2016 IL App (4th) 150805-U

NO. 4-15-0805

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 16, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
KATARIUS E. WOODLAND,	)	No. 12CF1546
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court conducted a proper inquiry into defendant's posttrial claims of ineffective assistance of counsel.

¶ 2 Following a January 2013 trial, a jury found defendant, Katarius E. Woodland, guilty of criminal sexual assault (720 ILCS 5/11-1.20 (West 2010)). In February 2013, defendant filed a *pro se* posttrial motion, raising claims of ineffective assistance of counsel. In March 2013, the trial court conducted a preliminary inquiry into defendant's claims as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. Based on that inquiry, the court found defendant's claims meritless and declined to appoint new counsel. The court later sentenced defendant to 12 years' imprisonment.

¶ 3 Defendant appealed, arguing the trial court failed to conduct a proper preliminary *Krankel* inquiry. We agreed, finding the court improperly invited equal adversarial participation by the State, and remanded for a new preliminary *Krankel* hearing. *People v. Woodland*, 2015 IL App (4th) 130267-U, ¶¶ 38, 40.

¶ 4 Following an August 2015 "pre-inquiry *Krankel* hearing," the trial court found defendant's allegations did not rise to the level of ineffective assistance as they related to matters of trial strategy. Defendant appeals, arguing the trial court failed to conduct a proper preliminary *Krankel* inquiry. We affirm.

¶ 5 I. BACKGROUND

¶ 6 Following a January 2013 trial, a jury found defendant guilty of criminal sexual assault (720 ILCS 5/11-1.20 (West 2010)). See *Woodland*, 2015 IL App (4th) 130267-U, ¶¶ 6-15 (setting out the evidence adduced at defendant's trial).

¶ 7 In February 2013, defendant filed a *pro se* posttrial motion for a new trial, alleging his public defender, Steve Langhoff, provided ineffective assistance. Defendant supplemented his motion by a handwritten letter asserting 13 claims of ineffective assistance. See *id*. ¶ 17 (listing defendant's claims).

¶ 8 In March 2013, the trial court held a preliminary *Krankel* hearing to investigate defendant's claims of ineffective assistance. Defendant appeared *pro se*. The court proceeded by going through each claim, allowing defendant an opportunity to explain or elaborate. The court periodically interjected and asked defendant for additional information. The court then asked the State and defense counsel for their positions. The State addressed eight of defendant's claims, arguing either they (1) were not supported by the record, (2) concerned matters of trial strategy,

or (3) were not supported by what the law requires of counsel. See *id*. ¶¶ 18-25, 38. Following its inquiry, the court found defendant's claims lacked merit and declined to appoint new counsel. The court later sentenced defendant to 12 years' imprisonment.

¶ 9 Defendant appealed, arguing the trial court failed to conduct a proper preliminary *Krankel* inquiry because the State's participation transformed the proceeding into an adversarial evidentiary hearing. We agreed, finding the court improperly invited equal adversarial participation by the State, and remanded the matter "for a new preliminary *Krankel* hearing before a different judge, without the State's adversarial participation." *Id*. ¶¶ 38, 40.

¶ 10 In February 2015, the trial court, with a different judge presiding, held a status hearing to schedule "a new pre-inquiry hearing." The court appointed an assistant public defender, David Ellison, to represent defendant. Langhoff was no longer practicing law due to health reasons.

¶ 11 Between March and July 2015, the trial court held multiple status hearings. Ellison continually appeared on behalf of defendant. Ellison, the State, and the court agreed a "pre-inquiry" *Krankel* hearing was required. The court indicated on multiple occasions the State would have limited control during the hearing and must refrain from taking an adversarial position.

¶ 12 In August 2015, the trial court held a "pre-inquiry *Krankel* hearing." Ellison appeared on behalf of defendant. Langhoff was present. The court noted the procedural history of defendant's case and this court's previous findings. It also noted, "[t]he law's pretty clear now that the State should not be allowed to participate." The court indicated it would consider, excluding the State's improper participation, the transcripts from defendant's first preliminary

Krankel hearing. As a matter of process, the court (1) read aloud each of defendant's allegations, (2) allowed defendant to elaborate, (3) reviewed defendant's prior comments, (4) read aloud Langhoff's prior statements, (5) allowed Langhoff to elaborate, and (6) allowed Ellison to add to defendant's claims. The court did not allow the State to participate in its investigation into the factual bases of defendant's claims.

