

No. 1-15-1731

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. 08 CR 5787
)	
ANTONIO ELLIS,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Where defense counsel did not file a Supreme Court Rule 604(d) certificate, the trial court's order denying defendant's motion to vacate his guilty plea or reconsider sentence is reversed and the cause is remanded for compliance with Illinois Supreme Court Rule 604(d).

¶ 2 Pursuant to a negotiated plea agreement, defendant Antonio Ellis pleaded guilty to aggravated battery with a firearm and was sentenced to 23 years in prison. On appeal, defendant contends that because defense counsel did not file a Supreme Court Rule 604(d) certificate, the cause must be remanded to the circuit court to allow him to file a new motion to withdraw his

guilty plea. Defendant further contends that on remand, the trial court must conduct a *Krankel* inquiry into his postplea *pro se* claim of ineffectiveness of counsel.

¶ 3 For the reasons that follow, we reverse and remand.

¶ 4 Defendant's conviction arose from the shooting of Leonard Johnson on January 9, 2008. Following arrest, defendant was charged with four counts of attempted first degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm.

¶ 5 On February 9, 2011, defendant pleaded guilty to aggravated battery with a firearm in exchange for a negotiated sentence of 23 years in prison. During the hearing on the plea, the trial court read the charge, explained that the sentencing range was 6 to 30 years, and advised defendant that he was giving up his rights to trial, to plead not guilty, to confront witnesses against him, and to present evidence and testify on his own behalf or remain silent. The court stated that it would sentence defendant to a term of 23 years' imprisonment, of which he would be required to serve 85 percent, and a three-year term of mandatory supervised release. Defendant indicated that he understood, that he was pleading guilty of his own free will, and that no one had threatened him or promised him anything, other than what was discussed in open court during the plea proceedings.

¶ 6 As a factual basis for the plea, the prosecutor related that on the day in question, defendant was in a vehicle with an "uncharged associate" when they saw the victim, pulled out handguns, and fired at the victim. The victim, who recognized defendant from the neighborhood, attempted to run away but was shot several times. As a result of his gunshot injuries, the victim was rendered a quadriplegic and was permanently paralyzed from the waist down. Defendant later participated in a scheme to bribe the victim to change his identification testimony. Defendant also admitted to a third party that he shot the victim because the victim had previously shot at him.

¶ 7 The trial court accepted defendant's plea, finding that it was made freely and voluntarily and that a factual basis for the plea existed. The court continued the case for sentencing. In doing so, the court indicated that it would "abide by the sentence that I said I would give you," but commented that "for some reason both sides -- your lawyer and the State want this matter continued until February 22, 2011. I think your lawyer wants to make sure you get a number of proper days credit. He wants to figure out all of that in the meantime."

¶ 8 On February 22, 2011, defense counsel informed the court that over the weekend, he received a letter from defendant stating that he wished to vacate the plea based on "time" and his mental state. Defendant interjected, "I wasn't in my right state of mind," and "I was going through a lot of stuff." The trial court stated that defendant had been admonished, there had been a guilty plea conference, counsel had been given time to talk with defendant, and defendant had accepted the offer made to him. Therefore, the court denied the motion to vacate the guilty plea. The trial court thereafter heard arguments in aggravation and mitigation and sentenced defendant to 23 years' imprisonment. After the court admonished defendant that he had 30 days to file a motion to withdraw his plea, defense counsel stated that he was making an oral motion to reduce sentence and would "follow it up in writing."

¶ 9 On March 8, 2011, counsel filed a written motion to vacate the guilty plea or reconsider sentence. The motion stated that when defendant entered his plea, he was under immense emotional and psychological duress, and asserted that the sentence was unduly harsh and failed to take into consideration factors in mitigation and evidence of provocation in the incident.

¶ 10 On March 18, 2011, the trial court held a hearing on the motion. At the hearing, counsel argued that defendant was "under a lot of mental duress and wasn't thinking clearly" when he

pleaded guilty, and that the trial court did not accurately consider all the factors in mitigation, especially evidence of provocation. Counsel stated, "And, Judge, under the circumstances, I think it's [defendant's] belief that given his limited, or at least scant, any history of any violent offenses, Judge, 23 years at 85 percent is essentially 20 years, your Honor, and he is asking the Court, he is pleading with the court, your Honor, if it would consider reducing the sentence between the range of 15 and 18." Defendant's sister testified that defendant was not a violent person and would never intentionally hurt anyone, and asked the trial court for leniency.

¶ 11 After the trial court reviewed the transcript of the guilty plea hearing, defendant asked to speak and made the following statement:

"Well, you Honor, my lawyer came back and talked to me, you know, what he was telling me that it was 20 years.

I misunderstood that it was 23 years, your Honor, that is what I was going to ask you, to reduce it.

To my knowledge it was going to be 20 years, not 23."

The prosecutor responded to defendant's statement, asserting that defendant was fully aware that his agreed-upon sentence was 23 years, but that he had just changed his mind. The trial court denied defendant's motion to vacate the plea or reconsider sentence, making the following statement:

"I am not coming off of anything that I did not agree upon, that I explained to you and you explained to him, and he was also told in open court and had no problem with it.

So now, coming back, thinking about it, he thinks it's too much time.

