

No. 1-14-3579

**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 ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 14471
	)	
DARELL DOSS,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Mason concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Conviction and sentence affirmed. The trial court did not abuse its discretion in imposing a 12-year sentence for defendant's armed habitual criminal conviction; defendant's post-conviction remarks did not require a *Krankel* inquiry by the court.

¶ 2 Following a bench trial, defendant was convicted as an armed habitual criminal. On appeal, defendant contends his sentence of 12 years for his third gun-possession conviction was excessive where his actions did not cause or threaten harm, and that his remarks following the sentencing hearing required the trial court to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm defendant's conviction and sentence.

¶ 3 Defendant was charged by information with one count of being an armed habitual criminal, two counts of unlawful use or possession of a weapon by a felon, six counts of aggravated unlawful use or possession of a weapon by a felon, and one count of defacing identification marks of firearms. The charges stemmed from defendant having been in possession of a loaded .32 caliber revolver. Defendant had been convicted twice previously of unlawful use or possession of a weapon by a felon. At trial, the State presented the testimony of two Chicago police officers.

¶ 4 Officer Brendan Roberts testified that on July 18, 2013, he and his partner, Officer McDonnell, were on duty in their unmarked squad car. Shortly after midnight, the officers were on 77th Street when they observed a purple Jeep on South Morgan Street, traveling northbound from 77th Street. The officers observed that a visor inside the Jeep was hanging down from the rear-view mirror, obstructing the driver's view. The officers activated their vehicle's lights and curbed the Jeep at about 7640 South Morgan. As the Jeep came to a stop, Roberts saw an individual, whom he identified at trial as defendant, exit the rear passenger seat. As defendant exited the Jeep, he began to run while holding the front side of his pants or pocket. Roberts left the squad car and pursued defendant on foot.

¶ 5 Initially, defendant ran north on Morgan. As defendant and Roberts approached the corner of Morgan and 76th Streets, about 15 feet from a streetlight, Roberts saw defendant pull what appeared to be a silver handgun from the right side of his body and toss it with his right hand. Roberts was about 15 to 20 feet behind defendant; his partner was following in the police vehicle. Roberts notified other police units by radio of the pursuit. Defendant turned east on 76th Street and eventually was detained about a block east of Morgan. Roberts placed handcuffs on defendant and then, accompanied by Officer McEnerney who had responded to the radio message, he returned to 7601 South Morgan where he had seen defendant throw the handgun. McEnerney recovered the gun, a .32 caliber silver revolver, from the front yard of an apartment building. The handgun was recovered "a few minutes" after Roberts saw defendant jettison it. Roberts did not see any civilians in the area of the chase or the place where defendant tossed the handgun. The location of the chase was a residential area.

¶ 6 Officer McEnerney testified that at about 12:21 a.m., he was on duty when he heard a radio dispatch of an officer calling for assistance in a pursuit. McEnerney encountered Officer Roberts and accompanied him to find the discarded handgun. The two officers went to 7601 South Morgan, the location of a residential building with a grassy front yard surrounded by a wrought iron fence. McEnerney observed and recovered from the yard a .32 caliber revolver and determined that its cylinder was loaded with three live rounds and three spent casings. McEnerney took the gun to the police station and inventoried it.

¶ 7 After offering in evidence certified copies of conviction for defendant's two prior convictions for unlawful use of a weapon by a felon, together with a certified letter from the

Illinois State Police that defendant had not been issued a firearm owner's identification (FOID), the State rested. Defense counsel moved for a finding of not guilty, which was denied, after which the defense rested.

¶ 8 Defense counsel's closing argument included the contention that the State had presented no evidence corroborating the testimony of the officers. Counsel argued: "They could have printed the gun and found whether [defendant's] fingerprints were on the gun. They chose not to do it and it's their burden." The court found defendant guilty of being an armed habitual criminal but not guilty of defacing identification marks, and ruled that all remaining counts merged into the armed habitual criminal count.

¶ 9 At a subsequent court date, defendant's written motion for new trial was denied, and the court proceeded to a sentencing hearing. A presentence investigation (PSI) report was filed which showed that in January 2009, defendant was sentenced to one year probation for possession of a controlled substance. Following a violation of probation, he was resentenced on the drug charge on August 14, 2009, to three years in prison, concurrent with a three-year prison term for unlawful use of a weapon by a felon. In 2011, defendant was sentenced to five years in prison on a second conviction for unlawful use of a weapon by a felon. In mitigation, defense counsel submitted letters from defendant's fiancé and from his employer requesting leniency. Counsel also argued that defendant, who was 26 years old, "still has a lot of life to go."

