

NOTICE

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2016 IL App (4th) 160183-U

NO. 4-16-0183

FILED

October 18, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
TAVARIS HUNT,)	No. 12CF1868
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court remanded the cause with directions for the trial court to conduct an examination under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984).

¶ 2 In December 2012, defendant, Tavaris Hunt, pleaded guilty to the offense of aggravated domestic battery and was sentenced to probation. In January 2014, the State filed a petition to revoke defendant’s probation, which the trial court granted in February 2014. In March 2014, the court resentenced defendant to seven years in prison. On direct appeal, this court remanded the cause for the trial court to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). In February 2016, defendant filed an amended *pro se* claim of ineffective assistance of counsel. The court denied defendant’s claims.

¶ 3 On appeal, defendant argues the trial court failed to address his claim concerning defense counsel’s failure to investigate and present mitigating witnesses at his resentencing

hearing. We remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In November 2012, the State charged defendant by information with six counts of domestic battery with a prior domestic battery conviction (counts I through VI) (720 ILCS 5/12-3.2(a)(1) (West 2010)) and one count of aggravated domestic battery (count VII) (720 ILCS 5/12-3.3(a-5) (West 2010)). All seven counts related to a series of incidents occurring on September 27, 2012.

¶ 6 In December 2012, defendant pleaded guilty to count VII. In exchange for the plea, the State dismissed the remaining charges and recommended defendant serve 48 months of probation. The trial court accepted the guilty plea and sentenced defendant to the 48-month probationary period.

¶ 7 In January 2014, the State filed a petition to revoke defendant's probation, alleging he violated the conditions of his probation when he consumed alcohol and committed the offenses of domestic battery and resisting a peace officer. In February 2014, defendant agreed to admit the allegations in the State's petition. Following a factual basis, the trial court revoked defendant's probation. In March 2014, the court resentenced defendant to seven years in prison. Thereafter, defense counsel filed a motion to reconsider the sentence.

¶ 8 While awaiting a hearing on the motion to reconsider, defendant filed a letter with the trial court, claiming therein that trial counsel was ineffective for failing to give him proper legal advice throughout the proceedings. He alleged counsel "used my ignorance of the law to get me to plea [*sic*] when the evidence against me could be suppressed." Because of "ineffective counseling, illegal evidence, breach of [his] constitutional rights, and unreasonable punishment, [defendant requested] a lighter sentence and/or a completely new trail [*sic*]."

¶ 9 In April 2014, the trial court conducted a hearing on the motion to reconsider the sentence. Defendant did not appear. The court noted there were “some *pro se* filings” by defendant and asked defense counsel if she wanted to add anything to the motion. Counsel indicated she did not. Thereafter, the court denied the motion to reconsider.

¶ 10 On direct appeal, defendant argued the trial court erred in failing to conduct a preliminary inquiry into his claim of ineffective assistance of counsel as required by *Krankel*. We agreed and remanded for an inquiry pursuant to *Krankel*. *People v. Hunt*, 2015 IL App (4th) 140313-U, ¶ 16.

¶ 11 On remand, defendant filed a *pro se* amended claim of ineffective assistance of counsel in February 2016. Therein, defendant claimed counsel was ineffective during the probation revocation proceeding because he failed to investigate two witnesses, Akeenen Hunt and Tevin Lockett, who were with defendant when he was arrested in January 2014.

¶ 12 Defendant also claimed counsel did not investigate any potential mitigating evidence to present at the resentencing hearing. Further, defendant claimed counsel failed to contact him about any possible witnesses in mitigation. Defendant included a letter from Atewa Hunt, who stated she would have been a character witness at the resentencing hearing. Defendant also claimed counsel was ineffective for failing to object to the State’s use of a video recording as aggravating evidence.

¶ 13 At the *Krankel* hearing, defendant argued counsel provided bad advice during the proceedings on the petition to revoke his probation and failed to conduct an adequate investigation. The trial court noted the petition to revoke alleged the commission of domestic battery, resisting a peace officer, and consumption of alcohol. Defendant admitted he “probably” did not have any witnesses to rebut the allegation of resisting a peace officer, but he claimed to

have witnesses to rebut the other two allegations. The court stated that because defendant did not have any witnesses to testify against the allegation of resisting a peace officer, counsel's alleged deficient representation did not affect defendant's case. Defendant responded he was unable to find witnesses because counsel failed to conduct an investigation and noted Hunt and Lockett "would testify to everything." New defense counsel stated he had no witnesses to rebut the resisting charge.

¶ 14 The trial court denied defendant's claim of ineffective assistance of counsel. Thereafter, defendant stated his amended claim had "more issues" pertaining to resentencing and mentioned the use of "illegal video evidence." The court stated it did not believe there was a video and denied defendant's claims. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues his cause should be remanded for a new *Krankel* hearing, claiming the trial court did not address his issue concerning defense counsel's failure to investigate and present mitigating witnesses at his resentencing hearing. We agree, and the State concedes.

¶ 17 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

"New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. 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. However, if the allegations show possible neglect of the case, new counsel should be appointed.” *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

On appeal, our “review of a defendant’s claim of error necessarily turns on the *adequacy* of the trial court’s inquiry.” (Emphasis in original.) *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 40, 982 N.E.2d 832. “If a trial court conducts an inadequate *Krankel* inquiry, then the inquiry does not meet the purpose of the rule.” *McLaurin*, 2012 IL App (1st) 102943, ¶ 44, 982 N.E.2d 832.

¶ 18 In the case *sub judice*, the record indicates the trial court conducted an adequate *Krankel* hearing with regard to defendant’s assertions concerning the petition to revoke probation. However, the court failed to adequately address defendant’s claims concerning the effectiveness of counsel at the resentencing hearing, including counsel’s alleged failure to investigate and present mitigating evidence. Thus, the court failed to conduct an adequate inquiry under *Krankel* and its progeny. Accordingly, the cause must be remanded for the court to conduct a *Krankel* hearing concerning the effectiveness of defense counsel at the resentencing hearing. See *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we remand the cause with directions to conduct a *Krankel* inquiry on defendant’s claim of ineffective assistance of counsel at his resentencing hearing.

¶ 21 Remanded with directions.