

No. 1-14-1120

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. 12 CR 7371
)	
BRIAN WILLIAMS,)	Honorable
)	Neil J. Linehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court did not commit manifest error when, after holding a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), it did not appoint new counsel to represent defendant on his post-plea motions.

¶ 2 In 2013, defendant Brian Williams entered a negotiated plea of guilty to the offense of armed habitual criminal and was sentenced to eight years in prison. Defendant, proceeding *pro se*, then filed a motion and a supplemental motion to withdraw the plea alleging, *inter alia*, ineffective assistance of counsel. The trial court denied the motions. On appeal, defendant

contends that trial counsel labored under a conflict of interest when she represented him on the *pro se* motions to withdraw the guilty plea. He therefore requests that this cause be remanded and new counsel be appointed so that he may "pursue his claims with conflict-free counsel." We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a March 2012 incident during which police found a gun in defendant's vehicle. Defendant filed a motion to quash arrest and suppress evidence, alleging that there was no probable cause for his arrest.

¶ 4 At the May 2013 hearing on the motion to quash, police officer Anthony Bruno testified that when he arrived at a certain location he saw a maroon Chrysler minivan. Earlier that day, Bruno had received photographs showing occupants of the van retrieving a gun from underneath the van. The photographs showed a burgundy van with particular license plates and defendant with two other men. The van was registered to defendant. The photographs did not indicate the address where they were taken. After arriving, Bruno removed a gun and bag of suspected cannabis from the top of the van's spare tire. Defendant, who was not handcuffed, was standing nearby. Defendant was arrested and, after being informed of his *Miranda* rights, gave a statement at a police station. He was later charged with possession of the gun and cannabis from the van.

¶ 5 During cross-examination, Bruno testified that a police station commander received information from a concerned citizen who described persons going under a maroon minivan to retrieve a gun from the top of the spare tire. The citizen provided three photographs of this activity, along with his telephone number and the details of the city block where the photographs were taken. The commander provided copies of the photographs, which included the van's license plate, to Bruno and other officers. Later that day, Bruno learned that the van had been

stopped in a traffic stop. When Bruno arrived, defendant, two other men, and "one or two girls, maybe," were already outside the van so Bruno did not know who was driving when the van was stopped. Based upon the earlier information, Bruno went directly to the spare tire. The record on appeal does not contain copies of the photographs.

¶ 6 On redirect examination, Bruno admitted that he had not met the citizen. However, Bruno spoke to him on the telephone and knew his name. The citizen had sent the photographs to the commander and they were forwarded to Bruno. He did not know when the photographs were taken. When asked if he saw a gun in any of the photographs, Bruno pointed out what he believed to be portions of a gun. He believed that one of the photographs showed a man wearing a white t-shirt holding a gun, and another photograph showed a man in a black t-shirt holding a gun. However, he did not believe that defendant was either of these men. Rather, defendant was the man shown in the third photograph reaching under a van. No gun was visible in that photograph.

¶ 7 In denying defendant's motion, the trial court stated that it heard Bruno's testimony and viewed the photographs. The court found no issues with Bruno's identification of defendant in the photographs. The court then found that the second photograph depicted a weapon or other contraband being "palmed" between defendant and another man, and that the third photograph clearly showed defendant reaching underneath the van. The court also found that the information upon which Bruno acted was not provided anonymously and was supported by photographs. Ultimately, the trial court concluded that the officers had probable cause to stop the van based upon the photographs. The court further held that that the police did not impermissibly enter the van by reaching under the spare tire because that was not a location where the van's occupants had a reasonable expectation of privacy.

¶ 8 Although counsel filed a motion to reconsider, counsel told the trial court at the next court date that defendant was requesting a plea conference pursuant to Supreme Court Rule 402 (eff. July 1, 2012). The court admonished defendant that at such a conference the parties would discuss the facts of the case and defendant's criminal background, and the court would hear information it would not normally hear outside a trial. The court would then advise the parties what sentence it would give if defendant entered a guilty plea. While defendant could accept or reject such an offer, he could not have another judge later hear his trial. Defendant replied that he understood, and a plea conference was held.

¶ 9 Following the conference, the court stated that, if defendant pled guilty to the offense of armed habitual criminal, he would receive eight years imprisonment to "be served at 85 percent," and all other charges would be dismissed. The State, counsel, and defendant agreed that this was their understanding of the agreement. After agreeing that counsel had informed him of his legal rights and the consequences of a guilty plea, defendant entered a plea of guilty to the offense of armed habitual criminal. The court read the charge and described the applicable Class X felony sentencing range. Defendant indicated that he understood, and wanted to plead guilty. The court then admonished defendant of his right to a trial. Defendant waived his right to a jury trial and to a pre-sentence investigation report.

