.

¶ 7 On remand, Judge Burns conducted a *Krankel* inquiry to determine if new counsel should be appointed to argue the issue. Both of defendant's former trial counsels testified under oath at the *Krankel* hearing pursuant to questioning by the State. Following the hearing, Judge Burns denied the appointment of new counsel. The judge determined that any claims of ineffectiveness based on a failure to investigate and discover records of defendant's psychiatric history either lacked merit or pertained to matters of trial strategy and tactics. Defendant appeals from that judgment.

¶ 8 ANALYSIS

¶ 9 *Krankel* provides a defendant with an opportunity to have a hearing on his or her *pro se* posttrial claims of ineffective assistance of counsel. *People v. Gillespie*, 276 Ill. App. 3d 495, 501 (1995). "Where there is a clear basis for an allegation of ineffectiveness of counsel, a defendant's failure in explicitly making such an allegation does not result in waiver of a *Krankel* problem. \* \* \* Fundamental fairness requires a further investigation of counsel's performance." *Williams*, 224 Ill. App. 3d at 524.

¶ 10 *Krankel* requires a trial court to conduct a preliminary investigation into a defendant's *pro se* posttrial claims of ineffective assistance of counsel in order to determine whether new and independent counsel should be appointed to evaluate and advance the claims. *People v. Ward*, 371 Ill. App. 3d 382, 430 (2007). However, the appointment of independent counsel is not automatically required merely because a defendant presents a *pro se* motion for a new trial alleging ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77 (2003); *People v. Nitz*, 143 Ill. 2d 82, 134 (1991). Rather, *Krankel* and its progeny hold that when a case is

remanded for the limited purpose of conducting a hearing on a defendant's *pro se* posttrial claims of ineffective assistance of counsel, before new counsel can be appointed to undertake an independent evaluation of the claims, the trial court should first conduct a preliminary inquiry into the factual basis of the claims to determine if they show possible neglect of the case warranting appointment of new counsel. See *Ward*, 371 Ill. App. 3d at 430. The purpose of appointing new counsel to independently evaluate such claims is to avoid the possible conflict of interest that might result if original defense counsel were put in a position of arguing his or her own incompetence. *People v. Phipps*, 238 Ill. 2d 54, 63 (2010).

¶ 11 Our supreme court has determined that the main concern for the reviewing court is to assess whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 78 (citing *People v. Johnson*, 159 Ill. 2d 97, 125 (1994)). In *Moore*, our supreme court provided some guidance as to how a trial court should conduct such an inquiry, stating:

"During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim. Trial counsel may simply answer questions and explain the facts and circumstances surrounding the defendant's allegations. [Citations.] A brief discussion between the trial court and the defendant may be sufficient. [Citations.] Also, the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the sufficiency of the defendant's allegations on their face. [Citations.]" *Moore*, 207 Ill. 2d at 78-79.

¶ 12 In accordance with *Moore*, our courts have held that a trial court may conduct a preliminary inquiry in one or more of the following three ways: (1) questioning trial counsel about the facts and circumstances surrounding defendant's allegations; (2) requesting specific information from defendant; or (3) relying on its own knowledge of defense counsel's performance at trial and the sufficiency of the defendant's allegations on their face. *People v. Peacock*, 359 Ill. App. 3d 326, 339 (2005); *People v. Fields*, 2013 IL App (2d) 120945, ¶ 39. These preliminary investigatory hearings are not meant to be either adversarial nor evidentiary. *People v. Jolly*, 2013 IL App (4th) 120981, ¶ 48. Our standard of review is *de novo* since we are reviewing the manner in which the trial court conducted the preliminary inquiry under *Krankel*, which is a question of law. *Fields*, 2013 IL App (2d) 120945, ¶ 39 ("We review *de novo* the manner in which the trial court conducted its *Krankel* hearing"); *Jolly*, 2013 IL App (4th) 120981, ¶ 44 (same).

¶ 13 Our review indicates the trial court conducted a procedurally inappropriate *Krankel* hearing. First, the trial court improperly relied on matters outside of the record in evaluating whether defense counsels provided defendant with effective assistance at trial. The judge who conducted the *Krankel* hearing was not the same judge who presided over defendant's trial and therefore he had no personal knowledge with which to assess defense counsels' performances at trial. Instead, the judge relied on his personal knowledge of the reputations of defense counsels in concluding that they provided effective assistance. The judge stated:

"I was not a party to this case, I do know both the attorneys here. I know them to be very, very competent attorneys, well respected attorneys. While that is not controlling of course, I find it very, very hard to believe that they would ignore or not investigate a claim such as this."

¶ 14 The judge obviously found defense counsels competent and credible based on information not of record. He erred in this regard. See *Jolly*, 2013 IL App (4th) 120981, ¶ 53 ("with regard to an attorney's performance, the trial court must only take into consideration the attorney's performance in the particular case at issue").