¶ 10 The court observed: "Apparently, he didn't learn anything whatsoever by doing time. He's done time twice before. He likes to carry guns." The court imposed a sentence of 12 years in prison, three years of mandatory supervised release, and 440 days credit for time served. After

imposition of sentence, defendant's counsel stated: "I have a motion [to] reconsider sentence. No oral argument." There was no objection by the State to the absence of a written motion.

However, the court did not rule on the motion.

¶ 11 After the court imposed sentence, defense counsel informed the court that defendant had presented to him a written motion challenging the constitutionality of the armed habitual criminal act. Counsel stated he had reviewed the motion and would not file it over his own name but that defendant wished to file it. The court informed defendant, "I will take a look at it if you want" and stated that it "would consider it more of a *Krankel* hearing." The court asked defendant to present his argument as to why the statute was unconstitutional. Defendant replied, "I was asking my attorney to do it for me. I don't know nothing about law." The court read the motion and asked defendant if he wanted to add to it. Defendant stated that he had some more paperwork in the bullpen. Defendant was allowed to go to the courtroom lockup. When he returned, he stated, "I've been asking for \*\*\* fingerprints and everything for that gun. I'm doing 12 years for something I didn't even have --" Defendant tendered to the court an article from *Criminal Lawyer* magazine entitled "Illinois Supreme Court Rules Aggravated UUU Unconstitutional."<sup>1</sup> The court explained to defendant that the article concerned the opinion in *People v. Aguilar*, 2013 IL 112116, which did not apply to defendant's case. The court denied defendant's written motion challenging the constitutionality of the armed habitual criminal act and stated that counsel was not ineffective for not filing it because the motion had no basis. The court asked defendant if there was anything else he wanted to say. Defendant again stated: "Your

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<sup>1</sup> Neither defendant's *pro se* motion nor the magazine article has been included in the record on appeal.

Honor, I've been asking for fingerprints and everything about that gun. I'm sitting up here 12 years for something I didn't even have --" The court replied that defendant had a right to appeal and repeated that defense counsel was not ineffective where the motion had no basis.

¶ 12 On appeal, defendant first contends that where his actions did not cause or threaten serious harm and he has strong rehabilitative potential, the trial court abused its discretion in imposing a prison sentence twice the length of the minimum sentence for the offense of armed habitual offender.

¶ 13 When imposing a sentence, the trial court has broad discretionary powers, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A court of review may not alter a defendant's sentence absent an abuse of discretion by the trial court. *Id.* We defer to the trial court's judgment on sentencing because the trial court, having observed the defendant and the proceedings, has a far better opportunity to consider sentencing factors than the reviewing court. *Id.* 212-13. The trial court is better suited to balance the need to protect society against the rehabilitative potential of the defendant. *People v. Sharp*, 2015 IL App (1<sup>st</sup>) 130438, ¶ 133. Where a sentence imposed is within the statutory range, this court may find an abuse of discretion only when the sentence is "greatly at variance with the purpose and spirit of the law." *People v. Sharp*, 2015 IL App (1<sup>st</sup>) 130438, ¶ 134 (quoting *People v. Center*, 198 Ill. App. 3d 1025, 1032 (1990)).

¶ 14 Defendant was sentenced to 12 years in prison under the armed habitual criminal statute, a Class X felony (720 ILCS 5/24-1.7(b) (West 2012)) for which the sentencing range is 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2012)). Defendant contends that a sentence more

than the 6-year minimum was excessive because he "did not harm anyone or even threaten to harm anyone."

¶ 15 Defendant concedes he has forfeited this issue by failing to raise it in a postsentencing motion (see *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); 730 ILCS 5/5-4.5-50(d) (West 2012)), but he asks this court to review it as plain error or, alternatively, to find his trial counsel ineffective for failing to preserve it. In the context of a sentencing hearing, we will review an error that is not properly preserved as plain error where the evidence is closely balanced or the error is so fundamental that it may have deprived defendant of a fair sentencing hearing. *People v. Thomas*, 178 Ill. 2d 215, 251 (1997). The first step in plain-error review is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Accordingly, we first determine whether any error occurred in the court's pronouncement of sentence.