¶ 10 The State then recited the factual basis for the plea. The State would offer certified copies of defendant's convictions for armed robbery in case number 08 CR 3388, and robbery in case number 06 CR 24340. Bruno would testify to receiving information from an anonymous citizen that defendant and others placed a gun on top of a vehicle's spare tire, and that this information included photographs showing the vehicle's license plate. Bruno would also testify that he saw the vehicle in question occupied by defendant, who was the registered owner but not

the driver, and two other persons. Bruno would finally testify that he found a loaded pistol under the vehicle on top of its spare tire. Defense counsel stipulated that Officer Bruno would so testify.

¶ 11 Ultimately, the trial court accepted defendant's plea, finding it to be knowingly and voluntarily made and to have a factual basis. The trial court then sentenced defendant to eight years in prison.

¶ 12 Defendant later filed a *pro se* motion to withdraw his plea, arguing that "I do not believe there was any factual basis to support my guilty plea; the facts in the case do[] not support my guilt." He also claimed that he "was not mentally competent to enter a guilty plea" because he had learned that his father had been shot to death.

¶ 13 Post-plea, the same assistant public defender appeared for defendant. In October 2013, counsel told the court that she "had an opportunity to go over quite a bit of information with" defendant but was awaiting more information from him and wanted to continue the case. In November 2013, counsel informed the court that she had been trying to contact members of defendant's family "to give me the necessary information I needed to support his basis for" withdrawing his plea, but none of the telephone numbers she tried were valid.

¶ 14 On February 6, 2014, counsel informed the trial court that defendant planned to add a claim of ineffective assistance of counsel to his *pro se* motion to withdraw the plea. Defendant then filed a *pro se* amendment to the motion in open court stating:

"I am relying on facts that are not in the guilty plea records, which are conversations I have had with reliable sources outside of court pertaining to additional factual basis to support my defense. I was unaware of certain information regarding specific elements on

which the State had the burden of proving my guilt beyond a reasonable doubt. Therefore, I wish to withdraw my plea of guilty and vacate the judgment."

The court stated that it would hold a *Krankel* hearing. When the court asked defendant who his "reliable sources outside of court" were, defendant replied "the law library and the clerk," explaining that he meant a clerk in prison. The court asked what the clerk told him, and defendant replied "[b]asically, the facts. I can't really explain the elements of obstructive [*sic*] possession due to the charges." The court then asked defendant to explain his complaint regarding counsel. Defendant initially replied that "I really don't have a complaint against the lawyer" but then stated that he did not recall counsel explaining constructive possession.

¶ 15 The court asked counsel to respond. Counsel stated that she explained to defendant that he was charged with the offense of armed habitual criminal and had two felonies supporting the charge. She filed a motion to quash but the court had concluded that the photographic evidence showed defendant holding a weapon. Counsel stated that if the case had gone to trial, the evidence would have shown that a gun was "found underneath a van that is owned and operated by" defendant. After Bruno testified to actual possession, defendant told counsel that he wanted to raise constructive possession as a defense. Counsel had explained to defendant that constructive possession is not a defense, and that the State would try to prove his guilt at trial based upon his ownership of the van and the photograph of him reaching under the van by the spare tire.

¶ 16 Defendant denied that counsel had explained constructive possession. Instead, he claimed, counsel only explained the elements of armed habitual criminal. He told the court that he wanted to raise constructive possession because the gun was not in his actual possession. The

court then noted there was photographic evidence of actual possession, namely the photograph of defendant reaching under the van with the gun in hand. The court found that counsel had explained the difference between actual and constructive possession. After determining that the constructive possession matter was defendant's only issue with counsel, the court ruled that counsel would continue representing defendant as "nothing indicates [counsel was] ineffective by any stretch of the imagination." Counsel agreed that she would file a certificate pursuant to Supreme Court Rule 604(d) (eff. Feb. 6, 2013), and the case was continued.

¶ 17 On that same day, counsel filed a Rule 604(b) certificate. The certificate stated that counsel consulted with defendant in person to ascertain his claim, reviewed the record including the transcribed plea proceedings, and "made such amendments to the motion as are necessary for an adequate presentation of any defect in those proceedings." The record does not include counsel's amended motion to withdraw plea.

