2014 IL App (1st) 160021-U

THIRD DIVISION
June 15, 2016

No. 1-16-0021

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re GIOVANNIE R., a Minor.	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 15 JD 3431
	)	
v.	)	
	)	
GIOVANNIE R.,	)	The Honorable
	)	Stuart F. Lubin,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment

ORDER

¶ 1 In this direct appeal, respondent Giovannie R. argues the trial court should have conducted a posttrial inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984), as to the competence of his defense counsel. Under *Krankel* and its progeny, if a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel that shows possible neglect of the case, a trial court must appoint new counsel for independent review of the claim in order to avoid a

conflict of interest. *Id*. at 189; *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). For the reasons stated below, *Krankel* is inapplicable, and we affirm.

¶ 2 NATURE OF THE CASE

¶ 3 Respondent, then age 16, was arrested and charged with aggravated unlawful use of a weapon and unlawful possession of a firearm. At a hearing on October 26, 2015, the State requested a finding of probable cause and "urgent and immediate necessity." The State noted respondent had been sentenced a month before to five years' probation for robbery and found guilty of possessing a stolen motor vehicle. The court granted the State's request that respondent be held in custody given that he was found with a loaded weapon, then concluded the case was of "urgent and immediate necessity," and ordered trial within 30 days on November 24.

¶ 4 The cause proceeded to a bench trial that day. Defense counsel asked if she could "preliminarily put on the record something about witnesses," but the court denied her request. Chicago police officer Matthew Scott then testified that he saw respondent among a group of males by an apartment building, but on seeing the unmarked police vehicle, respondent retreated to the nearby stairwell and removed a dark object, later discovered to be a black semiautomatic handgun, from his pants pocket and placed it behind a wall. Respondent had no valid Firearm Owners Identification (FOID) card. Respondent testified on his own behalf that he did not have a gun or retreat to the stairwell. Rather, police handcuffed the group of males together, went down to the stairwell basement area for 30 minutes, and returned with a gun, also announcing they would "pick" an offender since no one claimed the weapon. Respondent suggested they chose him because he was already on probation. The court found Officer Scott more credible and adjudicated respondent delinquent of the above-stated offenses.

¶ 5 In a written posttrial motion, filed by appointed counsel, respondent asked that the court reopen his case or grant a new trial because certain defense witnesses were not present at trial. In the motion, defense counsel stated she had already served four witnesses, but several days before trial, she also learned of two additional witnesses via discovery. Counsel opted not to request a continuance to personally serve the new witnesses because of those already subpoenaed. At trial, on November 24, however, none of the subpoenaed witnesses appeared. Counsel stated she did not have sufficient time to draft a written continuance due to the court call and its "policy of not allowing cases to be passed except in very rare circumstances," and even when witnesses did not show. Counsel nonetheless attempted to make an oral record regarding the witnesses and request for a continuance, but the court denied her the opportunity. She alleged in the posttrial motion that the six potential defense witnesses would have corroborated defendant's testimony.

¶ 6 The trial court denied the posttrial motion and sentenced respondent to 18 months' probation. This appeal followed.

¶ 7 ANALYSIS

¶ 8 Respondent contends the trial court erred by failing to *sua sponte* conduct a *Krankel* inquiry regarding his trial attorney's alleged ineffective assistance of counsel. Respondent contends trial counsel essentially admitted her own ineffectiveness in the posttrial motion and, in support, points to her stated failure to draft a continuance on the trial date so as to secure defense witnesses. Respondent asks that we remand his case for a *Krankel* inquiry.

¶ 9 The State counters that respondent never made a *pro se* allegation of ineffective assistance of counsel and therefore *Krankel* is inapplicable. Based on recent supreme court case law and the facts of this case, we agree.

¶ 10 In *People v. Taylor*, 237 Ill. 2d 68, 76 (2010), the defendant contended on appeal that he was entitled to a *Krankel* inquiry regarding whether his attorney was ineffective. The supreme court held the defendant's statements at sentencing were insufficient to trigger the trial court's duty to conduct a *Krankel* inquiry because the defendant did not specifically complain about his attorney's performance or expressly claim ineffective assistance of counsel. Here, respondent made no claim *at all* of ineffective assistance, and thus, under *Taylor* the court had no duty to conduct an inquiry. *Id*. at 76; see also *People v. Gillespie*, 276 Ill. App. 3d 495, 501 (1995) (nothing in *Krankel* suggests that if the issue is not raised before the trial court a duty should be placed on the trial court to raise the issue of ineffectiveness of counsel *sua sponte*).

¶ 11 Respondent nonetheless contends his trial counsel essentially admitted she was ineffective in the posttrial motion. This claim is belied by the record. In her motion, counsel stated she attempted to request an oral continuance, but was denied the opportunity by the court. The report of proceedings corroborates this fact, as it shows she requested to make an on-the-record statement regarding the witnesses but the court denied her the opportunity. Given the rushed court call, which the record reveals, her actions were reasonable. To the extent she declined to obtain a continuance so as to serve subpoenas on the additional witnesses when she learned of them four days before trial, it was because she believed the already subpoenaed witnesses would appear, and this too was a reasonable matter of strategy. *Cf. Gillespie*, 276 Ill. App. 3d at 503 (matters of trial strategy do not establish incompetence, even if clearly wrong in retrospect). The posttrial motion, wherein she sought to reopen the case or a new trial, does not demonstrate counsel admitted ineffectiveness or that she was ineffective.

¶ 12 Moreover, the record demonstrates just the opposite is true. As stated, counsel interviewed and subpoenaed four witnesses before trial. At trial, she submitted photographic

exhibits of the scene, also effectively cross-examining the State's only witness. She argued on her client's behalf in opening and closing that the State could not prove its case beyond a reasonable doubt, where the lighting conditions would have precluded a clear view of the object in respondent's hand. She also attempted to inject doubt as to the officer's ability to identify respondent. At the close of the State's case, she requested a directed verdict. The record thus shows counsel appropriately advocated for respondent, negating any reason for the court to question her effectiveness. See *People v. Davis*, 337 Ill. App. 3d 977, 988 (2003) (trial court did not err in failing to inquire into the effectiveness of defense counsel where record did not show "clear basis" for an allegation of ineffectiveness).

¶ 13 Respondent relies on cases like *People v. Willis*, 2013 IL App (1st) 110233, ¶¶ 69, 73-74, where counsel alleged his own ineffectiveness in a posttrial motion, and *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992), where there was record evidence of counsel's possible ineffectiveness before the trial court, and argues that as in those cases the present matter must be remanded for a *Krankel* inquiry. Even assuming *Williams* is still viable and *Willis* was correctly decided, those cases are inapposite for the reasons already explained. Moreover, notably, respondent has not asserted a free-standing claim of ineffective assistance of counsel or a claim of plain error on appeal.

¶ 14 CONCLUSION

¶ 15 Based on the foregoing, we affirm the judgment of the circuit court. This order was entered in accordance with Supreme Court Rule 23(c)(2) (eff. July 1, 2011).

¶ 16 Affirmed.