¶ 15 The trial court also erred by allowing the initial investigatory phase of the *Krankel* proceeding to become an adversarial and evidentiary hearing on the merits of whether there was ineffective assistance of counsel. See *Jolly*, 2013 IL App (4th) 120981, ¶ 48 ("These investigatory hearings are meant to be neither adversarial nor evidentiary"). Pursuant to *Krankel*, when an issue arises as to ineffective assistance of counsel, the trial court must conduct a preliminary inquiry into the factual basis of the issue to determine if it shows possible neglect of the case warranting appointment of new counsel. *People v. Cabrales*, 325 Ill. App. 3d 1, 5 (2001).

¶ 16 Here, the trial court did not conduct a preliminary investigation into possible neglect of the case, but instead proceeded directly to an adversarial hearing on the merits of the issue when it allowed the assistant state's attorney (ASA) to subject the issue to adversarial inquiry during his questioning of defense counsels. The trial court allowed the State to conduct most of the inquiry. We have found no cases suggesting that the State should be actively participating in the trial court's preliminary inquiry into whether defense trial counsel possibly neglected the case warranting appointment of new counsel. Rather, the State's participation should be *de minimis*. "If the State's participation during the initial investigation into a defendant's *pro se* allegations is anything more than *de minimis*, there is a risk that the preliminary inquiry will be turned into an adversarial proceeding, with both the State and trial counsel opposing the defendant. That is exactly what occurred here." *Fields*, 2013 IL App (2d) 120945, ¶ 40.

¶ 17 When the trial court allowed the State to actively participate in the preliminary inquiry into whether defense counsels possibly neglected defendant's case by allegedly failing to investigate and discover records of her psychiatric history prior to trial, the proceeding turned into an adversarial hearing on the merits, where defendant was required to act as her own counsel in arguing whether there was ineffectiveness. See *Jolly*, 2013 IL App (4th) 120981, ¶ 51 ("The moment the State was allowed to question defense counsel, [the] hearing turned from investigatory to adversarial"). It was the trial court's role and not that of the ASA to question defense counsels and conduct the preliminary inquiry, especially since the ASA had an interest in upholding defendant's conviction. In addition, the trial court put defendant in the position of having to act as her own counsel in arguing the merits of her claims. Such a format is particularly prejudicial to *pro se* defendants who are generally unskilled in the rules of evidence and the art of cross-examination. The trial court's abdication of its role under *Krankel* resulted in the preliminary inquiry being turned into an adversarial proceeding, much like a trial, but one where defendant was denied her full due process protections of an adversarial proceeding.

¶ 18 A trial court's failure to conduct the initial *Krankel* inquiry in a proper manner will not require reversal if the error was harmless beyond a reasonable doubt. *Jolly*, 2013 IL App (4th) 120981, ¶ 54 (citing *People v. Nitz*, 143 Ill. 2d 82, 135 (1991)). "However, in *Nitz*, the trial court produced a record that demonstrated the meritless nature of defendant's claims." *Moore*, 207 Ill. 2d at 80 (citing *Nitz*, 143 Ill. 2d at 135).

¶ 19 In contrast to *Nitz*, we cannot say, from the record as it stands, that the issue of whether defense counsels were ineffective is meritless. There was some evidence that defendant's actions might have been impacted by her mental illness. At one of the sentencing hearings, Dr. Robert Hanlon, a clinical neuropsychologist and board certified clinical psychologist opined as follows:

"I believe that given my opinion and objective findings, that [defendant] does manifest some cognitive deficits which are typical of patients with bipolar disorder. That those cognitive deficits as her, in combination with her emotional instability and behavioral abnormalities due to bipolar disorder, did contribute to her actions on May 21st of '05." Defendant argues that defense counsels could have hired Dr. Hanlon prior to trial, and that his opinions had the potential to "fortify pretrial and trial arguments."

¶ 20 Defendant argues her trial counsels were ineffective for failing to investigate and discover records of her psychiatric history which she claims would have shown she suffered from mental illness that distorted her perception of the need to use deadly force. Defendant maintains such evidence would have supported a claim of unreasonable belief in self-defense and, thus, a second-degree murder conviction. Under these circumstances and based on the record, we cannot conclude that the trial court's failure to conduct a proper nonadversarial *Krankel* inquiry was harmless. We express no opinion on the merits of any possible claims of ineffective assistance of counsel.

¶ 21 We find the trial court erred by failing to conduct an appropriate preliminary inquiry to determine whether defense counsels possibly neglected defendant's case by failing to investigate and discover records of her psychiatric history prior to trial. Accordingly, we reverse the denial of appointment of new counsel and remand this matter to the trial court to conduct a proper preliminary *Krankel* inquiry to determine if appointment of new counsel is warranted to independently evaluate the ineffective assistance of counsel issue. If the trial court determines the issue lacks merit or pertains only to matters of trial strategy, then no new counsel need be appointed to represent defendant. *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992); *Moore*, 207 Ill. 2d at 81. If, however, it is indicated that defense counsels may have neglected

defendant's case, the trial court should appoint new counsel to argue defendant's claims of ineffective assistance of counsel. *Williams*, 224 Ill. App. 3d at 524. If the trial court rules against defendant on this issue, she may still appeal her assertion of ineffective of counsel along with her other assignments of error. *Moore*, 207 Ill. 2d at 81-82.

¶ 22 Accordingly, we remand this cause to the circuit court of Cook County for further proceedings consistent with this order.

¶ 23 Reversed and remanded with directions.