¶ 13 The only examination necessary to review for the purpose of appeal relates to defendant's seventh allegation of ineffective assistance, which alleged: "Counsel was ineffective for his failure to show or bring me any evidence concerning videotape of the interview by detectives due to the fact that I was never told an age [and] thought she was under age." After reading the allegation aloud, the court allowed defendant, Langhoff, and Ellison to comment. Ellison asserted defendant's claim was based on Langhoff's failure to use the videotaped interview for impeachment when a detective testified, contrary to defendant's testimony, he did not suggest during the interview the victim was a minor. See *id.* ¶ 13 (defendant testified the detectives informed him the victim was a high school student). Langhoff explained he filed a motion *in limine* to avoid the introduction of the videotaped interview as it contained prejudicial other-crimes evidence.

¶ 14 Following its investigation into the factual bases of defendant's 13 claims, the trial court gave defendant, Langhoff, Ellison, and the State an opportunity to argue their respective positions, which defendant and Langhoff declined. Ellison requested, given the claims presented, the matter be advanced in the *Krankel* process. Prior to allowing the State to respond, the court noted, "I did not allow you to respond factually, but I'll certainly allow you to make an

argument *** in terms of what you think I should do at this time." The State responded as follows:

> "I don't think that the defendant—that anything's risen to the level that this should go forward any more. While I under—think I understand what [defendant] is saying, and admittedly, since I wasn't an active participant, maybe I'm confused didn't hear correctly, but the issue of whether or not this defendant had requested a bench trial was taken up before. Taking out the State's participation *** that was answered prior to any health issue that Mr. Langhoff had. Uh—Mr. Langhoff, and I will say for the record, obviously, I wasn't the attorney nor was I in Macon County. However, I have been in this county now almost a year, and it is definitely my understanding from *** speaking to other attorneys that Mr. Langhoff is an experienced attorney. He *** this wasn't his first rodeo so-to-speak. Uh—so, certainly, we're not talking about a brand new attorney who came in and didn't understand bench trial and didn't listen to his client, and when he was asked by—or when this was addressed before, he stated that he had no recollection of that.
>
> Um—this is an experienced court as well.
>
> That's buyer's remorse, and now, the defendant wants to put this on his attorney. Uh—he certainly doesn't get an additional

benefit because his attorneys had a health issue. That allegation's been answered before. In fact, all of 'em were, and none of them rose to the level that this should go any further.

He was represented by competent, experienced counsel and is unhappy with the results of his trial and is now attempting to blame someone else.

I'd ask that you deny defense motion."

¶ 15 After "consider[ing] the factual *** allegations of *** defendant and the responses of Mr. Ellison and Mr. Langhoff," the trial court concluded defendant's allegations did not rise to the level of ineffective assistance. Specifically, the court found defendant's allegations related to matters of trial strategy. The court further noted,

"I know Mr. Langhoff to be very competent counsel, and I think in terms of this case, and I know Judge Coryell commented on this before, that it simply came down to a determination in the jury's eyes of credibility of the witnesses, and again, I wasn't there *** but apparently the jury believed *** the alleged victim."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant asserts the trial court failed to conduct a proper preliminary *Krankel* inquiry. Specifically, defendant asserts the court (1) improperly allowed the State to argue against his claims, and (2) applied an erroneous legal standard in assessing his claims. Defendant contends these improprieties require either a remand for a new hearing or, because at

least one of his claims shows possible neglect, the appointment of new counsel to fully investigate his claims.

¶ 19 The State contends defendant's arguments are meritless as the matter was before the trial court for an evidentiary hearing, where defendant was represented by new counsel. In response, defendant contends, given (1) our remand order, (2) the manner in which the trial court conducted the hearing, and (3) the extent of Ellison's representation, we should consider his claims in the context of a preliminary *Krankel* inquiry.

¶ 20 Under *Krankel* and its progeny, when a defendant files a colorable *pro se* posttrial motion alleging claims of ineffective assistance, the trial court must conduct an inquiry into the defendant's claims to determine whether new counsel should be appointed to assist the defendant in presenting his claims. See *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049; *People v. Johnson*, 159 Ill. 2d 97, 126, 636 N.E.2d 485, 498 (1994); *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). An inquiry involves the court (1) understanding the defendant's claims, and (2) evaluating them for potential merit. *People v. Mays*, 2012 IL App (4th) 090840, ¶ 58, 980 N.E.2d 166. "[T]he goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claims of ineffective assistance of trial counsel and thereby potentially limit issues on appeal." *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127.

¶ 21 To understand the factual bases of the defendant's claims, the trial court may question trial counsel and the defendant. *Mays*, 2012 IL App (4th) 090840, ¶ 57, 980 N.E.2d 166. In fact, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is *** usually necessary."

Moore, 207 Ill. 2d at 78, 797 N.E.2d at 638. The State's participation in the court's investigation, if any, should be nonadversarial and *de minimis*. *Jolly*, 2014 IL 117142, ¶ 38, 25 N.E.3d 1127.