¶ 18 At the March 2014 hearing on defendant's motions to withdraw the plea, defendant testified that he wanted to withdraw his plea because of further information from outside the record, but that he could no longer recall this information. After refreshing his recollection with his *pro se* addendum, defendant said that he was "unaware" that the State had to prove his knowledge, and immediate and exclusive control, of the weapon. During cross-examination, defendant admitted that counsel discussed the charges with him before he pled and that the court read the charge to him before he pled. He also attended the hearing on the motion to quash and heard the State's evidence against him. When shown the photographs, defendant denied that they depicted him, but admitted that he was present. Defendant was asked if he understood that constructive possession is not a defense, and he testified that a person who does not have actual possession of contraband can still be accountable for it if he had knowledge of it and immediate

and exclusive control of it. The court asked defendant what his additional evidence was, and he replied "we just went over it." Defendant clarified that he meant his "understanding of the law."

¶ 19 The court asked defendant about his initial claim that he was not mentally competent to enter a plea because he had learned of his father's death. Defendant replied that a cousin told him that she had heard that his father had been killed, but now "they're saying that he might not have been dead." However, defendant did not know whether his father was dead because he had no contact with his father.

¶ 20 The trial court denied the defendant's motion to withdraw his plea, noting that such a motion is granted only to correct manifest injustice. The court concluded that counsel had advised defendant and that it had fully admonished defendant before the plea, so nothing established that defendant was unaware of the charges or facts to which he was pleading. The court also found that the photographic evidence belied defendant's assertion that he was not depicted handling the gun. This appeal followed.

¶ 21 Initially, we note that the record on appeal does not include the photographs that the trial court relied upon in denying the motions to quash and to withdraw the plea. As appellant, defendant is obligated to provide this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *People v. Carter*, 2015 IL 117709, ¶ 19. Where the record is incomplete, the reviewing court must presume the trial court's orders conformed to the law and had a sufficient factual basis. *Id.* Conversely, our review is not precluded where the record on appeal contains all the evidence needed to dispose of the legal issues raised under the applicable standard of review; that is, where we are in the same position as the trial court. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007).

¶ 22 On appeal, defendant contends that because trial counsel was appointed as post-plea counsel, she labored under a conflict of interest. He concludes that the cause must be remanded so that his post-plea claims can be presented by conflict-free counsel. He acknowledges that the trial court inquired into his *pro se* posttrial claims of ineffective assistance of counsel in accordance with *People v. Krankel*, 102 Ill. 2d 181 (1984), but contends that the inquiry was insufficient.

¶ 23 Pursuant to *Krankel* and its progeny, when a defendant makes a *pro se* posttrial allegation of ineffective assistance of counsel, the trial court must conduct an adequate inquiry into the factual basis of the claim. *People v. Moore*, 207 Ill. 2d 68, 79 (2003). The court may conduct this preliminary inquiry by: (1) questioning trial counsel about the facts and circumstances surrounding defendant's allegations; (2) requesting more specific information from defendant; or (3) relying on its own knowledge of defense counsel's performance at trial and the insufficiency of defendant's allegations on their face. *Moore*, 207 Ill. 2d at 78-79. If, following an inquiry, the court finds possible neglect of the case, new counsel should be appointed. However, if the court determines that the claim lacks merit or pertains solely to trial strategy it need not appoint counsel and may deny the defendant's motion. *Moore*, 207 Ill. 2d at 78. Whether the court properly conducted a preliminary *Krankel* inquiry is a legal question we review *de novo*. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 72. When a court holds a preliminary inquiry and determines the merits of *Krankel* claims, we will reverse only if that determination is manifestly erroneous. *Id.*

¶ 24 Although defendant contends that there was a conflict of interest in trial counsel representing him in post-plea proceedings, trial counsel may properly represent a defendant in post-plea proceedings unless the defendant claims that counsel was ineffective. In such a case,

the trial court conducts a *Krankel* inquiry to determine whether new counsel must be appointed. Here, the court conducted such an inquiry by questioning defendant and counsel, considering counsel's performance, and analyzing the sufficiency of defendant's claim. We find that the inquiry here was adequate. When given the opportunity to explain his "additional factual basis" claim, defendant explained that counsel had not explained actual and constructive possession to him, and that if he had been properly advised he would not have pled guilty. Rather, he would have forced the State to prove constructive possession. Thus, the trial court had sufficient information to evaluate the claim.

¶ 25 In the case at bar, we find no manifest error in the trial court's conclusion that new counsel was unnecessary. First, counsel told the court that she had in fact explained constructive possession to defendant after he sought to raise it as a defense. The court was entitled to credit counsel's account over that of defendant. Moreover, the court viewed the photographic evidence and found that it established defendant's knowledge and control of the firearm, if not his actual possession of it. Accordingly, such that he could not have been prejudiced by his professed unawareness of the difference between actual and constructive possession. In the absence of the photographs, we must presume that this conclusion was correct.

¶ 26 Accordingly, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.