Well, you know what, don't do the crime if you can't do the time.

Based on all the evidence, I am not going to vacate the 23 years, that stands at 85 percent."

¶ 12 Defendant's late notice of appeal was allowed on June 23, 2015.

¶ 13 On appeal, defendant first contends that where his attorney did not file a Supreme Court Rule 604(d) certificate, the cause must be remanded to the circuit court to allow him to file a new motion to withdraw his guilty plea. The State agrees that because there is no evidence in the record that defense counsel filed a Rule 604(d) certificate, remand is required.

¶ 14 Appeals from convictions entered on guilty pleas are governed by Rule 604(d). 210 Ill. 2d R. 604(d) (eff. July 1, 2006). Under this rule, the defendant must file an appropriate postplea motion and the attorney representing the defendant in connection with the motion must file a certificate stating that he or she:

"has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." 210 Ill. 2d R. 604(d) (eff. July 1, 2006).

¶ 15 Attorneys must strictly comply with Rule 604(d)'s certificate requirement. *People v. Janes*, 158 Ill. 2d 27, 35 (1994). When defense counsel fails to file a Rule 604(d) certificate, the appropriate remedy is remand for (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522,

531 (2011). We review *de novo* the trial court's compliance with supreme court rules. *People v. Breedlove*, 213 Ill. 2d 509, 512 (2004).

¶ 16 We agree with the parties that there is no evidence in the record of a Rule 604(d) certificate. Without strict compliance with Rule 604(d), this case must be remanded. *Janes*, 158 Ill. 2d at 33. Accordingly, we reverse the trial court's denial of defendant's motion to vacate the plea or reconsider sentence and remand to the trial court for (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing. *Lindsay*, 239 Ill. 2d at 531.

¶ 17 Defendant's second contention on appeal is that the trial court failed to conduct an adequate inquiry into his *pro se* claim of ineffective assistance of counsel, *i.e.*, his oral assertion at the hearing on the motion to vacate the guilty plea or reconsider sentence that defense counsel advised him he would be given a 20-year sentence, as opposed to a 23-year sentence. Defendant asserts that due to the trial court's failure, the cause must be remanded for further proceedings consistent with *People v. Krankel*, 102 Ill. 2d 181 (1984). The State responds that because defendant is being afforded the opportunity to file a new postplea motion and receive a corresponding hearing on that motion, the *Krankel* claim is premature and need not be considered by this court. In his reply brief, defendant asserts that whether a *Krankel* inquiry needs to be conducted on remand will depend on whether he is appointed new counsel; he maintains that if he is represented by the same attorney who represented him at his plea and at the hearing on his original postplea motion, then a *Krankel* inquiry will be necessary because the attorney would be proceeding under a conflict of interest if he had to justify actions that were contrary to his client's position.

¶ 18 In *Krankel*, our supreme court held that when a defendant sets forth a colorable *pro se* claim of ineffective assistance of counsel, new counsel should be appointed before a hearing is conducted on that claim. *Krankel*, 102 Ill. 2d at 189. However, our supreme court later clarified in *People v. Moore*, 207 Ill. 2d 68, 77 (2003), that new counsel is not automatically required. Rather, the trial court must first conduct an adequate inquiry into the factual basis of the claim. *Id.* at 77-78. If inquiry into the defendant's allegations shows possible neglect of the case, then the court should appoint new counsel to argue the claim of ineffective assistance. *Id.* at 78. However, if the court concludes that the defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim without appointing new counsel. *Id.* A trial court may conduct its evaluation in three ways: (1) the court may ask trial counsel about the facts and circumstances related to the defendant's allegations; (2) the court may ask the defendant for more specific information; or (3) the court may rely on its knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face." *Id.* at 78-79. Whether a defendant's posttrial claim of ineffective assistance of trial counsel triggers a *Krankel* inquiry is a question of law that we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 19 Here, the trial court relied on its recollection of the plea hearing and found defendant's allegation insufficient on its face. The record supports the trial court's conclusion. At the initial plea hearing, the trial court advised defendant that in exchange for his plea, he would be sentenced to a term of 23 years' imprisonment, of which he would be required to serve 85 percent. When the court asked defendant if he understood, defendant answered that he did. At the conclusion of the hearing, the court indicated that the matter would be continued for sentencing, but that it would "abide by the sentence that I said I would give you." Then, at sentencing, the trial court imposed a

23-year sentence. When defendant later alleged that counsel had told him his sentence would be 20 years, the trial court rejected that argument, finding that the 23-year sentence was explained to defendant in open court and he "had no problem with it."

¶ 20 In our view, the trial court's consideration of defendant's *pro se* allegation of ineffectiveness was adequate. Because the specific allegation raised by defendant was rebutted by the record, further questioning of defendant and defense counsel was unnecessary. Accordingly, we find no cause for a remand for further *Krankel* inquiry. See *People v. Ford*, 368 Ill. App. 3d 271, 276 (2006); *People v. Milton*, 354 Ill. App. 3d 283, 293 (2004).

¶ 21 For the reasons explained above, we reverse the trial court's order denying defendant's postplea motion and remand the case for compliance with Rule 604(d).

¶ 22 Reversed and remanded with directions.