¶ 16 Defendant does not contest that the 12-year sentence imposed was within the statutory range for the offense. In fact, the sentence is much closer to the 6-year minimum than the 30-year maximum that the trial court could have imposed. Although a trial court is required in imposing a sentence to consider the defendant's potential for rehabilitation, the court is not required to give greater weight to this factor than to the seriousness of the offense. *People v. McGee*, 222 Ill. App. 3d 92, 98 (1991). Here, the trial court considered that defendant had been given several opportunities at rehabilitation and failed to take advantage of them. As the court observed, over a course of five years defendant was convicted of arming himself with a firearm on three separate occasions despite having a prior felony conviction. In August 2009, defendant was sentenced to concurrent three-year prison terms for possession of a controlled substance and

unlawful use of a weapon by a felon. In 2011 he was sentenced to five years in prison on a second conviction for unlawful use of a weapon by a felon. The instant weapons charge occurred in 2013. The close proximity of defendant's convictions shows that he would re-arm himself with a dangerous weapon on each occasion when he was released from prison. The facts of the instant case indicate defendant ran through a residential neighborhood holding and then tossing a loaded firearm, with a police officer in close pursuit. The trial court was better suited to balance the need to protect society against the rehabilitative potential of the defendant. *People v. Sharp*, 2015 IL App (1<sup>st</sup>) 130438, ¶ 133. We conclude that the trial court did not abuse its discretion in imposing a sentence of 12 years in prison, given the factual context of the offense and defendant's repeated insistence of illegally arming himself with a dangerous weapon.

¶ 16 As we find that no error occurred in imposing sentence on defendant, we need not consider his contention under plain-error analysis (*People v. Willhite*, 399 Ill. App. 3d 1191, 1197 (2010)), nor need we consider defendant's claim that his counsel was ineffective (*People v. Toney*, 2011 IL App (1st) 090933, ¶ 30).

¶ 17 Defendant's second claim of error is that the trial court failed to conduct a *Krankel* inquiry to examine the factual basis of defendant's *pro se* posttrial claim that his trial counsel was ineffective. After the court imposed sentence, defendant raised two claims *pro se*. First, in a *pro se* written motion, he challenged the constitutionality of the armed habitual criminal act; the trial court rejected defendant's claim. On appeal, defendant is now challenging only the second claim, relating to fingerprint evidence involving the recovered .32 caliber firearm.



¶ 18 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should conduct an adequate preliminary inquiry (what has come to be known as a "Krankel inquiry") to determine the factual basis for defendant's claim. *Krankel*, 102 Ill. 2d at 189; *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If after the trial court's inquiry it determines defense counsel's possible neglect of the case, it should appoint new counsel. *Giles*, 261 Ill. App. 3d at 847. However, if the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then new counsel need not be appointed and the *pro se* motion may be denied. *People v. Bull*, 185 Ill. 2d 179, 210 (1998). "[T]he operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the *pro se* defendant's allegations of ineffective assistance of counsel." *People v. Johnson*, 159 Ill. 2d 97, 125 (1994). Where there was neither an explicit nor an implicit claim of ineffectiveness of counsel, no *Krankel* inquiry was required. *People v. Taylor*, 237 Ill. 2d 68, 77 (2010). Whether the trial court properly conducted a preliminary *Krankel* inquiry is a legal question that we review *de novo*. *People v. Jolly*, 2014 IL 117142, ¶ 28.

¶ 19 At the close of the sentencing hearing, defendant stated: "I've been asking for fingerprints and everything about that gun. I'm sitting up here 12 years for something I didn't even have --" On appeal, defendant contends this statement constituted a claim that his counsel should have investigated fingerprint evidence on the recovered firearm and that the trial court should have conducted a *Krankel* inquiry on his claim. We disagree. The statement was no more than defendant's dissatisfaction with the outcome of his trial and at most raised a claim of

insufficiency of the evidence, not an allegation of ineffective assistance of counsel so as to warrant an inquiry by the court.

¶ 20 Defendant asserts, however, that the trial court "stifled" his efforts to explain the claim relating to fingerprint evidence by repeatedly interrupting him. Even assuming, *arguendo*, that defendant's statement was actually a claim of ineffective assistance of trial counsel, *i.e.*, that his counsel should have investigated fingerprint evidence on the firearm the police recovered, a *Krankel* inquiry was not required. At trial, defense counsel used the lack of fingerprint evidence to argue that there was no physical evidence connecting defendant to the gun. Defendant's claim relating to fingerprint evidence addressed a matter of trial strategy. The decision as to what evidence to present is generally an unassailable matter of trial strategy which cannot support a claim of ineffective assistance of counsel. *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007). Where defendant raises such a claim, the trial court may dismiss it without further inquiry. *Id.* We conclude that the trial court was not required to conduct a *Krankel* inquiry based on defendant's statement about fingerprints.

¶ 21 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.