¶ 22 After an adequate inquiry into the factual bases of the defendant's claims, the trial must determine whether there was a "possible neglect of the case." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637. In making such a determination, the court may rely on the allegations and responses of trial counsel and the defendant, its knowledge of trial counsel's performance at trial, or on its own legal knowledge of what does and does not constitute ineffective assistance. *Mays*, 2012 IL App (4th) 090840, ¶ 57, 980 N.E.2d 166. If the court finds possible neglect, it should appoint new counsel to independently investigate and represent the defendant at a separate hearing. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. If, on the other hand, the court determines the claims "lack[ ] merit or pertain[ ] only to matters of trial strategy," the court may deny the motion without appointing new counsel. *Id.* at 77-78, 797 N.E.2d at 637.

¶ 23 Defendant asserts the trial court conducted an improper preliminary *Krankel* inquiry because the trial court allowed the State to argue against his claims, which influenced the court's assessment. Defendant cites the court's comment regarding Langhoff's competence as support of his claim the court was influenced by the State's improper argument. In response, the State asserts any participation was *de minimis* and the court's comment regarding Langhoff's competence was based on its own experience. Whether the trial court conducted a proper *Krankel* inquiry is reviewed *de novo*. *Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 24 The procedure used by the trial court was confusing. The fact Mr. Langhoff was no longer practicing law was irrelevant. He was obviously available since he was present at the "pre-inquiry" hearing. New trial counsel should not have been appointed. Once appointed, trial

counsel asserted the matter was now ready for a full evidentiary hearing under *Krankel*, but the trial court contradicted the assertion and stated it was still a "pre-inquiry" hearing. The trial court then reminded the State it would not be able to participate, but at the close of the "pre-inquiry" hearing, the trial court asked the State to make an argument "as to what you think I should do at this time." That is participation by the State.

¶ 25 However, we find the trial court conducted a thorough investigation into the factual bases of defendant's claims. Following its investigation, the court then inexplicably allowed the State to give a brief summary argument. In reaching its decision, the court indicated it considered only defendant's factual allegations and the responses of Ellison and Langhoff. We find the State's participation was less than *de minimis*—it did not occur until after the court inquired into the factual bases of defendant's claims, and had no substance. With respect to defendant's suggestion the court was influenced by the State's "argument" regarding Langhoff's reputation, we agree with the State the court's commentary was based on its own experience—"I know Mr. Langhoff to be very competent counsel." We also note a trial court may not rely on trial counsel's performance in unrelated matters in evaluating a posttrial ineffective-assistance-of-counsel claim (see *Mays*, 2012 IL App (4th) 090840, ¶ 57, 980 N.E.2d 166); however, our review indicates the court's uncalled-for commentary was not a basis for its decision.

¶ 26 Defendant further asserts the trial court evaluated his claims based on an erroneous legal standard. Specifically, defendant asserts the trial court improperly considered whether Langhoff was ineffective rather than whether his claims demonstrated possible neglect. In response, the State asserts, although the court used terminology from *Strickland v. Washington*, 466 U.S. 668 (1983), it does not negate the fact defendant's allegations failed to

demonstrate possible neglect. Whether the trial court evaluated defendant's claims under the correct legal standard is a question of law, which we review *de novo*. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 47, 994 N.E.2d 138.

¶ 27 In *People v. Chapman*, 194 Ill. 2d 186, 229, 743 N.E.2d 48, 74 (2000), the defendant asserted the trial court erroneously evaluated his posttrial ineffective-assistance-of-counsel claims under the *Strickland* prejudice prong. After determining the trial court adequately inquired into the defendant's allegations of ineffective assistance, the supreme court rejected the defendant's argument, finding "[t]he fact that during this inquiry the trial court also referenced the *Strickland* prejudice prong does not affect the fact that the matters about which defendant complains lack merit and involve a question of trial strategy." *Id.* at 231, 743 N.E.2d at 75. While the trial court concluded defendant's claims failed to demonstrate he was provided ineffective assistance, such a conclusion was based on its finding defendant's claims related to matters of trial strategy. Claims pertaining to matters of trial strategy may properly be disposed of without an evidentiary hearing. See *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637 ("If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion.").

¶ 28 As a final matter, we reject defendant's suggestion Langhoff's failure to introduce a videotaped interview to dampen the attack on his credibility demonstrates possible neglect. Langhoff's decision to avoid introducing a videotape containing prejudicial other-crimes evidence for the purpose of impeachment was a matter of sound trial strategy. Defendant suggests the participants' mistaken belief that at the preliminary *Krankel* hearing that part of the

videotape was shown to the jury should impact our analysis, but it is clear they understood the part serving as the basis for defendant's claim was not shown.

¶ 29 III. CONCLUSION

¶ 30 We affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 31 Affirmed.